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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALLEN HAMMLER,  
  
                                Plaintiff,  
  
                  v.  
  
DIRECTOR OF CDCR, et al.,  
  
                                Defendants.

No. 2:17-cv-1949 MCE DB P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims prison officials have failed to provide him with safe living conditions in violation of the Eighth Amendment. Presently before the court is plaintiff’s motion for summary judgment (ECF No. 77) and defendant’s opposition (ECF No. 82).

On September 16, 2019, plaintiff filed a motion for summary judgment. (ECF No. 77.) He argues the court should grant summary judgment because defendants are following the housing policy he challenges in this case and the only “remaining question is whether the defendant’s continuing in the course is legal.” (*Id.* at 1.)


Defendant filed an opposition arguing that the court should deny the motion because the court has not yet ruled on the pending motion to dismiss, the parties have not yet engaged in discovery, and plaintiff’s motion fails to comply with Local Rule 260(a). (ECF No. 82.)

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1            “[T]he plain language of Rule 56(c) mandates the entry of summary judgment, *after*  
2 adequate time for discovery and upon motion, against a party who fails to make a showing  
3 sufficient to establish the existence of an element essential to that party’s case, and on which that  
4 party will bear the burden of proof at trial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)  
5 (emphasis added). Defendant is entitled to conduct discovery before opposing a summary  
6 judgment motion. Fed. R. Civ. P. 56. Here, the motion to dismiss has not yet been resolved and  
7 the parties have yet to engage in discovery. Thus, plaintiff’s motion for summary judgment  
8 should be denied as premature. However, plaintiff may file a future motion for summary  
9 judgment that incorporates all relevant materials obtained after the period set for the completion  
10 of all discovery as contemplated by Rule 56. See Gordon v. Marquez, 2019 WL 1017323 at \*1  
11 (E.D. Cal. Mar. 4, 2019) (denying as premature plaintiff’s motion for summary for summary  
12 judgment filed before the parties conducted discovery, but noting that plaintiff could file a future  
13 motion for summary judgment following a period of discovery). Accordingly, the court will deny  
14 plaintiff’s motion for summary judgment without prejudice.

15            IT IS HEREBY ORDERED that plaintiff’s motion for summary judgment (ECF No. 77)  
16 is denied without prejudice.

17 Dated: February 7, 2020

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21 DEBORAH BARNES  
22 UNITED STATES MAGISTRATE JUDGE  
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