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

JAMAAL THOMAS,

Plaintiff,

No. CIV S-11-1138 MCE EFB P

vs.

ANTIPOV, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He moves to compel defendants to cooperate in discovery. He also requests that the court appoint counsel and that the court “reschedule”his deposition, set for February 24, 2012, in light of his request for counsel. For the reasons stated below, plaintiff’s motions are denied.

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 counsel voluntarily to represent such a plaintiff. 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 the likelihood of success on the

1 merits as well as the ability of the plaintiff to articulate his claims pro se in light of the
2 complexity of the legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009).
3 The court has determined there are no exceptional circumstances in this case. Plaintiff's requests
4 for counsel and to reschedule his deposition, are denied.

5 Plaintiff also moves to compel defendants' discovery responses. He claims that
6 defendants failed to respond to interrogatories and requests for admissions that he served on
7 November 15, 2011. Dckt. No. 25. Pursuant to the amended discovery and scheduling order, all
8 written requests for discovery were to be served no later than December 30, 2011, and all
9 motions to compel filed by February 28, 2012. Dckt. No. 22. Defendants respond in their
10 opposition brief that on December 19 and 22, 2011, they timely served their discovery responses
11 on plaintiff, and attach copies of their responses, along with proofs of service. Dckt. No. 26,
12 Williams Decl. ¶¶ 4-5, Exs. 1-B. Plaintiff did not file a reply brief. There are no grounds on
13 which to grant plaintiff's motion to compel, given defendants' evidence showing that they
14 provided plaintiff with responses to his discovery requests. Plaintiff's motion to compel is
15 denied.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff's February 13, 2012 request for appointment of counsel is denied.
- 18 2. Plaintiff's February 7, 2012 motion to compel is denied.

19 DATED: February 28, 2012.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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