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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARL JOHNSON,
Plaintiff,
v.
J. SCALIA, A. FRITZ,
B. HACKWORTH, J. CAMPOS,
A. ARANDA, and DOES 1-4,
Defendants.

Case No. 1:18-cv-00061-DAD-JDP
ORDER DENYING MOTION TO APPOINT
COUNSEL
ECF No. 25
ORDER DENYING MOTION TO COMPEL
DISCOVERY
ECF No. 26
ORDER DIRECTING RESPONSE TO
SETTLEMENT REQUEST
THIRTY-DAY DEADLINE

Plaintiff is a state prisoner proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983. Pending before the court are plaintiff’s motions to appoint counsel, ECF No. 25, to compel discovery, ECF No. 26, and to refer the case for settlement, ECF No. 28. We address each in turn below.

I. Appointment of Counsel

Plaintiff does not have a constitutional right to appointed counsel in this action, *see Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *withdrawn in part on other grounds on reh’g en banc*, 154 F.3d 952 (9th Cir. 1998), and the court lacks the authority to require an attorney to represent plaintiff. *See Mallard v. U.S. District Court for the Southern District of Iowa*, 490 U.S.

1 296, 298 (1989). The court may request the voluntary assistance of counsel. *See* 28 U.S.C.
2 § 1915(e)(1) (“The court may request an attorney to represent any person unable to afford
3 counsel”); *Rand*, 113 F.3d at 1525. However, without a means to compensate counsel, the court
4 will seek volunteer counsel only in exceptional circumstances. In determining whether such
5 circumstances exist, “the district court must evaluate both the likelihood of success on the merits
6 [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the
7 legal issues involved.” *Rand*, 113 F.3d at 1525 (internal quotation marks and citations omitted).

8 The court cannot conclude that exceptional circumstances requiring the appointment of
9 counsel are present here. The allegations in the complaint are not exceptionally complicated.
10 Based on a review of the record, it is not apparent that plaintiff is unable to articulate his claims
11 adequately. Further, at this early stage in the proceedings, plaintiff has not demonstrated that he
12 is likely to succeed on the merits.

13 The court may revisit this issue at a later stage of the proceedings if the interests of justice
14 so require. If plaintiff later renews his request for counsel, he should provide a detailed
15 explanation of the circumstances that he believes justify appointment of counsel.

16 **II. Discovery Dispute**

17 On March 28, 2019, plaintiff moved to compel certain discovery, alleging that defendants
18 had not produced documents or responded to requests for admissions that plaintiff served on
19 January 17, 2019. *See* ECF No. 26. On April 24, 2019, defendants responded that such discovery
20 had been produced. *See* ECF No. 27. Plaintiff did not reply. Thus, plaintiff’s motion is denied
21 as moot. Should further discovery disputes arise, the parties must attempt to resolve them
22 informally before filing motions with the court. *See* Local Rule 251.

23 **III. Settlement**

24 Plaintiff moves the court for a settlement conference. ECF No. 28. Defendants have not
25 responded to this motion. The parties should discuss whether settlement in this case may be
26 feasible. After such discussion, defendants are to respond to plaintiff’s motion and indicate
27 whether they believe a settlement conference could be productive. Defendants’ response to
28 plaintiff’s motion is due in thirty days.

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IV. Order

Accordingly,

1. Plaintiff's motion to appoint counsel is denied without prejudice. ECF No. 25.
2. Plaintiff's motion to compel certain discovery is denied as moot. ECF No. 26.
3. Defendants are directed to respond to plaintiff's settlement request, ECF No 28, thirty days from the date of this order.

IT IS SO ORDERED.

Dated: August 6, 2019


UNITED STATES MAGISTRATE JUDGE

No. 204