

1 sixty (60) days from the date of this Order to complete depositions in this
2 matter.
3 Order [Doc. 48] 4:18-21. Plaintiff has failed to offer any reason why additional time is
4 required. Indeed, it would appear that Plaintiff did not even read this Court's previous
5 Order.² As such, Plaintiff's Notice of Motion and Motion for Continuance to Seek
6 Depositions and Affidavit in Support Under Fed. R. Civ. P. 56(f) [Doc. 49] is denied.
7 Plaintiff shall have ten (10) days from the date of this Order to submit his opposition to
8 Defendants' Motion for Summary Judgment [Doc. 46].³

9 **II. APPOINTMENT OF COUNSEL**

10 Plaintiff again seeks appointment of counsel [Doc. 50]. As this Court has
11 previously stated, appointment of counsel under 28 U.S.C. § 1915(e)(1) is required only
12 when "exceptional circumstances" are present. *Terrell v. Brewer*, 935 F.2d 1015, 1017
13 (9th Cir. 1991). A court must consider both the likelihood of success on the merits and the
14 ability of the petitioner to articulate his claims *pro se* given the complexity of his case.
15 *Id.* Neither factor is dispositive, and both must be viewed together before a finding of
16 exceptional circumstances can be made. *Id.*

17 Plaintiff cites his inability to bear the costs of deposition expenses as grounds
18 requiring appointment of counsel. Plaintiff had other discovery tools at his disposal, such
19 as written interrogatories or requests for admission, but failed to use them. Moreover,
20 there are only two Defendants remaining in this cause of action, and given potentially
21 qualified immunity defenses, Plaintiff's likelihood of success on the merits is
22 underwhelming. There is no evidence before this Court to suggest the presence of
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24 ²The Court further notes that Defendants' Opposition to Plaintiff's Motion to Re-Open
25 Discovery and take Depositions [Doc. 51] is also devoid of reference to this Court's December 22,
26 2011 Order [Doc. 48], suggesting that perhaps neither party actually read it.

27 ³Although Plaintiff sought additional time for depositions, he did not request an extension
28 of time to respond to Defendants' summary judgment motion. The Court's December 22, 2011
 Order [Doc. 48] directed that Plaintiff's response was due on or before January 30, 2011.

1 “exceptional circumstances” warranting appointment of counsel. As such, the Court will
2 not appoint counsel at this time. Plaintiff’s Notice of Motion and Motion for
3 Appointment of Counsel and Affidavit in Support Under 28 U.S.C. § 1915(e)(1) [Doc.
4 50] is denied without prejudice.

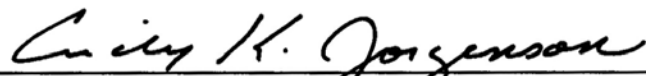
5 Accordingly, IT IS HEREBY ORDERED that:

6 1) Plaintiff’s Notice of Motion and Motion for Continuance to Seek Depositions
7 and Affidavit in Support Under Fed. R. Civ. P. 56(f) [Doc. 49] is DENIED;

8 2) Plaintiff’s Notice of Motion and Motion for Appointment of Counsel and
9 Affidavit in Support Under 28 U.S.C. § 1915(e)(1) [Doc. 50] is DENIED WITHOUT
10 PREJUDICE; and

11 3) Plaintiff shall submit his response to Defendants’ Motion for Summary
12 Judgment [Doc. 46] within ten (10) days of the date of this Order.

13 DATED this 22nd day of February, 2012.

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Cindy K. Jorgenson
16 United States District Judge
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