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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JON CHRIST,
Plaintiff,
v.
R. BLACKWELL, et al.,
Defendants.

No. 2:10-cv-0760 EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He 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 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 ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Having considered those factors, the court finds there are no exceptional circumstances in this case.

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1 Plaintiff complains that, because he has no lawyer, defendants have refused his document
2 production requests. However, as plaintiff is aware, his motion to compel further responses to
3 those requests was denied because plaintiff failed to identify the specific responses he found
4 inadequate and describe why they were inadequate. ECF No. 45. Plaintiff did not file a more
5 specific motion to compel despite the court's order telling him what was required in such a
6 motion.

7 Plaintiff also complains that he hasn't been able to communicate with his witnesses, both
8 incarcerated and free. Plaintiff has successfully obtained the court's intervention to gain access to
9 these witnesses; prison officials have complied with the court's orders that they permit plaintiff to
10 communicate with his incarcerated witnesses and provide plaintiff with the last known addresses
11 of his released witnesses. ECF Nos. 138, 157. Plaintiff does not explain how appointment of
12 counsel will convince these individuals to cooperate with his case if he has thus far been unable to
13 do so. If plaintiff's witnesses do not wish to communicate with plaintiff and/or refuse to testify
14 voluntarily, plaintiff may follow the procedures set forth by the court for obtaining the presence at
15 trial of witnesses who will not voluntarily testify. ECF No. 46 at 2-4. While plaintiff states that
16 his witnesses are "gone" and he has "no way to locate them," the record in this action shows that
17 plaintiff has been granted access to his incarcerated witnesses and been provided with any last
18 known addresses of his unincarcerated witnesses.

19 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for appointment of
20 counsel (ECF No. 177) is denied.

21 DATED: September 23, 2015.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE