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

HOWARD SCOTT,

Plaintiff,

No. CIV S-09-0851 MCE EFB P

vs.

M. MCDONALD, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He has requested that the court appoint counsel, as well as a second extension of time to file an opposition to defendants' September 28, 2011 motion to dismiss.

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 counsel voluntarily to represent such a plaintiff. 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). The court finds that there are no exceptional circumstances in this case.

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1 However, plaintiff's request for an extension of time is granted and plaintiff has 30 days
2 from the date this order is served to file and serve an opposition to defendant's September 28,
3 2011, motion to dismiss.

4 Plaintiff is hereby reminded that in cases in which one party is incarcerated and
5 proceeding without counsel, motions ordinarily are submitted on the record without oral
6 argument. Local Rule 230(1). "Opposition, if any, to the granting of the motion shall be served
7 and filed with the Clerk by the responding party not more than eighteen (18) days, plus three (3)
8 days for mailing or electronic service, after the date of service of the motion." *Id.* A responding
9 party's failure "to file written opposition or to file a statement of no opposition may be deemed a
10 waiver of any opposition to the granting of the motion and may result in the imposition of
11 sanctions." *Id.* Furthermore, a party's failure to comply with any order or with the Local Rules
12 "may be grounds for imposition of any and all sanctions authorized by statute or Rule or within
13 the inherent power of the Court." Local Rule 110. The court may recommend that an action be
14 dismissed with or without prejudice, as appropriate, if a party disobeys an order or the Local
15 Rules. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1263 (9th Cir. 1992) (district court did not abuse
16 discretion in dismissing *pro se* plaintiff's complaint for failing to obey an order to re-file an
17 amended complaint to comply with Federal Rules of Civil Procedure); *Carey v. King*, 856 F.2d
18 1439, 1440-41 (9th Cir. 1988) (dismissal for *pro se* plaintiff's failure to comply with local rule
19 regarding notice of change of address affirmed).

20 On June 17, 2011, the court advised plaintiff of the requirements for filing an opposition
21 to the motion, that failure to oppose such a motion may be deemed a waiver of opposition to the
22 motion and that failure to comply with the Local Rules may result in a recommendation of
23 dismissal.

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1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Plaintiff's December 12, 2011, request for an extension of time is granted.

3 2. Plaintiff's opposition to defendants' motion to dismiss shall be filed within 30 days of
4 the date this order is served.

5 3. Plaintiff's December 15, 2011, request for appointment of counsel is denied.

6 DATED: January 3, 2012.

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8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
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