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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

BRYAN DENTON,	)	1:13-cv-00017-AWI-BAM (PC)
	)	
Plaintiff,	)	ORDER ADOPTING FINDINGS AND
	)	RECOMMENDATIONS REGARDING
v.	)	DISMISSAL OF DEFENDANT KERN
	)	COUNTY JAIL
PULIDO, et al.,	)	
	)	(ECF No. 14)
Defendants.	)	
	)	
	)	

Plaintiff Bryan Denton (“Plaintiff”) is a county jail inmate proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On January 14, 2014, the Magistrate Judge issued Findings and Recommendations that this action proceed on Plaintiff’s first amended complaint against Defendant Pulido for excessive force in violation of the Fourteenth Amendment and that Defendant Kern County Jail be dismissed from this action based on Plaintiff’s failure to state a cognizable claim.<sup>1</sup> The Findings and Recommendations were served on Plaintiff and contained notice that any objections were to be filed within thirty days after service. (ECF No. 14.) On February 13, 2014, Plaintiff filed objections. (ECF No. 17.)

<sup>1</sup> By separate order, the Magistrate Judge directed Plaintiff to submit service documents for Defendant Pulido. (ECF No. 15.) On February 18, 2014, after Plaintiff returned the service documents, the Magistrate Judge directed the United States Marshals Service to serve Defendant Pulido with the first amended complaint. (ECF No. 18.)

1 In his objections, Plaintiff states that it is not his desire to have Defendant Kern County  
2 dismissed from this action. Plaintiff believes that he misunderstood an instruction regarding this  
3 matter, he is incompetent to represent himself and he would like to be appointed counsel. (ECF  
4 No. 17.) Plaintiff's request for the appointment of counsel is not a basis for disagreement with  
5 the Magistrate Judge's findings and recommendations. Although Plaintiff claims that he is  
6 incompetent, there is no indication that the Magistrate Judge erred or that the appointment of  
7 counsel is warranted.

8 Further, Plaintiff does not have a constitutional right to appointed counsel in this action,  
9 Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an attorney  
10 to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court  
11 for the Southern District of Iowa, 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in  
12 certain exceptional circumstances the court may request the voluntary assistance of counsel  
13 pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

14 Without a reasonable method of securing and compensating counsel, the court will seek  
15 volunteer counsel only in the most serious and exceptional cases. In determining whether  
16 "exceptional circumstances exist, the district court must evaluate both the likelihood of success  
17 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the  
18 complexity of the legal issues involved." Id. (internal quotation marks and citations omitted).

19 In the present case, the court does not find the required exceptional circumstances. Even  
20 if it is assumed that Plaintiff is not well versed in the law and that he has made serious  
21 allegations which, if proved, would entitle him to relief, his case is not exceptional. This court is  
22 faced with similar cases almost daily. Further, at this early stage in the proceedings, the court  
23 cannot make a determination that Plaintiff is likely to succeed on the merits, and based on a  
24 review of the record in this case, the court does not find that Plaintiff cannot adequately  
25 articulate his claims. Id. Plaintiff's assertion that he is incompetent because he was unable to  
26 cure the deficiencies identified by the Magistrate Judge regarding Defendant Kern County Jail is  
27 not sufficient to demonstrate exceptional circumstances. Plaintiff was able to state a cognizable  
28 claim against Defendant Pulido.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted  
2 a de novo review of this case. Having carefully reviewed the entire file, the Court finds the  
3 Findings and Recommendations to be supported by the record and by proper analysis.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. The Findings and Recommendations, issued on January 14, 2014, are adopted in  
6 full;
- 7 2. This action shall proceed on Plaintiff's claim against Defendant Pulido for  
8 excessive force in violation of the Fourteenth Amendment;
- 9 3. Defendant Kern County Jail is dismissed from this action based on Plaintiff's  
10 failure to state a cognizable claim;
- 11 4. Plaintiff's request for the appointment of counsel is denied; and
- 12 5. This action is referred back to the Magistrate Judge for further proceedings  
13 consistent with this order.

14  
15 IT IS SO ORDERED.

16 Dated: March 18, 2014

  
17 SENIOR DISTRICT JUDGE