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

ROBERTO HERRERA,

Plaintiff,

No. CIV S-10-1154 MCE DAD P

vs.

P. STATTI, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983.

Pending before the court is plaintiff’s amended complaint. Plaintiff has not signed his amended complaint. Under Rule 11 of the Federal Rules of Civil Procedure, plaintiff must sign “[e]very pleading, written motion and other paper” submitted to the court. In the interest of justice, the court will direct the Clerk of the Court to send plaintiff a copy of his amended complaint. If plaintiff wishes to proceed in this action, he will be required to sign his complaint and return it to the court within fourteen days of the date of service of this order.

Also pending before the court are plaintiff’s two motions for appointment of counsel. The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court,

1 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request
2 the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935
3 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

4 The test for exceptional circumstances requires the court to evaluate the plaintiff's
5 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
6 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
7 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
8 common to most prisoners, such as lack of legal education and limited law library access, do not
9 establish exceptional circumstances that would warrant a request for voluntary assistance of
10 counsel. In the present case, the court does not find the required exceptional circumstances.

11 Finally, plaintiff has filed a motion for a court order prohibiting High Desert State
12 Prison staff from destroying any potential evidence in this case. At this time, the court has not
13 found that plaintiff's complaint states a cognizable claim. Nor has the court ordered plaintiff's
14 complaint served on any of the defendants. Plaintiff is advised that this court is unable to issue
15 an order against individuals who are not parties to a suit pending before it. See Zenith Radio
16 Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 112 (1969). Accordingly, the court will deny
17 plaintiff's motion.

18 Accordingly, IT IS HEREBY ORDERED that:

19 1. The Clerk of the Court is directed to send plaintiff a copy of his amended
20 complaint (Doc. No. 19);

21 2. Within fourteen days from the date of service of this order, plaintiff shall
22 complete the attached Notice of Submission of Documents and submit it to the court, together
23 with his signed amended complaint. Plaintiff is cautioned that failure to comply with this order
24 or seek an extension of time to do so will result in a recommendation that this action be
25 dismissed without prejudice;

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3. Plaintiff's motions for appointment of counsel (Doc. Nos. 23 & 24) are denied;

and

4. Plaintiff's motion for a court order (Doc. No. 26) is denied.

DATED: March 21, 2011.



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

DAD:9
herr1154.sign

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

ROBERTO HERRERA,

Plaintiff,

No. CIV S-10-1154 MCE DAD P

vs.

P. STATTI, et al.,

Defendants.

NOTICE OF SUBMISSION
OF DOCUMENTS

_____ /

Plaintiff hereby submits the following document in compliance with the court's order filed _____ :

_____ a signed amended civil rights complaint

DATED: _____.

Plaintiff