

1 A scheduling order may be modified upon a showing of good cause. Fed. R. Civ. P. 16(b). Good
2 cause exists when the moving party demonstrates he cannot meet the deadline despite exercising
3 due diligence. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

4 Plaintiff served defendant with interrogatories on May 16, 2013. ECF No. 36 at 9.
5 Plaintiff states that he had the interrogatories ready during the week of May 6, 2013, but that
6 service was delayed by at least one week because of shortcomings in the law library's resources
7 and copying services. *Id.* at 1. Good cause appearing, the court will extend the deadline for
8 serving interrogatories, *nunc pro tunc*, to May 16, 2013, and deem plaintiff's May 16, 2013
9 interrogatories, timely served.² Defendant shall respond to those interrogatories in accordance
10 with Rule 33(b).

11 Arranging Depositions

12 Plaintiff requests unspecified assistance in arranging the depositions of defendant and
13 other potential witnesses. Plaintiff's request must be denied, as the court cannot even ascertain
14 the precise assistance that plaintiff requests. Moreover, the proper procedures for taking
15 depositions, both orally and by written question, are set forth in Rules 30 and 31 of the Federal
16 Rules of Civil Procedure. Plaintiff has not complied with those procedures.

17 Appointment of Counsel

18 Plaintiff requests that the court appoint counsel. District courts lack authority to require
19 counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist.*
20 *Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney
21 to voluntarily represent such a plaintiff. *See* 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d
22 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
23 When determining whether "exceptional circumstances" exist, the court must consider the
24 likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro
25 se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970

26 ² Defendant notes in his opposition that plaintiff served a second and third set of interrogatories
27 on June 27 and July 12, respectively. ECF No. 39 at 2. These interrogatories were not timely
28 served, and there is no good cause to further modify the discovery and scheduling order to deem
them timely.

1 (9th Cir. 2009). Having considered those factors, the court finds there are no exceptional
2 circumstances in this case.

3 Summary of Order

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. The deadline for serving interrogatories is extended, *nunc pro tunc*, to May 16, 2013,
6 and plaintiff's May 16, 2013 interrogatories are deemed timely;
- 7 2. Plaintiff's request for assistance in arranging depositions is denied;
- 8 3. Plaintiff's request for the appointment of counsel is denied; and
- 9 4. The Clerk shall terminate plaintiff's motions (ECF Nos. 36, 37, 38).

10 Dated: August 20, 2013.

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12 EDMUND F. BRENNAN
13 UNITED STATES MAGISTRATE JUDGE
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