

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESSE LEE BAUER,

Plaintiff,

No. 2:11-cv-2864 LKK EFB P

vs.

RAFAEL MIRANDA, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On July 17, 2012, defendants filed a motion to dismiss for failure to exhaust administrative remedies. *See* Fed. R. Civ. P. 12(b). After plaintiff failed to respond to the motion, the court recommended that this action be dismissed for failure to prosecute. Plaintiff filed objections to that recommendation, arguing that he did exhaust his administrative remedies and requesting appointment of counsel. The court will construe plaintiff’s objections as an opposition to the motion to dismiss and will vacate the findings and recommendations. Additionally, the court will deny plaintiff’s request for appointment of counsel.

District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily to represent such a

1 plaintiff. See 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991);
2 *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether
3 “exceptional circumstances” exist, the court must consider the likelihood of success on the
4 merits as well as the ability of the plaintiff to articulate his claims pro se in light of the
5 complexity of the legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009).
6 Having considered those factors, the court finds there are no exceptional circumstances in this
7 case. Accordingly, it is hereby ORDERED that:

- 8 1. Plaintiff’s November 8, 2012 objections (Dckt. No. 26) are construed as an opposition
9 to defendants’ motion to dismiss;
- 10 2. The October 4, 2012 findings and recommendations (Dckt. No. 25) are vacated; and
- 11 3. Plaintiff’s request for appointment of counsel (Dckt. No. 26) is denied.

12 DATED: November 9, 2012.

13 
14 EDMUND F. BRENNAN
15 UNITED STATES MAGISTRATE JUDGE
16
17
18
19
20
21
22
23
24
25
26