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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JASON LATRELL THOMAS,

 Plaintiff,

 v.

M. WILBER, et al.,

 Defendants.

Case No. 1:10-cv-00006-SKO (PC)

ORDER GRANTING MOTION TO
REQUEST COUNSEL AND REFERRING
CASE TO PRO BONO PROGRAM TO SEEK
VOLUNTARY COUNSEL FOR TRIAL

(Doc. 93)

Plaintiff Jason Latrell Thomas, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 4, 2010. Pursuant to the scheduling order filed on April 30, 2014, this matter is set for jury trial on May 5, 2015, on the following federal constitutional claims: (1) Plaintiff’s Eighth Amendment excessive force claim against Defendants Vikjord and Hernandez, (2) Plaintiff’s First Amendment retaliation claim against Defendants Vikjord and Hernandez arising out of the use of force on August 25, 2007, and (3) Plaintiff’s First Amendment retaliation claim against Defendants Frescura and Price arising out of the use of force on or around February 18, 2007.

28 U.S.C. § 1915(e) provides that “[t]he court may request an attorney to represent any person unable to afford counsel,” and on April 24, 2014, Plaintiff filed a motion seeking the appointment of counsel. In the motion, Plaintiff stated that his personal and legal property were destroyed by prison officials, and Plaintiff’s mental health issues and resulting interruptions to access to legal material are well documented in the record. On April 30, 2014, the Court ordered

1 Defendants Frescura, Hernandez, Price, and Vikjord (“Defendants”) to file a status report
2 addressing the current status of Plaintiff’s property and his access to legal material and/or services.
3 Plaintiff was granted leave to file a response to the status report, and Defendants were granted
4 leave to file a reply to Plaintiff’s response. On May 30, 2014, Defendants filed a status report, and
5 on June 13, 2014, Plaintiff filed a response.

6 There is no evidence supporting Plaintiff’s assertion in his motion for appointment of
7 counsel that prison officials *destroyed* his property. However, Plaintiff’s mental stability and his
8 ability to try his case pro se are of sufficient concern to the Court that this case will be referred to
9 the Eastern District of California’s Pro Bono Program to seek voluntary counsel for Plaintiff.¹ 28
10 U.S.C. § 1915(e). If the Court is able to secure voluntary counsel to represent Plaintiff, the
11 appointment is limited to the trial phase. Discovery will not be reopened. However, counsel will
12 be permitted to file an amended pretrial statement on Plaintiff’s behalf, and if the parties believe a
13 settlement conference will be beneficial, they may file a stipulation requesting one. Finally,
14 depending on the availability of counsel for both sides once an attorney for Plaintiff is located, the
15 trial date of May 5, 2015, is subject to change.

16 Plaintiff is informed that it may take time to locate an attorney willing to voluntarily
17 represent him, and he should not expect the issuance of this order to result in imminent receipt of
18 information regarding an appointment of counsel for him.

19 Accordingly, the Court HEREBY ORDERS as follows:

20 1. Plaintiff’s motion for the Court to request voluntary counsel to represent him, filed
21 on April 24, 2014, is GRANTED; and

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26 ¹ There has been no showing that Plaintiff is or was mentally incompetent, and the record reflects he has adequately
27 litigated his case to date. *See Davis v. Walker*, 745 F.3d 1303, 1305-06 (9th Cir. 2014) (addressing availability of
28 guardian ad litem where plaintiff was and remained mentally incompetent). However, this case presents concerns
because Plaintiff’s mental health does fluctuate, he requires a high level of care, and he was previously under the care
of the Department of Mental Health. (Docs. 78, 105.)

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2. This case is referred to the Pro Bono Program to seek voluntary counsel for Plaintiff for the trial phase, subject to the parameters addressed above.

IT IS SO ORDERED.

Dated: August 1, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE