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

HULEN T. HARRELL,

Plaintiff,

No. CIV S-04-1968 JAM DAD P

vs.

P.D. PALMER, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. Several motions are pending before the court.

First, plaintiff has filed a renewed motion for an extension of time to file a response to defendant Palmer’s answer, together with a request for appointment of an expert to take the defendant’s deposition. As the court previously advised plaintiff, a response to the defendant’s answer is neither necessary nor proper. In addition, plaintiff is advised that the expenditure of public funds on behalf of an indigent litigant is proper only when authorized by Congress. See Tedder v. Odel, 890 F.2d 210 (9th Cir. 1989). The in forma pauperis statute does not authorize the expenditure of public funds for an expert to take the defendant’s deposition. See 28 U.S.C. § 1915.

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1 To the extent that plaintiff is requesting appointment of counsel to take the
2 defendant's deposition, he is advised that the United States Supreme Court has ruled that district
3 courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard
4 v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the
5 district court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1).
6 Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332,
7 1335-36 (9th Cir. 1990).

8 The test for exceptional circumstances requires the court to evaluate the plaintiff's
9 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
10 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
11 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
12 common to most prisoners, such as lack of legal education and limited law library access, do not
13 establish exceptional circumstances that would warrant a request for voluntary assistance of
14 counsel. In the present case, the court does not find the required exceptional circumstances.

15 Second, defendant Palmer has filed a motion to compel plaintiff's deposition,
16 together with a request for monetary sanctions. According to defense counsel, on May 22, 2009,
17 defendant Palmer noticed plaintiff's deposition for June 22, 2009. On June 22, 2009, when
18 defense counsel attempted to take plaintiff's deposition plaintiff refused to cooperate or give his
19 deposition. He stated that he would not participate in a deposition absent a court order
20 specifically requiring him to do so. Defense counsel notes that the defendant has incurred
21 \$1851.80 associated with the costs of attempting to take plaintiff's deposition.

22 Plaintiff has opposed defendant's motion and has filed two motions for a
23 protective order relieving him of participating in a deposition. Plaintiff alleges that his
24 participation in a deposition in this "high profile civil litigation" could provoke prison officials to
25 engage in acts of retaliation against him. He proposes that the parties engage in written discovery
26 instead and that the court issue an order prohibiting potential prison staff retaliation.

1 On March 26, 2009, this court issued a discovery order. Under the order,
2 defendant Palmer is allowed to depose plaintiff provided he gives plaintiff at least fourteen days
3 notice in accordance with Rule 30(b)(1) of the Federal Rules of Civil Procedure. Here, it is
4 undisputed that defendant Palmer provided plaintiff with sufficient notice of his deposition.
5 However, plaintiff refused to participate in the deposition when defense counsel arrived at the
6 prison. The undersigned has the authority under Local Rule 73-302(c)(1) to order plaintiff to
7 submit to a deposition. Accordingly, the court will order plaintiff to cooperate with defense
8 counsel in the taking of his deposition. Any further refusal on plaintiff's part to cooperate in the
9 taking of his deposition will result in a recommendation for dismissal of this action.

10 Although the court has broad discretion to impose sanctions pursuant to Rule 37,
11 the court finds that defendant Palmer's request for monetary sanctions is premature under the
12 current circumstances. Plaintiff is an inmate proceeding pro se and in forma pauperis. Although
13 plaintiff's inability to pay should not be the only reason for the court's denial of monetary
14 sanctions, it can be considered. Warren v. Guelker, 29 F.3d 1386, 1390 (9th Cir. 1994).
15 Defendant Palmer's request for sanctions will therefore be denied without prejudice to a renewed
16 motion for monetary sanctions should plaintiff continue to fail to cooperate in the taking of his
17 deposition.

18 Finally, plaintiff has not established good cause for a protective order in this case.
19 Fed. R. Civ. P. 26(c). Plaintiff's vague and conclusory allegations regarding potential retaliation
20 by prison officials are too speculative to warrant relief. If plaintiff believes prison officials are
21 engaging in misconduct, he should file an administrative grievance at his institution. See Cal.
22 Code Regs. tit. 15, § 3084.1(a) (prisoners may appeal "any departmental decision, action,
23 condition, or policy which they can demonstrate as having an adverse effect upon their
24 welfare.").

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