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

JOHN MAGANA,

Plaintiff,

No. CIV S-08-0871 WBS KJM P

vs.

ARNOLD SCHWARZENEGGER, et al.,

Defendant.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____/

By order filed July 21, 2009, plaintiff’s complaint was dismissed and thirty days leave to file an amended complaint was granted. The thirty day period has now expired, and plaintiff has not filed an amended complaint. However, plaintiff did file a motion for the appointment of counsel in response to the court’s order. 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 Plaintiff states in his motion that if appointment of counsel is denied, "I must ask
2 for leave... to dismiss." Docket No. 17. He also states that he believes his case should have been
3 filed in the Southern District of California. Id. In light of these representations by plaintiff and
4 the court's previous order that failure to file a third amended complaint within thirty days would
5 result in dismissal, the court recommends that this action be dismissed without prejudice.

6 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the
7 appointment of counsel (Docket No. 17) is denied.

8 IT IS HEREBY RECOMMENDED that this action be dismissed without
9 prejudice. See Local Rule 11-110; Fed. R. Civ. P. 41(b).

10 These findings and recommendations are submitted to the United States District
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
12 days after being served with these findings and recommendations, plaintiff may file written
13 objections with the court. The document should be captioned "Objections to Magistrate Judge's
14 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
15 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
16 F.2d 1153 (9th Cir. 1991).

17 DATED: October 29, 2009.

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U.S. MAGISTRATE JUDGE

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