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

JAMES TROTTER,

Plaintiff,

vs.

ARNOLD SCHWARZENEGGER,

Defendant.

Case No. 1:10-cv-01971 LJO JLT (PC)

ORDER DENYING PLAINTIFF’S MOTION  
FOR THE APPOINTMENT OF COUNSEL

(Doc. 18)

ORDER DENYING PLAINTIFF’S MOTIONS  
FOR ENTRY OF DEFAULT

(Docs. 22, 25 & 27)

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT PLAINTIFF’S  
MOTION FOR LAW LIBRARY ACCESS BE  
DENIED

(Doc. 21)

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has several motions currently pending before the Court.

**I. Motion to Appoint Counsel**

On December 15, 2010, Plaintiff filed a motion seeking the appointment of counsel. (Doc. 18.) Plaintiff is advised that he does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and that the Court cannot require an attorney to represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional

1 circumstances, the Court may request the voluntary assistance of counsel pursuant to § 1915(e)(1).  
2 Rand, 113 F.3d at 1525. In determining whether “exceptional circumstances exist, a district court  
3 must evaluate both the likelihood of success on the merits [and] the ability of the [plaintiff] to  
4 articulate his claims *pro se* in light of the complexity of the legal issues involved.” Id. (internal  
5 quotations and citations omitted).

6 In the present case, the Court does not find the required exceptional circumstances. Even if  
7 it is assumed that Plaintiff is not well-versed in the law and that he has made serious allegations  
8 which, if proved, would entitle him to relief, his case is not exceptional. This Court is faced with  
9 similar cases almost daily. Without a reasonable method of securing and compensating counsel, the  
10 Court will seek volunteer counsel only in the most serious and exceptional cases. Further, at this  
11 early stage in the proceedings, the Court cannot make a determination that Plaintiff is likely to  
12 succeed on the merits. And, based on a review of the record in this case, the Court does not find that  
13 Plaintiff is unable to adequately articulate his claims.

14 Accordingly, for all the reasons set forth above, Plaintiff’s motion for the appointment of  
15 counsel is **DENIED** without prejudice.

## 16 **II. Motion for Entry of Default and Motions to Compel**

17 On February 16, 2011, Plaintiff filed a motion for entry of default. (Doc. 22.) In addition,  
18 on April 5, 2011 and June 3, 2011, Plaintiff filed motions styled as “motions to compel,” wherein  
19 Plaintiff essentially asks the Court to enter default against Defendant. (See Docs. 25 & 27.) Plaintiff  
20 contends that Defendant has failed to answer his complaint and therefore the Court should enter  
21 judgment Plaintiff’s favor on all his claims. (See Doc. 25 at 1.)

22 Plaintiff is advised that the Court is required to screen complaints in cases such as this one,  
23 in which a prisoner seeks redress from a governmental entity or officer. See 28 U.S.C. § 1915A(a).  
24 Until, and unless, the Court finds that the complaint states a cognizable claim, the defendants are not  
25 required to file an answer to the complaint. Here, the Court has yet to review Plaintiff’s complaint  
26 and has yet to find that the complaint states a cognizable claim.<sup>1</sup> Therefore, at this time, Defendant

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28 <sup>1</sup> The Eastern District of California carries one of the highest caseloads in the United States. The Court will screen Plaintiff’s complaint in due course.

1 is under no obligation to file an answer in this case.

2 Accordingly, Plaintiff's motions for entry of default are **DENIED**.

3 **III. Motion for Law Library Access**

4 On January 3, 2011, Plaintiff filed a motion for law library access. (Doc. 21.) Plaintiff is  
5 advised that federal courts are courts of limited jurisdiction and must have before it an actual case  
6 or controversy. City of Los Angeles v Lyons, 461 U.S. 95, 102 (1983); Valley Forge Christian Coll.  
7 v. Ams. United for Separation of Church and State, Inc., 454 U.S. 464, 471 (1982). If the Court does  
8 not have an actual case or controversy before it, it has no power to hear the matter in question.  
9 Lyons, 461 U.S. at 102. Therefore, "[a] federal court may issue an injunction [only] if it has personal  
10 jurisdiction over the parties and subject matter over the claim; it may not attempt to determine the  
11 rights of persons not before the court." Zepeda v. United States Immigration Serv., 753 F.2d 719,  
12 727 (9th Cir. 1985).

13 Here, Plaintiff asserts that T. Peterson is denying him access to the law library. (Doc. 21 at  
14 3.) However, T. Peterson is not before the Court in this case, and therefore the Court has no power  
15 to issue injunctive relief from this individual. See Zepeda, 753 F.2d at 727. Accordingly, Plaintiff's  
16 motion for law library access should be **DENIED**.

17 **IV. Conclusion**

18 In accordance with the above, it is **HEREBY ORDERED** that:

- 19 1. Plaintiff's December 15, 2010 motion for the appointment of counsel (Doc. 18) is  
20 **DENIED** without prejudice;
- 21 2. Plaintiff's February 16, 2011 request for entry of default (Doc. 22) is **DENIED**;
- 22 3. Plaintiff's April 5, 2011 motion to compel (Doc. 25) is **DENIED**; and
- 23 4. Plaintiff's June 3, 2011 motion to compel (Doc. 27) is **DENIED**.

24 Also, it is **HEREBY RECOMMENDED** that:

- 25 1. Plaintiff's January 3, 2011 motion for law library access (Doc. 21) be **DENIED**.

26 These findings and recommendations are submitted to the assigned United States District  
27 Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being  
28 served with these findings and recommendations, Plaintiff may file written objections with the Court.

1 A document containing objections should be captioned “Objections to Magistrate Judge’s Findings  
2 and Recommendations.” Plaintiff is advised that failure to file objections within the specified time  
3 may waive the right to appeal the District Court’s order. See Martinez v. Ylst, 951 F.2d 1153 (9th  
4 Cir. 1991).

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6 IT IS SO ORDERED.

7 Dated: August 25, 2011

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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