IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDRE' BOSTON,

Plaintiff, No. CIV S-10-1782 KJM DAD P

vs.

V. GARCIA et al.,

Defendants. ORDER

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Plaintiff is a state prisoner proceeding pro se and in forma pauperis. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983.

On March 11, 2011, the undersigned found that plaintiff's complaint appeared to state an Eighth Amendment claim against defendants Garcia, Alkire, and Renauld. The undersigned also found, however, that plaintiff's complaint did not state a cognizable claim against defendants Bayles, Reinsel, and Grannis for the way in which they allegedly responded to his inmate appeals or against defendants Aguila, McDonald, John Doe, and Jane Doe because plaintiff failed to allege an actual connection or link between the actions of these latter defendants and the deprivation alleged to have been suffered by plaintiff. Finally, the court denied plaintiff's motion for appointment of counsel.

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Plaintiff has filed objections to the court's "dismissal" of defendants Bayles, Reinsel, Grannis, Aguila, McDonald, John Doe, and Jane Doe. Plaintiff is advised that this court did not dismiss these defendants. However, as noted above, the court did find that plaintiff's complaint failed to state a cognizable claim against them and therefore did not order service of these defendants. Plaintiff is advised that the Federal Rules of Civil Procedure provide that a party may amend his or her pleading "once as a matter of course at any time before a responsive pleading is served." Fed. R. Civ. P. 15(a). No responsive pleading has yet been served in this matter. Thus, plaintiff may file an amended complaint in an attempt to state a cognizable claim against these defendants. However, plaintiff is strongly cautioned that the court cannot refer to a prior pleading to make plaintiff's amended complaint complete. Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading. This is because, as a general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an original complaint, plaintiff must include sufficient factual allegations against all of the defendants, including defendants Garcia, Alkire, and Renauld.

As to plaintiff's objections to the denial of his motion for appointment of counsel, the undersigned has construed the objections as a request for reconsideration. As the court previously advised plaintiff, 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, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the voluntary assistance of counsel pursuant to 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).

The test for exceptional circumstances requires the court to evaluate the plaintiff's likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in

light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not establish exceptional circumstances that would warrant a request for voluntary assistance of counsel. In the present case, the court does not find the required exceptional circumstances.

Accordingly, IT IS HEREBY ORDERED that plaintiff's objections construed as a request for reconsideration (Doc. No. 16) is denied.

DATED: May 10, 2011.

DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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