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

LUIS LORENZO ARMENTERO,

Plaintiff,

No. CIV S-06-1838 GEB KJM P

vs.

C. LEVAN, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a state prison inmate proceeding pro se with a civil rights action under 42 U.S.C. § 1983. Several of his motions are pending before the court.

1. Motion To Appoint Counsel

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

1 2. Motion For Default Judgment

2 Plaintiff claims that defendant Taylor has failed to file an answer or otherwise
3 undertake a defense to the complaint. Plaintiff is mistaken. Defendant Taylor answered the
4 complaint on July 12, 2007.

5 3. Requests For A Trial Date

6 Plaintiff has filed two requests that the court set a trial date. Further dates will be
7 set, if necessary, after the resolution of the pending motion for summary judgment.

8 4. Plaintiff's Motion For Summary Judgment

9 In the scheduling order of July 25, 2007, the court set January 4, 2008 as the
10 deadline for dispositive motions. Defendant Taylor sought permission to file a renewed motion
11 for summary judgment outside this schedule; plaintiff did not. Accordingly, his motion is not
12 timely.

13 IT IS HEREBY ORDERED that:

- 14 1. Plaintiff's request for the appointment of counsel (docket no. 58) is denied;
15 2. Plaintiff's motion for the entry of default (docket no. 54) is denied; and
16 3. Plaintiff's requests that the court set a trial date (docket nos. 56 & 57) are
17 denied without prejudice.

18 IT IS HEREBY RECOMMENDED that plaintiff's motion for summary judgment
19 (docket no. 59) be denied as untimely.

20 These findings and recommendations are submitted to the United States District
21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
22 days after being served with these findings and recommendations, any party may file written
23 objections with the court and serve a copy on all parties. Such a document should be captioned
24 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
25 shall be served and filed within ten days after service of the objections. The parties are advised

26 ////

1 that failure to file objections within the specified time may waive the right to appeal the District
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: July 24, 2009.

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6 U.S. MAGISTRATE JUDGE

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