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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER DICKSON,
Plaintiff,
v.
G. GOMEZ, et al.,
Defendants.

No. 1:17-cv-00294-DAD-BAM (PC)

ORDER DENYING PLAINTIFF’S MOTION
FOR RECONSIDERATION AND ADOPTING
FINDINGS AND RECOMMENDATION

(Doc. Nos. 26, 27, 29)

Plaintiff Christopher Dickson is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 3, 2019, plaintiff filed a “motion requesting court order that CCI Tehachapi have plaintiff’s legal mail delivered to plaintiff’s cell and plaintiff be given assistance to get to the law library in order to litigate and prosecute this civil complaint or appointment of counsel.” (Doc. No. 26.) The assigned magistrate judge interpreted plaintiff’s motion as a motion for appointment of counsel or, if appointment of counsel was denied, a motion for preliminary injunction. (Doc. No. 27.) On July 16, 2019, the magistrate judge issued both an order denying, without prejudice, plaintiff’s motion for appointment of counsel and findings and recommendations recommending that plaintiff’s motion for preliminary injunction be denied.

1 (*Id.*) The order and the findings and recommendation were served on plaintiff and contained
2 notice that any objections to the findings and recommendation were to be filed within fourteen
3 (14) days after service. (*Id.* at 5.)

4 On August 2, 2019, plaintiff filed objections to the magistrate judge’s findings and
5 recommendation. (Doc. No. 29.) Because plaintiff objects to both the magistrate judge’s order
6 denying his motion for appointment of counsel and the findings and recommendation, the
7 undersigned interprets plaintiff’s objections as (1) a motion for the undersigned’s reconsideration
8 of the magistrate judge’s denial of his motion for appointment of counsel, and (2) objections to
9 the magistrate judge’s findings and recommendation recommending that his motion for a
10 preliminary injunction be denied.

11 DISCUSSION

12 A. Plaintiff’s Motion for Reconsideration re Appointment of Counsel

13 “A motion for reconsideration should not be granted, absent highly unusual
14 circumstances, unless the district court is presented with newly discovered evidence, committed
15 clear error, or if there is an intervening change in the controlling law,” and it “may *not* be used to
16 raise arguments or present evidence for the first time when they could reasonably have been
17 raised earlier in the litigation.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571
18 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted) (emphasis in
19 original). Further, Local Rule 230(j) requires, in relevant part, that a movant show “what new or
20 different facts or circumstances are claimed to exist which did not exist or were not shown”
21 previously, “what other grounds exist for the motion,” and “why the facts or circumstances were
22 not shown” at the time the substance of the order which is objected to was considered.

23 Here, the magistrate judge found that plaintiff had failed to meet his burden of
24 demonstrating the existence of exceptional circumstances warranting the appointment of counsel
25 on his behalf in this civil rights action. (Doc. No. 27 at 2–3.) As plaintiff was previously
26 advised, “[t]here is no constitutional right to appointed counsel in a § 1983 action.” *Rand v.*
27 *Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997). Nor can the court require an attorney to represent
28 plaintiff pursuant to 28 U.S.C. § 1915(e)(1). See *Mallard v. United States District Court for the*

1 *Southern District of Iowa*, 490 U.S. 296, 298 (1989). Nevertheless, in certain exceptional
2 circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. §
3 1915(e)(1). *Rand*, 113 F.3d at 1525. Without a reasonable method of securing and compensating
4 counsel, the court will seek volunteer counsel only in the most serious and exceptional cases. In
5 determining whether such “exceptional circumstances exist, the district court must evaluate both
6 the likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims
7 pro se in light of the complexity of the legal issues involved.” *Id.* (internal quotation marks and
8 citations omitted). “Neither of these considerations is dispositive and instead must be viewed
9 together.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). The burden of demonstrating
10 exceptional circumstances is on the plaintiff. *Id.*

11 Here, plaintiff has not met his burden in this regard. First, plaintiff has shown no error in
12 the magistrate judge’s determination that plaintiff failed to demonstrate likelihood of success on
13 the merits of his cognizable claims. Second, plaintiff has not demonstrated an inability to
14 articulate his claims pro se. Plaintiff contends that he needs an attorney because he is “unlettered
15 and inexperience[d]” and he “cannot be possibly expected to meet the deadlines and adequately
16 articulate the diffe[re]nt aspects and complexities of the case.” (Doc. No. 29 at 2.) Plaintiff’s
17 apprehension with pursuing this case on his own is understandable, but it is insufficient grounds
18 for reconsideration of the magistrate judge’s order denying the appointment of counsel without
19 prejudice. “While a pro se litigant may be better served with the assistance of counsel,” the court
20 need not appoint counsel if plaintiff can articulate his claims. *Ricks v. Austria*, No. 1:15-cv-
21 01147-BAM (PC), 2016 WL 1734326, at *2 (E.D. Cal. May 2, 2016). Here, the record reflects
22 that the legal issues involved in this action are not complex and that plaintiff can adequately
23 articulate his cognizable claims.

24 Lastly, plaintiff states that his circumstances are much more dire than the circumstances of
25 most prisoners because, without a cane or wheelchair, he has no way of getting to the prison law
26 library without assistance and he is unable to walk to the gym to pick up the legal mail sent to
27 him by the court. (Doc. No. 29 at 3.) However, it is unclear how appointing counsel will remedy
28 that situation, since plaintiff would presumably remain unable to get around without assistance.

1 Although the undersigned sympathizes with plaintiff, these circumstances do not warrant
2 appointment of counsel. *See Palmer*, 560 F.3d at 970 (finding that plaintiff failed to demonstrate
3 exceptional circumstances despite his contentions that “the pain from his surgery limited his
4 ability to prepare for trial, and prison officials had denied him access to his legal documents,
5 thereby limiting his ability to prepare for trial”).

6 Accordingly, the undersigned will deny plaintiff’s motion for reconsideration of the
7 magistrate judge’s denial, without prejudice, of his motion for appointment of counsel.¹

8 **B. The Findings and Recommendation Recommending Denial of Plaintiff’s Motion for**
9 **Preliminary Injunction are Adopted in Full**

10 Next, the undersigned considers the assigned magistrate judge’s findings and
11 recommendation recommending denial of plaintiff’s motion for preliminary injunction. In
12 accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has
13 conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds
14 the findings and recommendation to be supported by the record and proper analysis.

15 In his objections, plaintiff asserts that he will suffer irreparable harm if his motion for
16 preliminary injunction is not granted because he will be unable to pick up his legal mail, go to the
17 law library to research, make copies, and comply with the court ordered deadlines and, as a result,
18 his action will be dismissed for failure to obey court orders. (Doc. No. 29 at 4–5.) Further,
19 plaintiff argues that, while he is not seeking injunctive relief against a defendant specifically
20 named in this action, his second amended complaint seeks relief against the California
21 Department of Corrections and Rehabilitation, which includes the staff of every prison. (*Id.* at 6.)

22 “[T]here must be a relationship between the injury claimed in the motion for injunctive
23 relief and the conduct asserted in the underlying complaint” for a court to have authority to grant
24 the preliminary injunctive relief requested. *Pacific Radiation Oncology, LLC v. Queen’s Medical*
25 *Center*, 810 F.3d 631, 636 (9th Cir. 2015). “The relationship between the preliminary injunction
26 and the underlying complaint is sufficiently strong where the preliminary injunction would grant

27 ¹ Of course, nothing in the magistrate judge’s order or this order, prohibits plaintiff from securing
28 counsel on his own, such as the attorney referenced in his objections. (*See* Doc. No. 29 at 3.)

1 ‘relief of the same character as that which may be granted finally.’” *Id.* (citation omitted).

2 Here, plaintiff’s request for a preliminary injunction does not have a relationship to the
3 cognizable claims alleged in his second amended complaint. Plaintiff’s motion for preliminary
4 injunction is based on allegations that medical and custody staff at the California Correctional
5 Institution have improperly confiscated his cane, gel insoles, and mobility vest. In contrast, in his
6 second amended complaint plaintiff alleges cognizable claims for excessive use of force,
7 violation of his due process rights in the prison disciplinary context, and deliberate indifference to
8 his serious medical needs. (Doc. No. 23.) The relief plaintiff seeks in his pending motion for a
9 preliminary injunction—requiring prison officials at California Correctional Institution to deliver
10 plaintiff’s legal mail to his cell and provide him assistance getting to the prison law library, the
11 showers, and/or phone calls—is different from the relief sought by him in his second amended
12 complaint. (*See generally* Doc. No. 23.)

13 For these reasons, the undersigned adopts in full the magistrate judge’s findings and
14 recommendation recommending that plaintiff’s motion for preliminary injunction be denied.

15 **CONCLUSION**

16 Accordingly:

- 17 1. Plaintiff’s motion for reconsideration of magistrate judge’s denial of his motion for
18 appointment of counsel, (Doc. No. 29), is denied;
- 19 2. The findings and recommendation issued on July 16, 2019, (Doc. No. 27), are
20 adopted in full;
- 21 3. Plaintiff’s motion for preliminary injunction, (Doc. No. 26), is denied; and
- 22 4. This action is referred back to the assigned magistrate judge for further
23 proceedings.

24 IT IS SO ORDERED.

25 Dated: March 25, 2020

26 
UNITED STATES DISTRICT JUDGE