

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

TORY J. DUTY,

Plaintiff,

No. CIV S-09-0724 EFB P

vs.

CLAUDE E. FINN, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff's consent. *See* 28 U.S.C. § 636; *see also* E.D. Cal. Local Rules, Appx. A, at (k)(4).

Plaintiff has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Dckt. No. 2. Plaintiff's declaration makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

On September 30, 2009, plaintiff filed a motion to amend and supplement his complaint. Dckt. No. 13. Pursuant to Rule 15(a)(1) of the Federal Rules of Civil Procedure, plaintiff is free

1 to amend his pleading once as a matter of course. The court will therefore deny plaintiff's
2 motion to amend and supplement his complaint as unnecessary, and will, by separate order,
3 screen the September 30, 2009 amended complaint, which supersedes the original complaint.
4 *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967).

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

11 Accordingly, the court hereby orders that:

12 1. Plaintiff's request to proceed *in forma pauperis* is granted.

13 2. Plaintiff must pay the statutory filing fee of \$350 for this action. All payments shall
14 be collected and paid in accordance with the notice to the Director of the California Department
15 of Corrections and Rehabilitation filed concurrently herewith.

16 3. Plaintiff's motion to amend and supplement his complaint, Dckt. No. 13, is denied as
17 unnecessary.

18 4. Plaintiff's March 16, 2009 request for appointment of counsel, Dckt. No. 3, is denied.

19 Dated: March 30, 2010.

20
21 
22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
24
25
26