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

10 MARCELL WILLIS,

11 Plaintiff,

No. CIV S-10-1631 MCE GGH P

12 vs.

13 FOLSOM STATE PRISON
14 MEDICAL STAFF, et al.,

15 Defendants.

ORDER

16 Plaintiff, proceeding pro se and in forma pauperis, filed this action pursuant to 42
17 U.S.C. § 1983, while a state prisoner. It appears plaintiff has subsequently paroled. Most of the
18 defendants answered the amended complaint on April 21, 2011, while at least one remained
19 unserved at that time. A discovery and scheduling order issued, setting a September 23, 2011,
20 deadline and a pretrial dispositive motion filing deadline of January 27, 2012. Docket # 29.
21 However, in light of the remaining defendant upon whom service has not yet been completed, it
22 is not likely that the current deadlines will be sustained, as the discovery deadline has passed
23 without the remaining defendant having yet been served.

24 Plaintiff filed a document, on September 16, 2011, requesting that his deposition
25 be taken via phone conference because he, as a parolee, is not allowed to travel more than 50
26 miles and thus cannot come to Sacramento. Plaintiff did not state when he was scheduled to be

1 deposited nor where the deposition was noticed to take place. He did provide telephone numbers at
2 which he states he may be contacted by defendants. As the present discovery cut-off has passed,
3 and no further communication has been forthcoming from either side, the court is unable to
4 determine how the parties have resolved the question. In any event, plaintiff's incomplete request
5 must be denied.

6 Plaintiff has requested the appointment of counsel. The United States Supreme
7 Court has ruled that district courts lack authority to require counsel to represent indigent prisoners
8 in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain
9 exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to
10 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.
11 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court does not find
12 the required exceptional circumstances. Plaintiff's request for the appointment of counsel will
13 therefore be denied.

14 Accordingly, IT IS ORDERED that plaintiff's motion regarding the taking of his
15 deposition, filed on September 16, 2011 (docket # 38), is denied.

16 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for the
17 appointment of counsel (Docket No. 15) is denied.

18 DATED: November 1, 2011

19 /s/ Gregory G. Hollows
20 UNITED STATES MAGISTRATE JUDGE

21 GGH:009
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