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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ANTHONY CRAIG HUCKABEE,  
Plaintiff,  
v.  
MEDICAL STAFF AT CSATF, et al.,  
Defendants.

Case No. 1:09-cv-00749-DAD-BAM (PC)  
ORDER DENYING PLAINTIFF’S MOTION  
FOR TRIAL DATE AND REQUEST FOR  
APPOINTMENT OF COUNSEL  
(ECF No. 280)

Plaintiff Anthony Craig Huckabee (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s fifth amended complaint against Defendants Wu, Jimenez, and McGuinness for deliberate indifference to Plaintiff’s serious medical needs in violation of the Eighth Amendment. Specifically, Plaintiff’s claims are against: (1) Defendant Wu for reducing the strength of Plaintiff’s prescription eye drops on December 21, 2004; (2) Defendant Jimenez for assuring Plaintiff that he would personally handle Plaintiff’s refill request for his eye drops on July 12, 14, and 18, 2005, but the medication was not refilled; and (3) Defendant McGuinness, who was aware of the delay in Plaintiff’s glaucoma medication in May 2005 and February 2006. (ECF Nos. 272, 274.)

On March 22, 2019, Defendant McGuinness filed a motion for summary judgment. (ECF No. 277.) Any response or opposition to that motion from Plaintiff is currently due on or before

1 April 15, 2019.

2 On March 25, 2019, the Court granted Defendants Wu and Jimenez's motion to modify  
3 the Court's scheduling order and extended the dispositive motion deadline for Plaintiff and  
4 Defendants Wu and Jimenez to April 22, 2019. (ECF No. 279.)

5 Currently before the Court is Plaintiff's motion for trial date and request for appointment  
6 of counsel, filed March 28, 2019. (ECF No. 280.) Plaintiff states that, in an attempt to be diligent  
7 with his case, he requests that the Court set a trial date at the earliest time, and further requests  
8 that the Court appoint Plaintiff counsel for representation. (Id.) Plaintiff does not otherwise  
9 provide any reasons for his request.

10 Plaintiff's request to set this matter for trial is premature. There is currently a pending  
11 motion for summary judgment by Defendant McGuinness, to which Plaintiff is required to file a  
12 response or opposition pursuant to Federal Rule of Civil Procedure 56. **Plaintiff's opposition to**  
13 **that motion is currently due on or before April 15, 2019.**

14 Furthermore, the Court has granted the remaining parties an extension until April 22, 2019  
15 to file any other dispositive motions. If additional dispositive motions are filed, oppositions to  
16 those motions must also be submitted. The Court declines to set a trial date until all dispositive  
17 motions are fully briefed, if not fully resolved.

18 As to Plaintiff's request for appointment of counsel, Plaintiff has been repeatedly  
19 informed that he does not have a constitutional right to appointed counsel in this action, Rand v.  
20 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), rev'd in part on other grounds, 154 F.3d 952, 954  
21 n.1 (9th Cir. 1998), and the court cannot require an attorney to represent plaintiff pursuant to 28  
22 U.S.C. § 1915(e)(1). Mallard v. U.S. Dist. Court for the S. Dist. of Iowa, 490 U.S. 296, 298  
23 (1989). However, in certain exceptional circumstances the court may request the voluntary  
24 assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

25 As Plaintiff has provided no explanation for his renewed request for appointment of  
26 counsel, the Court cannot find that Plaintiff has presented any of the required exceptional  
27 circumstances that would warrant appointment of counsel in this action.

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Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for trial date and request for counsel, (ECF No. 280), is DENIED.

IT IS SO ORDERED.

Dated: March 29, 2019

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE