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

ROBERT BEARD,

Plaintiff,

No. CIV S-09-3210 EFB P

vs.

UNKNOWN,

Defendant.

ORDER AND  
FINDINGS AND RECOMMENDATIONS

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Robert Beard, an inmate confined at Kern Valley State Prison, filed this pro se civil rights action under 42 U.S.C. § 1983.

On January 4, 2011, the court ordered plaintiff to provide the name of defendant John Doe within 30 days so that the complaint could be served. The court warned plaintiff that failure to do so would result in a recommendation that this action be dismissed without prejudice.

The thirty days have passed, and plaintiff has not provided the required information to the court. Plaintiff has filed a document styled “first amended civil rights complaint” containing copies of internal appeals and some legal arguments. This document does not contain the name of defendant John Doe.

Plaintiff has also filed two motions for appointment of counsel. District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. *Mallard v.*

1 *United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court  
2 may request counsel voluntarily to represent such a plaintiff. 28 U.S.C. § 1915(e)(1); *Terrell v.*  
3 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36  
4 (9th Cir. 1990). The court finds that there are no exceptional circumstances in this case.

5 Accordingly, it is hereby ORDERED that:

6 1. Plaintiff's January 26, 2011, and March 3, 2011, requests for appointment of counsel  
7 are denied; and

8 2. The Clerk is directed to randomly assign a United States District Judge to this case.

9 Further, it is hereby RECOMMENDED that this action be dismissed without prejudice to  
10 refiling should plaintiff later discover John Doe's identity.

11 These findings and recommendations are submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
13 after being served with these findings and recommendations, plaintiff may file written  
14 objections with the court and serve a copy on all parties. Such a document should be captioned  
15 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
16 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
17 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

18 Dated: March 21, 2011.

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20 EDMUND F. BRENNAN  
21 UNITED STATES MAGISTRATE JUDGE  
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