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

MARK PAYNE,

Plaintiff,

No. CIV S-04-1585 MCE KJM P

vs.

MULE CREEK STATE PRISON, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. On December 2, 2008, the court stayed this action due to plaintiff's poor health. On October 16, 2008, the court ordered plaintiff to indicate if a stay is still appropriate and, if so, why. On October 28, 2009, plaintiff did request that this action be stayed, but failed to indicate why. Therefore, the stay imposed in this case will be lifted and the court will issue an amended scheduling order.

In his response to the court's October 16, 2009 order, plaintiff requests the appointment of counsel. The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v.

1 Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36
2 (9th Cir. 1990). At present, the court does not find the required exceptional circumstances.
3 Plaintiff's request for the appointment of counsel will therefore be denied.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. The stay imposed in this action on December 2, 2008 is lifted;
- 6 2. Plaintiff's motion for the appointment of counsel (#102) is denied; and
- 7 3. The May 30, 2008 scheduling order is amended as follows:

8 A. The parties may conduct discovery until April 6, 2010. Any
9 motions to compel must be filed by that date. Any requests for
10 discovery must be served no later than sixty days from this order.

11 B. All pretrial motions, except motions to compel discovery, shall
12 be filed on or before June 6, 2010. Motions shall be briefed in
13 accordance with paragraph 7 of this court's order filed June 14,
14 2006.

15 C. Dates for the filing of pretrial statements and trial will be set, if
16 necessary, at a later date.

17 DATED: January 7, 2010.

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19 _____
20 U.S. MAGISTRATE JUDGE