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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHANTHON BUN,

Plaintiff,

v.

FELKER, et al.,

Defendants.

No. 2:09-cv-631-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On December 3, 2013, the court dismissed this case for failure to prosecute after plaintiff failed to submit a pretrial statement in accordance with the court’s orders. ECF No. 115. Thereafter, plaintiff’s timely version of a pretrial statement, consisting of motions in limine, exhibits, a notice regarding witnesses, and a request for appointment of counsel, was docketed by the Clerk of the Court. ECF Nos. 117-121. Accordingly, the order of dismissal will be vacated.

District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily to represent such a plaintiff. *See* 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). When determining whether “exceptional circumstances” exist, the court must consider the likelihood of success on the merits as well as the

1 ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues
2 involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Having considered those factors,
3 the court finds there are no exceptional circumstances in this case.

4 Accordingly, it is hereby ORDERED that:

- 5 1. The Clerk of the Court is directed to vacate the order of dismissal and judgment (ECF
6 Nos. 115, 116) and to reopen this case;
- 7 2. Plaintiff's request for appointment of counsel (ECF No. 117) is denied; and
- 8 3. Defendants shall file a pretrial statement within 30 days of the date of this order.

9 Dated: December 12, 2013.

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11 EDMUND F. BRENNAN
12 UNITED STATES MAGISTRATE JUDGE
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