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

TONIE ELMORE,

Plaintiff,

No. CIV S-07-1463 WBS EFB P

vs.

ARONG, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He has requested that the court appoint counsel. District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request counsel voluntarily to represent such a plaintiff. 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). The court finds that there are no exceptional circumstances in this case.

On September 11, 2009, defendants Maxham, Moreno, Rendon, and Perfino filed a motion for summary judgment. *See* Fed. R. Civ. P. 56. On November 19, 2008, the court advised plaintiff of the requirements for opposing a motion pursuant to Rule 56 of the Federal Rules of Civil Procedure. *See Rand v. Rowland*, 154 F.3d 952, 957 (9th Cir. 1998) (*en banc*), *cert. denied*, 527 U.S. 1035 (1999), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir.

1 1988). That order also informed plaintiff of the requirements for filing an opposition to the  
2 pending motion and that failure to oppose such a motion might be deemed a waiver of opposition  
3 to the motion. Plaintiff failed to file an opposition.

4 On October 29, 2009, the court gave plaintiff 20 days to file an opposition or a statement  
5 of no-opposition to defendants' motion. The 20 days have passed and plaintiff has not filed an  
6 opposition or statement of no opposition. However, the court will construe plaintiff's request for  
7 counsel as also requesting an extension of time.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's November 23, 2009 request for appointment of counsel is denied; and  
10 2. Within 21 days of the date of this order, plaintiff shall file either an opposition to the  
11 motion for summary judgment or a statement of no opposition. Rule 41(b) of the Federal Rules  
12 of Civil Procedure authorizes the court to dismiss an action for failure to obey this court's orders  
13 and the applicable procedural rules. Plaintiff's failure to file an opposition or a statement of no  
14 opposition will result in a recommendation that this action be dismissed under the authority of  
15 Rule 41(b)

16 DATED: December 4, 2009.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE