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

JOE SPAND,

Plaintiff,

No. CIV S-09-0552 EFB P

vs.

J. MARTEL, et al.,

Defendants.

ORDER

_____/

Plaintiff is a former inmate at Mule Creek State Prison proceeding without counsel in an action brought under 42 U.S.C. § 1983. On July 16, 2010, the court dismissed the complaint and provided plaintiff with 30 days to file an amended complaint. Dckt. No. 8. The court found that plaintiff could not proceed under § 1983 without showing that credit loss he sustained as a result of the disciplinary action he complains of had been reversed, expunged, or otherwise invalidated.

Plaintiff sought an extension of time to respond to the court’s order, and the court granted plaintiff 30 days from September 13, 2010 to file an amended complaint. Dckt. No. 12. Plaintiff failed to file anything within the time provided. However, on October 27, 2010, plaintiff filed a letter requesting the status of his case and stating that “CDC is not cooperating” to provide him with the documents that show that the disciplinary action was “overturned.” Dckt. No. 13.

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1 By order dated November 2, 2010, the court construed plaintiff's October 27th filing as a
2 request for an additional extension of time and excused plaintiff's failure to comply with the
3 deadline provided in the order of September 13, 2010 to file an amended complaint. Dckt. No.
4 14. The court granted plaintiff an additional 45 days from the date of that order to file an
5 amended complaint, admonished plaintiff that failure to comply with court orders may result in
6 dismissal of this action, and instructed plaintiff to provide the November 2, 2010 order to prison
7 officials when requesting the needed documents.

8 Instead of using the November 2, 2010 order to obtain the necessary documents as
9 instructed by the court, plaintiff has submitted a response stating that he requested the documents
10 "verbally" and by "written statement to [the] records office" sixty days ago, well before the
11 November 2 order issued, and has received no response. Dckt. No. 15. The court will give
12 plaintiff one last opportunity to comply with its orders. Plaintiff is instructed to file on or before
13 December 17, 2010 either (1) an amended complaint or (2) a document providing the court with
14 the name(s) of official(s) who, *having been provided with or shown a copy of the court's*
15 *November 2, 2010 order*, refuse to provide plaintiff with a copy of whatever documents that are
16 in the possession of the California Department of Corrections and Rehabilitation evidencing that
17 the rules violation report, CDC form 115 dated August 11, 2007, or the credit loss resulting
18 therefrom, has been reversed, expunged, or otherwise invalidated.

19 Plaintiff has also requested that the court appoint counsel. District courts lack authority
20 to require counsel to represent indigent prisoners in § 1983 cases. *Mallard v. United States Dist.*
21 *Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request counsel
22 voluntarily to represent such a plaintiff. 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d
23 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). The
24 court finds that there are no exceptional circumstances in this case.

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1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Plaintiff shall have up to and including December 17, 2010 to file either: (1) an
3 amended complaint or (2) a document providing the court with the name(s) of official(s) who,
4 *having been provided with or shown a copy of the court's November 2, 2010 order*, refuse to
5 provide plaintiff with a copy of whatever documents that are in the possession of the California
6 Department of Corrections and Rehabilitation evidencing that the rules violation report, CDC
7 form 115 dated August 11, 2007, or the credit loss resulting therefrom, has been reversed,
8 expunged, or otherwise invalidated.

9 2. Plaintiff's November 10, 2010, request for appointment of counsel is denied.

10 DATED: November 23, 2010.

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12 EDMUND F. BRENNAN
13 UNITED STATES MAGISTRATE JUDGE
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