

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

TERRY STUART,

Plaintiff, CV F 06 1236 OWW GSA PC

vs. ORDER RE MOTION (DOC 29)

LT. HENDERSON, et al.,

## Defendants.

On January 4, 2008, findings and recommendations were entered, recommending dismissal of this action for Plaintiff's failure to obey a court order and failure to state a claim upon which relief may be granted. The Court recommended dismissal based on the March 5, 2007, order dismissing the complaint with leave to amend.

On January 14, 2008, Plaintiff filed a motion for extension of time in which to file an amended complaint and a motion for the appointment of counsel. Good cause appearing, Plaintiff will be granted an extension of time to file an amended complaint. Should Plaintiff fail to do so, the January 4, 2008, recommendation of dismissal will be submitted to the District Court.

As to the motion for appointment of counsel, the United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983

1 cases. Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296,  
2 109 S.Ct. 1814 (1989). In certain exceptional circumstances, the court may request the  
3 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(d). Terrell v. Brewer, 935 F.2d  
4 1015 (9th Cir. 1990); Wood v. Housewright, 900 F.2d 1332 (9th Cir. 1990). In the present case,  
5 the court does not find the required exceptional circumstances.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. Plaintiff's motion for extension of time is granted. Plaintiff is granted an extension of  
8 time of thirty days from the date of service of this order in which to file an amended complaint.

9 2. Plaintiff's motion for the appointment of counsel is denied.

10 IT IS SO ORDERED.

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12 **Dated: February 6, 2008**

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**/s/ Gary S. Austin**  
14 UNITED STATES MAGISTRATE JUDGE  
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