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

BRIAN DARNELL EDWARDS,

Plaintiff,

No. 10-cv-3461 WBS KJN P

vs.

HIGH DESERT STATE PRISON, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner, proceeding without counsel, in an action brought under 42 U.S.C. § 1983.

Motion for Appointment of Counsel

Plaintiff requests that the court appoint counsel. District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily to represent such a plaintiff. See 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). When determining whether “exceptional circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. Palmer v.

1 Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to
2 appoint counsel). The burden of demonstrating exceptional circumstances is on the plaintiff. Id.
3 Circumstances common to most prisoners, such as lack of legal education and limited law library
4 access, do not establish exceptional circumstances that warrant a request for voluntary assistance
5 of counsel.

6 Having considered the factors under Palmer, the court finds that plaintiff has
7 failed to meet his burden of demonstrating exceptional circumstances warranting the
8 appointment of counsel at this time. Plaintiff is able to competently represent himself.

9 Notice to Plaintiff Regarding Requirements for Opposing Summary Judgment Motions

10 Defendants' summary judgment motion is pending before the court. Plaintiff has
11 filed an opposition as well as a motion to re-open discovery pursuant to Federal Rule of Civil
12 Procedure 56(d).¹ The undersign herein provides plaintiff with notice regarding his duties in
13 opposing a summary judgment motion.

14 This notice is provided to ensure that you, a pro se prisoner plaintiff, "have fair,
15 timely and adequate notice of what is required" to oppose a motion for summary judgment. See
16 Woods v. Carey, 684 F.3d 934 (9th Cir. 2012); Rand v. Rowland, 154 F.3d 952, 957 (9th Cir.
17 1998). The court requires that you be provided with this notice regarding the requirements for
18 opposing a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

19 When a defendant moves for summary judgment, the defendant is requesting that
20 the court grant judgment in defendant's favor without a trial. If there is no real dispute about any
21 fact that would affect the result of your case, the defendant who asked for summary judgment is
22 entitled to judgment as a matter of law, which will end your case against that defendant. A
23 motion for summary judgment will set forth the facts that the defendant asserts are not

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25 ¹ However, discovery has closed and plaintiff has not adequately addressed what discovery
26 he would undertake and how he anticipates the results of such discovery would preclude defendants
from being granted summary judgment.

1 reasonably subject to dispute and that entitle the defendant to judgment.

2 To oppose a motion for summary judgment, you must show proof of your claims.
3 To do this, you may refer to specific statements made in your complaint if you signed your
4 complaint under penalty of perjury and if your complaint shows that you have personal
5 knowledge of the matters stated. You may also submit declarations setting forth the facts that
6 you believe prove your claims, as long as the person who signs the declaration has personal
7 knowledge of the facts stated. You may also submit all or part of deposition transcripts, answers
8 to interrogatories, admissions, and other authenticated documents. For each of the facts listed in
9 the defendant's Statement of Undisputed Facts, you must admit the facts that are undisputed, and
10 deny the facts that are disputed. If you deny a fact, you must cite to the proof that you rely on to
11 support your denial. See L.R. 260(b). If you fail to contradict the defendant's evidence with
12 your own evidence, the court may accept the defendant's evidence as the truth and grant the
13 motion.

14 The court will consider a request to postpone consideration of the defendant's
15 motion if you submit a declaration showing that for a specific reason you cannot present such
16 facts in your opposition. If you do not respond to the motion, the court may consider your failure
17 to act as a waiver of your opposition. See L.R. 230(l).

18 If the court grants the defendant's motion, whether opposed or unopposed,
19 judgment will be entered for that defendant without a trial and the case will be closed as to that
20 defendant.

21 Accordingly, IT IS HEREBY ORDERED that:

22 1. Plaintiff's September 28, 2012 motion for the appointment of counsel (Dkt.
23 No. 66) is denied;

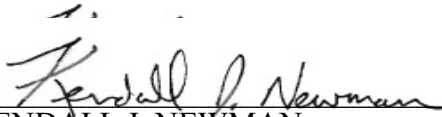
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1 2. Plaintiff is granted thirty days to file 1) a statement that he relies on his
2 previously submitted opposition; 2) a supplemental opposition; or 3) a new opposition to
3 defendants' summary judgment motion. Following receipt of plaintiff's briefing, the court will
4 consider plaintiff's motion to re-open discovery.

5 DATED: November 1, 2012

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9 KENDALL J. NEWMAN
10 UNITED STATES MAGISTRATE JUDGE

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