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

SEAN BAPTISTE NEAL,

Plaintiff,

No. CIV S-08-0313 GEB KJM P

vs.

ROSEANNE CAMPBELL, et al.,

Defendants.

ORDER

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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, at the present time, the court does not find the required exceptional circumstances. Plaintiff's request for the appointment of counsel will therefore be denied.

Plaintiff also requests that the court issue subpoenas for evidence plaintiff insists he needs to oppose a motion for summary judgment defendants have indicated they will file, and to support his own motion for summary judgment. Because defendants have not yet filed a

1 motion for summary judgment, it can not be clear what evidence plaintiff will require to oppose  
2 it. Also, any evidence from defendants that plaintiff requires for his own motion for summary  
3 judgment should have been obtained through discovery. The court recently has resolved a  
4 motion to compel and the period for discovery now has passed. For these reasons, plaintiff's  
5 request for the issuance of a subpoena will be denied without prejudice to plaintiff's filing a  
6 proper motion under Federal Rule of Civil Procedure 56(f), at the appropriate time, only if such a  
7 motion is warranted.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's request for the appointment of counsel (#50) is denied; and
- 10 2. Plaintiff's motion for the issuance of a subpoena (#51) is denied.

11 DATED: December 10, 2009.

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15 U.S. MAGISTRATE JUDGE  
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