

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA
4

5 BRIAN CAPUTO,

6 Plaintiff,

7 v.

8 KERN COUNTY SHERIFF'S OFFICE, et al.,
9

10 Defendants.

1:15-cv-01008-EPG (PC)

ORDER DENYING MOTION FOR
SUBPOENAS AND APPOINTMENT OF PRO
BONO COUNSEL

(ECF NO. 29)

11 **I. BACKGROUND**

12 Brian Caputo ("Plaintiff") is a prisoner¹ proceeding *pro se* and *in forma pauperis* in this
13 civil rights action filed pursuant to 42 U.S.C. § 1983. On July 16, 2015, Plaintiff consented to
14 Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c) (ECF No. 5) and no
15 other parties have made an appearance. Therefore, pursuant to Appendix A(k)(4) of the Local
16 Rules of the Eastern District of California, the undersigned shall conduct any and all
17 proceedings in the case until such time as reassignment to a District Judge is required. Local
18 Rule Appendix A(k)(3).

19 On January 17, 2017, Plaintiff filed a motion for subpoenas and appointment of pro
20 bono counsel. (ECF No. 29). It appears that Plaintiff may also be requesting that the Court
21 reconsider its order denying Plaintiff's motion for relief of medical neglect, medical
22 negligence, and medical abuse. All of Plaintiff's requests will be denied.

23 Plaintiff's request for subpoenas will be denied because discovery has not yet been
24 opened in this case. As the Court told Plaintiff in its First Informational Order in Prisoner/Civil
25 Detainee Civil Rights Case, "[a]fter defendants' answers are filed, the Court will issue an order
26 opening discovery and setting deadlines for completing discovery, amending the pleadings, and
27

28 ¹ At the time of the incidents alleged in the original Complaint, Plaintiff was incarcerated at
Kern County Jail. He is now incarcerated at the Lompoc U.S. Penitentiary.

1 filing dispositive motions. No discovery may be initiated until the Court issues a discovery
2 order or otherwise orders that discovery begin.” (ECF No. 3, p. 4). The Court has not issued a
3 discovery order or otherwise ordered that discovery begin. Therefore, it is not yet time in this
4 case for Plaintiff to conduct discovery.

5 Further, to the extent that Plaintiff is requesting subpoenas to gather evidence related to
6 his medical treatment, as described in more detail in the Court’s order, which was signed on
7 February 7, 2017, and docketed on February 8, 2017 (ECF No. 32), Plaintiff is no longer
8 asserting a claim based on deliberate indifference to his serious medical needs. Therefore,
9 unless Plaintiff amends his complaint, even after discovery is opened there will be no need for
10 Plaintiff to take discovery on this issue.

11 To the extent that Plaintiff is requesting reconsideration of the Court’s order denying
12 Plaintiff’s motion for relief of medical neglect, medical negligence, and medical abuse, that
13 request will also be denied. Plaintiff has failed to show any of the reasons laid out in Federal
14 Rule of Civil Procedure 60(b). And while Plaintiff is requesting subpoenas so that he can
15 gather additional evidence, presumably so that he can show at least one of the reasons, the
16 Court emphasizes the fact that Plaintiff has been moved from Kern County Jail to a federal
17 prison. Therefore, even if Plaintiff amends his complaint to assert that the county jail and its
18 staff were deliberately indifferent to Plaintiff’s serious medical needs, and even if Plaintiff can
19 show that the county jail and its staff were deliberately indifferent to his serious medical needs,
20 as the Court has already told Plaintiff (ECF No. 26, pgs. 4-5) there is no need for a preliminary
21 injunction against Kern County Jail or its staff.

22 Finally, Plaintiff’s request for the appointment of pro bono counsel will be denied.
23 According to Plaintiff, he needs counsel appointed because he is incarcerated, has limited
24 knowledge of the law, and has to “go against” an attorney.

25 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.
26 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), withdrawn in part on other grounds, 154 F.3d
27 952 (9th Cir. 1998), and the Court cannot require an attorney to represent Plaintiff pursuant to
28 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of

1 Iowa, 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in certain exceptional
2 circumstances the Court may request the voluntary assistance of counsel pursuant to section
3 1915(e)(1). Rand, 113 F.3d at 1525.

4 Without a reasonable method of securing and compensating counsel, the Court will seek
5 volunteer counsel only in the most serious and exceptional cases. In determining whether
6 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
7 of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the
8 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

9 The Court will not order appointment of pro bono counsel at this time. At this early
10 stage in the proceedings (the complaint has not yet been screened), the Court cannot make a
11 determination that Plaintiff is likely to succeed on the merits. Moreover, while Plaintiff
12 appears to not fully understand the procedures he needs to follow, based on the record in this
13 case it appears that Plaintiff can adequately articulate his claims. Therefore, at this time the
14 Court will not order the appointment of pro bono counsel. Plaintiff is advised that he is not
15 precluded from renewing the motion for appointment of pro bono counsel at a later stage of the
16 proceedings.

17 Accordingly, based on the foregoing, it is ORDERED that Plaintiff’s motion for
18 subpoenas and appointment of pro bono counsel (ECF No. 29) is DENIED.

19 IT IS SO ORDERED.
20

21 Dated: February 10, 2017

22 /s/ Eric P. Grogan
23 UNITED STATES MAGISTRATE JUDGE
24
25
26
27
28