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

EDWARD R. WEBB, SR.,

Plaintiff,

No. 2:12-cv-0345 EFB P

vs.

CALIFORNIA DEPART. OF CORRECTIONS
AND REHABILITATION, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983.¹ He requests leave to proceed in forma pauperis and that the court appoint counsel.

To proceed with a civil action a plaintiff must pay the \$350 filing fee required by 28 U.S.C. § 1914(a) or request leave to proceed *in forma pauperis* and submit a properly completed affidavit and trust account statement required by 28 U.S.C. § 1915(a). Plaintiff has submitted his trust account statement, but has not filed an affidavit using the form application for this district.

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¹ This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff's consent. Dckt. No. 5; *see* E.D. Cal. Local Rules, Appx. A, at (k)(4).

1 Accordingly, plaintiff's in forma pauperis application is denied without prejudice to filing the
2 application on the proper form.

3 Plaintiff also seeks appointment of counsel. District courts lack authority to require
4 counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist.*
5 *Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an
6 attorney to voluntarily to represent such a plaintiff. *See* 28 U.S.C. § 1915(e)(1); *Terrell v.*
7 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36
8 (9th Cir. 1990). When determining whether "exceptional circumstances" exist, the court must
9 consider the likelihood of success on the merits as well as the ability of the plaintiff to articulate
10 his claims pro se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560
11 F.3d 965, 970 (9th Cir. 2009). The court finds there are no exceptional circumstances in this
12 case.

13 Accordingly, IT IS HEREBY ORDERED that:

14 1. Plaintiff's application to proceed in forma pauperis (Dckt. No. 3) is denied without
15 prejudice;

16 2. The Clerk of the Court is directed to send plaintiff a new Application to Proceed In
17 Forma Pauperis By a Prisoner;

18 3. Plaintiff shall submit, within thirty days from the date of this order, a completed
19 application to proceed in forma pauperis. Plaintiff's failure to comply with this order will result
20 in this action being dismissed without prejudice.

21 4. Plaintiff's February 9, 2012, request for appointment of counsel (Dckt. No. 2) is
22 denied.

23 DATED: June 28, 2012.

24 
25 EDMUND F. BRENNAN
26 UNITED STATES MAGISTRATE JUDGE