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

HARRISON L. BURTON,

Plaintiff,

No. 2:10-cv-1980 JAM JFM (PC)

vs.

WARDEN MCDONALD, 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. By order filed July 13, 2012, plaintiff's third amended complaint was dismissed and plaintiff was granted thirty days in which to file a fourth amended complaint. On August 3, 2012, plaintiff filed a motion to compel return of his legal materials and for a one hundred twenty day extension of time to file a fourth amended complaint. By order filed August 24, 2012, defendants were directed to respond within ten days to that motion, and the court vacated the deadline for filing a fourth amended complaint.

On August 31, 2012, defendants filed a response to plaintiff's motion to compel. Therein, defendants represent that on August 29, 2012, counsel for defendants sent plaintiff copies of his third amended complaint, defendants' motion to dismiss the third amended complaint, a copy of the court's order dismissing the third amended complaint for failure to

1 include a prayer for relief, and two envelopes. Defendants contend, inter alia, that plaintiff's
2 motion is moot because they have provided him with everything he needs to file a fourth
3 amended complaint. Defendants also contend that plaintiff's inability to access his legal material
4 is caused by his voluntary hunger strike and confinement to a hospital bed.

5 On September 10, 2012, and October 3, 2012, plaintiff filed documents styled as
6 requests for judicial notice, both of which constitute additional argument concerning plaintiff's
7 access to his legal materials, and on September 13, 2012 plaintiff filed a reply brief in support of
8 his motion to compel access to his legal materials. On October 3, 2012, defendants filed a
9 response to plaintiff's requests for judicial notice.

10 After review of all relevant documents, and good cause appearing, plaintiff's
11 motion to compel further access to his legal materials will be denied. It appears from the
12 documents before the court that plaintiff has been provided with most, if not all, of his legal
13 material, and that defense counsel has provided to plaintiff copies relevant to preparation of a
14 fourth amended complaint, as well as envelopes to use for mailing the proposed fourth amended
15 complaint. The court will directed the Clerk of the Court to send plaintiff a form § 1983
16 complaint and will set a new deadline for filing the proposed fourth amended complaint.

17 On October 11, 2012, plaintiff filed a motion for appointment of counsel. The
18 United States Supreme Court has ruled that district courts lack authority to require counsel to
19 represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296,
20 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance
21 of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
22 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the
23 court does not find the required exceptional circumstances. Plaintiff's motion for the
24 appointment of counsel will therefore be denied.

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26 ////

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's August 3, 2012 motion to compel return of his legal material (Doc. No. 64) is denied;

2. The Clerk of the Court is directed to send plaintiff the court's form complaint for a prisoner civil rights action and accompanying instructions;

3. Plaintiff is granted sixty days from the date of this order in which to file and serve a proposed fourth amended complaint; and

4. Plaintiff's October 11, 2012 motion for appointment of counsel (Doc. No. 70) is denied.

DATED: December 10, 2012.


UNITED STATES MAGISTRATE JUDGE

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

HARRISON L. BURTON,

Plaintiff,

No. 2:10-cv-1980 JAM JFM (PC)

vs.

WARDEN MCDONALD, et al.,

Defendants.

NOTICE OF AMENDMENT

_____ /

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

Fourth Amended Complaint

DATED:

Plaintiff