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

ALTON E. DEAN,

Plaintiff,

No. CIV S-09-1339 EFB P

vs.

CAVAGNARO, et al.,

Defendants.

ORDER

_____/

Plaintiff is confined in a county jail and is proceeding without counsel in an action brought under 42 U.S.C. §1983. To proceed with a civil action a plaintiff must pay the \$350 filing fee required by 28 U.S.C. § 1914(a) or request leave to proceed *in forma pauperis* and submit the affidavit and trust account statement required by 28 U.S.C. § 1915(a). Plaintiff has neither paid the fee nor submitted a proper application for leave to proceed in forma pauperis.¹

Plaintiff also requests that the court appoint counsel. 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

¹ Plaintiff's April 21, 2009 request to proceed *in forma pauperis* was denied as moot in the May 11, 2009 order of transfer from the United States District Court of for the Northern District of California.

1 counsel voluntarily to represent such a plaintiff. 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935
2 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

3 The court finds that there are no exceptional circumstances in this case.

4 Accordingly, IT IS HEREBY ORDERED that plaintiff's July 2, 2009 and July 20, 2009 requests for
5 appointment of counsel are denied.

6 It is further ORDERED that plaintiff has 30 days from the date of service of this order to
7 submit either the filing fee or the application required by § 1915(a). The Clerk of the Court is
8 directed to mail to plaintiff a form application for leave to proceed in forma pauperis. Failure to
9 comply with this order will result in a recommendation that this action be dismissed.

10 So ordered.

11 Dated: December 4, 2009.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE