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

JON CHRIST,

Plaintiff,

No. 2:11-cv-1156 JFM (PC)

vs.

S. McCRAW,

Defendant.

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. On or about March 17, 2011, defendant removed this action from the Santa Clara County Superior Court to the United States District Court for the Northern District of California. On April 28, 2011, the action was transferred to this court. It has been referred to the undersigned by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On March 17, 2011, defendant filed a request to screen this action pursuant to 42 U.S.C. § 1983 and a waiver of reply pursuant to 42 U.S.C. § 1997e(g). The court has screened the complaint pursuant to 28 U.S.C. § 1915A and finds that it states a cognizable claim for relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the complaint are proven, plaintiff has a reasonable opportunity to prevail on the merits of this action. Accordingly, defendant will be directed to respond to the complaint.

1 On April 18, 2011, plaintiff filed a motion for an order permitting him to
2 correspond with non party witnesses. Good cause appearing, defendant will be directed to
3 respond to the motion.

4 Plaintiff has also requested the appointment of counsel. The United States
5 Supreme Court has ruled that district courts lack authority to require counsel to represent
6 indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298
7 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of
8 counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
9 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the
10 court does not find the required exceptional circumstances. Plaintiff's request for the
11 appointment of counsel will therefore be denied.

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

- 13 1. The complaint states a cognizable claim for relief against defendant S.
14 McCraw.
- 15 2. Defendant McCraw shall respond to the complaint within twenty days from the
16 date of this order.
- 17 3. Within twenty days from the date of this order defendant shall file and serve a
18 response to plaintiff's April 18, 2011 motion for an order permitting him to correspond with non
19 party witnesses.
- 20 4. Plaintiff's April 18, 2011 request for appointment of counsel is denied.

21 DATED: May 16, 2011.

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24 UNITED STATES MAGISTRATE JUDGE

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