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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

IVAN KILGORE,

Plaintiff,

v.

RICHARD MANDEVILLE, et al.,

Defendants.

No. 2:07-cv-2485 TLN KJN P

ORDER

On February 21, 2014, this court issued findings and recommendations, recommending that defendants' motion for summary judgment be granted. (ECF No. 151.) On March 10, 2014, the court granted plaintiff's request to extend, by an additional thirty days, the original 14-day deadline for filing objections to the findings and recommendations. (ECF No. 153.) Objections are now due on or before April 10, 2014. (Id.)

Plaintiff has now filed a request for appointment of counsel, and for a medical expert, to assist in the preparation of his objections. Plaintiff notes that the court previously appointed counsel in this case, based on the following findings (ECF No. 100 at 5-6):

The court finds that the instant case now presents the required exceptional circumstances warranting appointment of counsel. Although plaintiff has worked effectively during the discovery phase of this litigation, he is, as a nonlawyer and prisoner, necessarily limited at trial in his ability to elicit the necessary facts and articulate his legal claims, particularly because eight defendants remain in this action. Moreover, with effective legal representation,

1 and assistance in obtaining a medical expert, there is a reasonable
2 possibility that plaintiff may succeed on the merits of this action.
3 Finally, it would be helpful to the court to have the assistance of
4 counsel at trial in this action.

4 Although counsel was promptly appointed in this case, on September 16, 2011 (see ECF
5 No. 101), approximately a year later, on August 13, 2012, plaintiff informed the court that he was
6 concerned about the quality of appointed counsel’s representation, and may “move for
7 substitution of counsel or reinstatement of my pro se status or co-counsel status” (ECF No. 120 at
8 1). Thereafter, on September 13, 2012, plaintiff moved for substitution of appointed counsel.
9 (ECF No. 122.) Counsel responded by requesting withdrawal, due to plaintiff’s alleged
10 unwillingness to cooperate. (ECF No. 124.) On October 23, 2012, the court granted counsel’s
11 motion, and denied plaintiff’s request for substitution of a named attorney who was not a member
12 of this court’s pro bono panel and did not request the opportunity to represent plaintiff. The court
13 noted that it was “without authority to make such an appointment [although] [p]laintiff is free to
14 independently contact [the attorney], and make his request directly” (ECF No. 127 at 2.)
15 The court further noted (id.):

16 [C]ircumstances have changed. It appears that plaintiff was unable
17 to work effectively with appointed counsel. Moreover, plaintiff
18 now wishes to convene a settlement conference, stating that he “has
19 several alternate means in which to resolve this case that the
20 defendants may be inclined to accept.” (ECF No. 125 at 6.) [¶] For
21 these reasons, the court declines to appoint alternative counsel at
22 this time. Plaintiff is reminded that attorneys appointed to represent
23 prisoners in civil rights actions provide their services on a pro bono
24 and voluntary basis, and the number of available attorneys is
25 limited. Therefore, plaintiff shall now represent himself

22 In further support of his instant request for appointment, plaintiff has submitted additional
23 medical information that he alleges demonstrates the deliberate indifference of defendants when
24 they continued to prescribe plaintiff various medications that “did not differ in effect,” instead of
25 earlier referring plaintiff to an outside specialist. (ECF No. 154 at 3.) Plaintiff accurately notes
26 that the court must consider such evidence, even if first presented in a pro se prisoner’s objections
27 to findings and recommendations. See Johnson v. Gonzalez, 520 Fed. Appx. 573 (9th Cir. 2013).
28 However, plaintiff is not filing objections at this time, but a request for appointment of counsel

1 and a medical expert. Nevertheless, the court finds that plaintiff's new evidence does not support
2 his request, largely because it appears that this evidence would not change the court's findings
3 and recommendations. Significantly, those findings and recommendations were based in part on
4 the depositions and declarations of defendants which were obtained by plaintiff's previously-
5 appointed counsel.

6 For these reasons, the court finds that plaintiff has failed to meet his burden of
7 demonstrating exceptional circumstances warranting the appointment of counsel at this time.
8 Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009).

9 The court further finds that appointment of a medical expert is unwarranted at this late
10 juncture. The in forma pauperis statute does not authorize the expenditure of public funds for
11 medical experts. See 28 U.S.C. § 1915; Tedder v. Odel, 890 F.2d 210 (9th Cir. 1989). However,
12 in this court, such expenses may be reimbursed to appointed counsel from the court's non-
13 appropriated funds, subject to the discretion and prior approval of the presiding judge. See
14 Eastern District Court General Order No. 510(4)(A)(3). Plaintiff's instant request is aimed only
15 at supporting his objections to findings and recommendations. Moreover, as the court found in
16 reviewing plaintiff's evidence in opposition to defendants' motion for summary judgment,
17 "Notwithstanding the withdrawal of his appointed counsel, plaintiff's opposition to the instant
18 motion is thorough and well documented." (ECF No. 151 at 1 n.1.) It is unlikely that
19 appointment of a medical expert at this time would change the undersigned's assessment.


20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. Plaintiff's motion for appointment of counsel (ECF No. 154) is denied without
22 prejudice;
- 23 2. Plaintiff's request for a medical expert (ECF No. 154) is denied; and
- 24 3. The deadline for plaintiff to file objections to the findings and recommendations
25 remains April 10, 2014.

26 SO ORDERED.

27 Dated: March 24, 2014

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE