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

JAMEEL COLES,

Plaintiff,

No. 2:10-cv-1996 KJN P

vs.

MATTHEW CATE,
Secretary, California Department
of Corrections and Rehabilitation,

Defendants.

ORDER

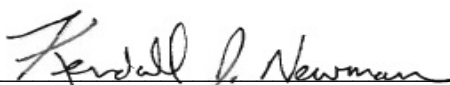
_____ /
Plaintiff requests the appointment of counsel “so that my interest may be protected and affidavits obtained by the professional assistance required.” (Dkt. No. 12.) The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the 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). However, in the present case, based on a review of plaintiff’s complaint and his instant request, the court does not find the required exceptional circumstances. Therefore, plaintiff’s request for the appointment of counsel is denied.

1 Plaintiff also requests a court-appointed investigator, on the ground that affidavits
2 will be “central” to proving plaintiff’s claims but his ability to contact expert witnesses is limited
3 by plaintiff’s incarceration at a Level 4 prison with long lockdowns. Plaintiff asserts that he
4 requires the assistance of an investigator who can obtain the necessary affidavits that will
5 ultimately assist the court in adjudicating this case. (Dkt. No. 13.) The expenditure of public
6 funds on behalf of an indigent litigant is proper only when authorized by Congress. Tedder v.
7 Odel, 890 F.2d 210 (9th Cir. 1989). The in forma pauperis statute does not authorize the
8 expenditure of public funds for investigators. See 28 U.S.C. § 1915. Therefore, plaintiff’s
9 request for a court-appointed investigator is denied.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff’s February 17, 2011 request for the appointment of counsel (Dkt. No.
12 12) is denied, and
- 13 2. Plaintiff’s February 17, 2011 request for a court-appointed investigator (Dkt.
14 No. 13) is denied.

15 DATED: February 24, 2011

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18 KENDALL J. NEWMAN
19 UNITED STATES MAGISTRATE JUDGE

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