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

10 ANTHONY PASSER,

11 Plaintiff,

No. 2:08-cv-2792 KJN P

12 vs.

13 DR. STEEVERS, et al.,

14 Defendants.

ORDER

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16 On September 14, 2010, the district judge adopted the undersigned's findings and  
17 recommendations, thereby authorizing (but not requiring) plaintiff to file, within thirty days, a  
18 Second Amended Complaint. (Dkt. Nos. 32, 33.) The next day, on September 15, 2010,<sup>1</sup>  
19 plaintiff filed a motion to compel discovery and a motion for appointment of counsel. (Dkt. Nos.  
20 34, 35.)

21 Plaintiff's discovery motion is premature. Should plaintiff choose to proceed on  
22 the currently operative complaint and not to file a Second Amended Complaint, then after  
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24 <sup>1</sup> Although the court docket indicates filing dates of September 15, 2010, September 5,  
25 2010 is the date on which petitioner signed and delivered his motions to prison officials for  
26 mailing. (See Dkt. No. 34, at 3, and Dkt. No. 35, at 6.) Pursuant to the mailbox rule, September  
5, 2010, is considered the operative filing date of plaintiff's motions. See Stillman v. Lamarque,  
319 F.3d 1199, 1201 (9th Cir. 2003).

1 expiration of the thirty-day deadline the court will issue an order setting forth the requirements  
2 for conducting discovery in this case. Plaintiff's discovery motion is therefore premature and  
3 must be denied without prejudice. However, all parties are cautioned that they will be required,  
4 in conducting discovery, to comply with the Federal Rules of Civil Procedure, including Rule 26,  
5 which requires each party to provide, early in the case, all pertinent initial disclosures. Cursory  
6 review of plaintiff's motion demonstrates that the information and documents he seeks are  
7 probably subject to the initial disclosure requirements.

8           Plaintiff also moves for appointment of counsel. Plaintiff states that he indigent,  
9 has a limited knowledge and understanding of the law, has attempted unsuccessfully to obtain  
10 counsel, and that counsel would be more effective at presenting evidence and cross-examining  
11 witnesses. However, the challenges faced by plaintiff are not dissimilar to those faced by most  
12 prisoners pursuing civil rights actions.

13           District courts lack authority to require counsel to represent indigent prisoners in  
14 § 1983 cases. Mallard v. United States District Court, 490 U.S. 296, 298 (1989). In certain  
15 exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to  
16 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.  
17 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990); Franklin v. Murphy, 745 F.2d 1221, 1236  
18 (9th Cir. 1984). A finding of exceptional circumstances requires a likelihood that plaintiff will  
19 succeed on the merits of his action coupled with a limited ability to articulate his claims "in light  
20 of the complexity of the legal issues involved." Agyeman v. Corrections Corp. of America, 390  
21 F.3d 1101, 1103 (9th Cir. 2004) (citations and internal quotations omitted). "Neither of these  
22 factors is dispositive and both must be viewed together before reaching a decision on request of  
23 counsel under section 1915(d)." Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (fn.  
24 omitted),

25           The court does not find the required exceptional circumstances in the instant case.  
26 While there may be some likelihood of success on the merits of plaintiff's claims, plaintiff has

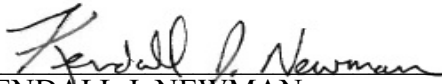
1 ably demonstrated an ability to adequately present his claims, including those pertinent to the  
2 instant matters. The court therefore finds that appointment of counsel is not warranted at this  
3 time.

4 Accordingly, for the foregoing reasons, IT IS HEREBY ORDERED that:

- 5 1. Plaintiff's motion to compel discovery (Dkt. No. 34) is denied without  
6 prejudice; and  
7 2. Plaintiff's motion for appointment of counsel (Dkt. No. 35) is denied without  
8 prejudice.

9 SO ORDERED.

10 DATED: September 21, 2010

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14 KENDALL J. NEWMAN  
15 UNITED STATES MAGISTRATE JUDGE

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