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

THOMAS CLINTON,  
Plaintiff,

No. 2:05-cv-1600-JAM-CMK-P

vs.

ORDER

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,  
Defendants.

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Plaintiff, a former state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are several motions filed by plaintiff. This case was set for a settlement conference on September 24, 2015, which did not occur as plaintiff informed both the court and defense counsel that attendance was not possible. Plaintiff has requested a new date, but given the reasons plaintiff provided for not attending the last settlement conference, the court does not find this case to be ripe for settlement. Plaintiff's request for a new settlement conference date (Doc. 571) will therefore be denied and this case will proceed to trial.

Plaintiff continues to seek appointment of counsel or referral to the pro bono program. As the court had stated several times, this case does not present the required

1 exceptional circumstances necessary for the appointment of counsel. The court previously  
2 denied plaintiff's request to appoint counsel, stating:

3 the United States Supreme Court has ruled that district courts lack  
4 authority to require counsel to represent indigent plaintiffs in civil  
5 actions. See Mallard v. United States Dist. Court, 490 U.S. 296,  
6 298 (1989). A plaintiff in a civil case generally has no right to  
7 appointed counsel. See Hernandez v. Whiting, 881 F.2d 768,  
8 770-71 (9th Cir. 1989); United States v. 30.64 Acres, 795 F.2d  
9 796, 801 (9th Cir. 1986).

10 In certain exceptional circumstances, the court may request  
11 the voluntary assistance of counsel pursuant to 28 U.S.C.  
12 § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.  
13 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir.  
14 1990). A finding of "exceptional circumstances" requires an  
15 evaluation of both the likelihood of success on the merits and the  
16 ability of the plaintiff to articulate his claims on his own in light of  
17 the complexity of the legal issues involved. See Terrell, 935 F.2d  
18 at 1017. Neither factor is dispositive and both must be viewed  
19 together before reaching a decision. See id.

20 In the present case, the court does not at this time find the  
21 required exceptional circumstances. First, the facts and law  
22 concerning plaintiff's one remaining claim are not overly complex.  
23 Second, the record demonstrates that plaintiff so far appears able to  
24 articulate his claims on his own as his pleadings are legible and  
25 reasonably articulate. Third, while plaintiff's claim has survived  
26 summary judgment, the court cannot say that plaintiff has  
demonstrated any particular likelihood of success on the merits.  
The one remaining claim, as set forth above, is whether defendant  
Cooper violated plaintiff's Eighth Amendment rights by failing to  
honor his medical chronos for an extra blanket and tennis shoes. A  
prison official violates the Eighth Amendment only when two  
requirements are met: (1) objectively, the official's act or omission  
must be so serious such that it results in the denial of the minimal  
civilized measure of life's necessities; and (2) subjectively, the  
prison official must have acted unnecessarily and wantonly for the  
purpose of inflicting harm. See Farmer v. Brennan, 511 U.S. 825,  
834 (1994). Thus, to violate the Eighth Amendment, a prison  
official must have a "sufficiently culpable mind." See id. From  
the limited evidence that has been presented to the court to date,  
the undersigned cannot reasonably find that a jury will determine  
withholding an extra blanket and tennis shoes to be sufficiently  
serious as to violate plaintiff's Eight Amendment rights. While  
that is a factual question for the jury to decide, for the purposes of  
ruling on plaintiff's request for counsel, the undersigned does not  
find any particular likelihood of plaintiff's success on the merits of  
his claim. His request for the appointment of counsel will  
therefore be denied.

(Order, Doc. 552, filed January 13, 1015).

1           The court further noted that plaintiff is no longer incarcerated and is not restricted  
2 in reaching out to the legal community as a whole, and/or the Civil Rights Clinic, personally in  
3 an attempt to obtain legal assistance. Nothing has changed in this case to alter that analysis. To  
4 the extent plaintiff indicates trial attendance without counsel may not be possible due to having  
5 to re-live the events surrounding the rape, the court notes the remaining claim is not associated  
6 with rape and only relates to defendant Cooper's alleged failure to honor plaintiff's medical  
7 chronos. Accordingly, plaintiff's requests for appointment of counsel or referral to the pro bono  
8 clinic (Docs. 561, 573) are denied.

9           Plaintiff next requests to be excluded from the time restraints set forth in Local  
10 Rule 230 (Doc. 560). It is unclear what it is plaintiff needs additional time for. Rule 230  
11 governs the time for filing and opposing motions, setting motions for hearing, and filing  
12 applications for reconsideration. This case is ready to be set for trial. No further motions are  
13 anticipated to be filed with the exception of pretrial motions such as motions in limine, which  
14 will be addressed by the District Court at the time of the pretrial conference. When plaintiff files  
15 a pretrial statement, additional time can be requested to address specific motions if necessary.  
16 Additional time can also be requested from defense counsel and/or the court in order to respond  
17 to any motion that may be filed. The undersigned does not find it necessary to enter an order  
18 excluding plaintiff from Rule 230 at this time, and the request to do is denied.

19           Plaintiff is also requesting the court seal the docket in this case (Doc. 564).  
20 Plaintiff indicates that there are some people who are attempting to use the information in this  
21 case against plaintiff. However, no showing has been made that meet the criteria for sealing any  
22 of the documents pursuant to Local Rules 140-142. If plaintiff can point the court to specific  
23 document containing personal information, and provide the necessary information as to why a  
24 specific document should be sealed, the court may consider such a request. However, based on  
25 the general request made, the court finds no basis to seal any specific document much less the  
26 entire action.

1           Finally, plaintiff is requesting the court hold an adverse inference hearing to  
2 determine if the defendants have destroyed documents (Doc. 559). Plaintiff has raised the  
3 destruction of documents several times, and the issue has been addressed. Specifically, the court  
4 found the documents plaintiff alleges were destroyed at best related to claims which have been  
5 dismissed from this case or were decided on the basis of law not fact. He now claims some  
6 documents related to defendant Cooper were also destroyed, including a Citizen's complaint  
7 reviewed by the Deputy Warden at California Men's Colony's. In support of this claim, plaintiff  
8 provides responses to request for production of documents, wherein it is outlined that the Chief  
9 Deputy Warden did not keep record of such appeals, but that the records retention schedule  
10 provides for keeping Citizens Complaints for five years.

11           Defendant objects<sup>1</sup> to the adverse inference sanctions on the grounds that the  
12 discovery responses plaintiff provides were from a different case, Clinton v. Green, et. al., 08-cv-  
13 4180 DOC (OP) (C.D. Cal. 2008), not this one. In addition, defendant argues that there is no  
14 indication that the alleged documents have any relevance to the remaining claim, or that  
15 defendant Cooper was responsible for the preservation or destruction of the documents.

16           The undersigned agrees, and finds no basis to grant plaintiff's motion. As  
17 discussed in previous orders, the documents plaintiff has claims were destroyed have no  
18 relevance to the remaining claim. As to the Citizen's Complaint he alleges to have filed against  
19 defendant Cooper, he fails to explain what the complaint related to, and whether he requested the  
20 document during discovery in this case. Plaintiff offers no information as to how this Citizen's  
21 Complaint is relevant to his claims against Cooper.

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25           <sup>1</sup> Defendant filed a motion for additional time to respond to plaintiff's motion (Doc.  
26 563). Good cause appearing, that motion will be granted, and the opposition is deemed timely  
filed.

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Plaintiff's motion for a new settlement conference date (Doc. 571) is  
3 denied;

4 2. Plaintiff's requests for appointment of counsel or referral to the pro bono  
5 clinic (Docs. 561, 573) are denied;

6 3. Plaintiff's request to be excluded from the time restraints set forth in Local  
7 Rule 230 (Doc. 560) is denied;

8 4. Plaintiff's motion to seal the docket in this case (Doc. 564) is denied;

9 5. Defendant's request for additional time to respond to plaintiff's motion for  
10 adverse inference (Doc. 563) is granted and the opposition thereto is deemed timely filed; and

11 6. Plaintiff's motion for adverse inference regarding destruction of  
12 documents (Doc. 559) is denied.

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14 DATED: December 15, 2015

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16 **CRAIG M. KELLISON**  
17 UNITED STATES MAGISTRATE JUDGE  
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