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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GOLDYN COOPER,
Plaintiff,
v.
SCOTT HEATLEY, et al.,
Defendants.

No. 2:12-cv-00602 KJM DAD P

ORDER AND FINDINGS &
RECOMMENDATIONS

Plaintiff Goldyn Cooper is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. In his complaint plaintiff contends that while he was incarcerated at Mule State Creek Prison defendants Dr. Scott Heatley, M.D. and Terry Weinholdt were deliberately indifferent to his medical needs, in violation of the Eighth Amendment’s prohibition against cruel and unusual punishment.

Now pending before the court are a motion for summary judgment filed by defendants, a motion for appointment of counsel filed by plaintiff, and various discovery-related motions filed by both parties.

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1 I. Background

2 A. Factual Background

3 Plaintiff alleges as follows in his complaint. (ECF No. 1.) On March 8, 2010, while he
4 was an inmate at Mule Creek State Prison,¹ plaintiff submitted a Health Care Services Request on
5 CDCR Form 7362, in which he wrote, “My knee is extremely swollen and almost gi[v]es out and
6 or buckles every few steps. I can hardly walk at all.” (ECF No. 1 at 2.)

7 Dr. H. Walter Pepper, M.D., formerly a defendant in this action, made the following
8 diagnosis of plaintiff’s condition based on x-rays taken around this time: “The articular margins
9 are normal. The patellofemoral joint is unremarkable.” (Id. at 3.) Plaintiff received a leg brace,
10 but received no further treatment. (Id. at 2-3)

11 Plaintiff alleges that he submitted medical requests again seeking treatment for his left
12 knee on August 7, 2010, August 27, 2010, and December 13, 2010, all to no avail. (Id. at 2-3.)
13 He alleges that he was examined by Dr. W. Hashimoto, M.D., a doctor at Mule Creek State
14 Prison, on November 18, 2010, December 24, 2010, February 2, 2011, and April 7, 2011, and that
15 Dr. Hashimoto repeatedly recommended that plaintiff receive an MRI. (Id.) Moreover, both
16 Dr. Hashimoto and O. Akintola, a physician’s assistant, diagnosed an ACL tear on the basis of
17 their examinations of plaintiff. (Id.) Nonetheless, requests for plaintiff to receive an MRI were
18 repeatedly denied by the prison’s Medical Authorization Review Committee (“MARC”), on
19 which defendants Terri Weinholdt and Dr. Scott Heatley, M.D. sat. (Id.)

20 On August 2011, plaintiff was seen by an orthopedic surgeon who ordered an MRI, which
21 plaintiff thereafter received. (Id.) This same surgeon later operated on plaintiff’s left knee. (Id.
22 at 5.) The orthopedic surgeon informed plaintiff that he would require complete reconstructive
23 surgery on his left knee in a few years. (Id.) He also told plaintiff that this follow-up surgery
24 would have been unnecessary if his knee had been timely operated on in March 2010, shortly
25 after he injured it. (Id.)

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28 ¹ Plaintiff was subsequently transferred to the Richard J. Donovan Correctional Facility in San
Diego, California. (See ECF No. 38.)

1 B. Procedural Background

2 On March 8, 2012, this action commenced with the filing of plaintiff's complaint. (ECF
3 No. 1.) On December 20, 2012, the court screened the complaint, and deemed service
4 appropriate on defendants Terri Weinholdt, Dr. Scott Heatley, M.D., and Dr. H. Walter Pepper,
5 M.D. (ECF No. 4.) On July 2, 2013, defendants Weinholdt and Dr. Heatley filed a joint answer.
6 (ECF No. 18.) On August 15, 2013, defendant Dr. Pepper filed a motion to dismiss. (ECF
7 No. 22.) On October 17, 2013, plaintiff filed a statement of non-opposition to the motion to
8 dismiss. (ECF No. 31.) On January 10, 2014, defendant Dr. Pepper was dismissed from the
9 action.² (ECF No. 33.)

10 On August 27, 2013, the court amended its previously-issued discovery and scheduling
11 order (ECF No. 23) in order to modify the following dates: the deadline to conclude discovery
12 and bring any discovery-related motions was reset to April 25, 2014, and the deadline to file
13 pretrial motions was reset to June 17, 2014. (ECF No. 27.)

14 On March 5, 2014, defendants Weinholdt and Dr. Heatley filed a joint motion to dismiss
15 plaintiff's complaint. (ECF No. 37.) The basis for the motion was plaintiff's alleged failure to
16 exhaust his administrative remedies prior to filing suit as required. (Id.) After considering
17 defendants' filing, as well as plaintiff's opposition (ECF No. 40) and defendants' reply (ECF
18 No. 41), the court denied the motion to dismiss without prejudice, on the grounds that, under the
19 decision in Albino v Baca, 747 F.3d 1162 (9th Cir. 2014), defendants may no longer raise the
20 issue of administrative exhaustion via an unenumerated Rule 12(b) motion. (ECF No. 48.) Per
21 the decision in Albino, if plaintiff's failure to exhaust is clear on the face of the complaint,
22 defendants may bring a motion to dismiss under Rule 12(b)(6); otherwise, the issue may only be
23 properly raised through a motion for summary judgment under Rule 56. (Id. at 1.) By order dated
24 May 21, 2014, defendants were given thirty days to bring a summary judgment motion raising the
25 issue. (Id. at 2.) They did not do so.

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27 ² For this reason, the term "defendants," when used hereinafter and not otherwise qualified,
28 should be taken to refer collectively to Terri Weinholdt and Dr. Heatley, the two remaining
defendants in the action.

1 Presently pending before the court are the following motions:

- 2 • Defendants Heatley and Weinholdt's motion to compel responses to special
3 interrogatories, set one, filed on April 16, 2014. (ECF No. 42.)
- 4 • Defendants' motion for imposition of discovery sanctions, filed on April 24, 2014.
5 (ECF No. 43.)
- 6 • Plaintiff's motion for imposition of sanctions based on defense counsel's alleged
7 perjury, filed on May 15, 2014. (ECF No. 46.)
- 8 • Defendants' motion for summary judgment, filed on June 17, 2014. (ECF No. 50.)
- 9 • Plaintiff's motion for a 90-day extension of time to conclude discovery, filed August
10 4, 2014. (ECF No. 52.)
- 11 • Plaintiff's motion to compel production of documents, filed August 5, 2014. (ECF
12 No. 53.)
- 13 • Plaintiff's renewed motion for appointment of counsel, filed August 5, 2014.³ (ECF
14 No. 54.)

15 Each of these motions is dealt with in turn below.

16 II. Analysis

17 A. Defendants' motion for discovery sanctions

18 Of primary concern to the court is defendants' motion for discovery sanctions, filed on
19 April 24, 2014. (ECF No. 43.) The basis for this motion is plaintiff's alleged unwillingness to
20 allow his deposition to be taken. Defendants seek terminating sanctions, or in the alternative, an
21 order (i) extending the discovery deadline, and (ii) compelling plaintiff to submit to a deposition
22 at a facility with videoconferencing capabilities. (ECF No. 43-1 at 4.) Defendants also seek
23 imposition of monetary sanctions against plaintiff in the amount of \$4944.46 to compensate for
24 the costs attendant on the failed deposition, as well as for defendants' attorney fees.

25 Federal Rule of Civil Procedure 37(d) provides that the court may order sanctions if a
26 party fails, after being served with proper notice, to appear for his or her deposition. Among the

27 ³ On February 12, 2014, the court denied a previous motion filed by plaintiff seeking the
28 appointment of counsel. (ECF No. 35.)

1 potential sanctions is dismissal of the action, in whole or in part. Fed. R. Civ. P. 37(b)(2)(A)(v).
2 The court may also order the party failing to act to pay the reasonable expenses, including
3 attorney's fees, caused by the failure, unless the failure was substantially justified or other
4 circumstances make an award of expenses unjust. Fed. R. Civ. P. 37(d)(3).

5 In a declaration in support of their sanctions motion, defendants' counsel Kenny Nguyen
6 states that, on April 1, 2014, he served a notice of deposition on plaintiff, which provided that
7 Deputy Attorney General Nguyen would take plaintiff's deposition in person at Richard J.
8 Donovan Correctional Facility in San Diego, California, on April 22, 2014 at 10:00 a.m. (ECF
9 No. 43-2 at 1-2.) According to Deputy Attorney General Nguyen, he did not receive any
10 objections or correspondence from plaintiff regarding the deposition notice. (Id. at 2.) Deputy
11 Attorney General Nguyen then avers:

12 Upon my arrival at [the prison] to begin the deposition, [p]laintiff
13 was brought into the deposition room. The deposition was set to
14 take place shortly after 10:00 AM due to the court reporter's late
15 arrival. Plaintiff immediately became hostile upon seeing me and
16 the court reporter. He began to pace back and forth in the room, at
17 first demanding to know why he was brought into the room. I
18 introduced myself to him as Deputy Attorney General Kenny
19 Nguyen, that [*sic*] I represent the defendants in the lawsuit he filed
20 in federal court alleging deliberate indifference to his medical
21 needs. I then told him that I was here to take his deposition, and
22 that a notice was served on him on April 1st. At this point,
23 [p]laintiff refused to sit down and continue pacing back and forth in
the small room in a threatening manner. Both I and the court
reporter feared for our safety. Plaintiff looked at me and asked me
if I thought he was stupid and continued with confrontational
questions such as this. He then stated that he knew exactly what I
was trying to do. And at that point he appeared to tense up as if he
was going to assault me and stated that he will remember exactly
what I look like. Fearing for my safety and the safety of the court
reporter, I then asked him whether he was refusing to proceed with
the deposition and when he continued to escalate his hostility
toward me, I asked the corrections officer to remove him from the
room.

24 (Id. at 2.) Deputy Attorney General Nguyen concludes by stating that he would feel unsafe if he
25 was again to be in plaintiff's presence while taking his deposition, that the Richard J. Donovan
26 facility lacks videoconferencing capabilities, and that a deposition by telephone would be
27 inadequate, as "[Deputy Attorney General Nguyen] cannot observe [plaintiff's] demeanor or
28 nonverbal responses." (Id. at 3.)

1 Plaintiff has filed an opposition to the motion. (ECF No. 45.) He claims therein that he is
2 a psychiatric patient in the Enhanced Outpatient Program (“EOP”).⁴ (Id. at 1.) He contends that

3 when a California Department of Corrections Classification
4 Committee conducts a hearing with the plaintiff, by state and
5 federal law, the Psychiatrist and Psychologist MUST be present
6 with The Warden who controls the custody and care of the plaintiff;
7 which Attorney Nguyen knew this was a Federal and State Court
8 mandated law, yet he chose not to comply with these two laws and
9 never contacted [the Warden] to have the Psychiatrist and
10 Psychologist present during the deposition interrogations of the
11 mentally ill.

12 (ECF No. 45 at 3.) This argument is inapt. A Classification Committee hearing addresses
13 “determination[s] affecting an inmate’s placement within an institution/facility, transfer between
14 facilities, program participation, work group, or custody designation” Entering a California
15 State Prison – What to Expect, Office of the Ombudsman, California Department of Corrections
16 and Rehabilitation, http://cdcr.ca.gov/Ombuds/Entering_a_Prison_FAQs.html. By contrast, a
17 deposition is a discovery procedure authorized by the Federal Rules of Civil Procedure. The
18 undersigned is unaware of any court orders, laws, or regulations, either at the federal or state
19 level, which requires that mental health personnel be present when EOP patients are deposed.
20 While Federal Rule of Civil Procedure 26(c)(E) allows a party to move for a protective order, on
21 a showing of good cause, “designating the persons who may be present while the discovery is
22 conducted,” the undersigned would be reluctant to issue such an order absent a declaration from a
23 treating mental health professional stating that he or she needed to be present with plaintiff during
24 his deposition. It is plaintiff who initiated this lawsuit; it is therefore reasonable that he should
25 anticipate being subject to a deposition regarding the matters at issue. This conclusion is
26 reinforced by the fact that plaintiff appears to have competently represented himself in civil
27 proceedings that culminated in a 2011 federal jury trial in the case of Cooper v. Dion, No. 2:08-

28 ⁴ The “Enhanced Outpatient Program (EOP) provides care to mentally disordered inmate-patients
who would benefit from the structure of a therapeutic environment that is less restrictive than
inpatient settings. This may include response to crisis symptoms which require extensive
treatment, but can be managed as outpatient therapy with several psychotherapy sessions or
medication adjustment with follow-up visits.” Mental Health Program Guide 8, California
Department of California Department of Corrections and Rehabilitation,
<http://www.cdcr.ca.gov/dchcs/docs/mental%20health%20program%20guide.pdf>.

1 cv-01567-JAM-JFM; it is therefore reasonable to infer that he is conversant with federal civil
2 procedure.

3 Plaintiff's more compelling argument is that had he threatened defendants' counsel,
4 Deputy Attorney General Nguyen, at the scheduled deposition, he would have been subjected to
5 disciplinary action. (ECF No. 45 at 9.) The court finds it notable that, according to Deputy
6 Attorney General Nguyen, a court reporter was present at the failed deposition, but defendants
7 nonetheless did not attach to their sanctions motion a transcript of what proceedings did occur.
8 Accordingly, the court is unable to verify whose account of what happened is reliable. For this
9 reason, defendants' request for terminating sanctions will be denied.

10 The sensible course of action at this point appears to be to require plaintiff to submit to a
11 video deposition.⁵ After taking this deposition, defendants can then bring another motion for
12 summary judgment if they so choose. Plaintiff is cautioned that if he fails to submit to the video
13 deposition, it is likely that terminating sanctions will issue, resulting in the dismissal of this case
14 with prejudice.

15 As for defendants' request for monetary sanctions, it will be denied at this time.
16 However, if plaintiff fails to submit to a video deposition or to cooperate in the deposition
17 process, defendants may renew their request and include the costs of their second failed attempt at
18 taking plaintiff's deposition. Plaintiff is again cautioned that if he fails to submit to the
19 deposition, he may then be subject to sanctions, both monetary and terminating.

20 B. Plaintiff's motion for sanctions, filed on May 15, 2014

21 On May 15, 2014, plaintiff filed a motion seeking the award of monetary sanctions in the
22 amount of \$5,000.00 from defendants' counsel, Deputy Attorney General Nguyen. (ECF No. 46.)
23 Plaintiff therein claims that Deputy Attorney General Nguyen perjured himself by failing to
24 provide receipts for all of the expenses claimed in his motion for imposition of discovery

25
26 ⁵ This conclusion is bolstered by Deputy Attorney General Nguyen's averment, in his declaration
27 in support of the motion for terminating sanctions, that he would be unable to prepare a motion
28 for summary judgment without plaintiff's deposition testimony. (See ECF No. 43-2 at 4.) While
defendants eventually did file a summary judgment motion (ECF No. 50), the court is unwilling
to consider and rule on that potentially dispositive motion absent a more fully-developed record.

1 sanctions against plaintiff, discussed above. Plaintiff brings his motion pursuant to Federal Rule
2 of Civil Procedure 11.

3 Deputy Attorney General Nguyen has now submitted to the court receipts for all of the
4 claimed expenses, attached as exhibits to a declaration filed in support of his opposition to
5 plaintiff's motion. (See ECF No. 49-1.) The court is satisfied by this filing and, accordingly, will
6 deny plaintiff's motion for monetary sanctions.

7 C. Plaintiff's motions (i) for an extension of time to conduct discovery
8 and (ii) to compel production of documents

9 On August 4, 2014, plaintiff filed a motion seeking a 90-day extension of time in which to
10 conduct discovery in this action. (ECF No. 52.) On August 5, 2014, plaintiff filed a motion to
11 compel defendants to respond to his request for production of documents. (ECF No. 53.)
12 Defendants have not filed oppositions to either motion.⁶

13 In a section entitled "[S]tatement of [F]acts" in his motion to compel, plaintiff claims that
14 he filed a request for production of documents in "5-circa 2014." (ECF No. 53 at 3.) The court
15 takes plaintiff to mean that he served these discovery requests in May 2014. According to
16 plaintiff, defendants did not respond to his discovery requests. However, "plaintiff was unable to
17 file a letter or motion asking why, because Prisoner Frederick W. Smith [an inmate who was
18 assisting plaintiff] left the prison May 19, [20]14 and did not return until May 29, 2014 and that
19 was because of his own depression and was under suicide watch." (Id.)

20 Plaintiff justifies his motion for a 90-day extension of time to conduct discovery in this
21 case on the grounds that on July 3, 2014, he was placed in administrative segregation at R.J.
22 Donovan State Prison. (ECF No. 52 at 1.) Plaintiff states that, as a result of his placement in
23 administrative segregation, his legal documents were taken from him and have yet to be returned.
24 (Id.) On this basis, he seeks an extension of time to propound interrogatories and requests for
25 admission to defendants. (Id.)

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27 ⁶ Defense counsel is reminded that failure to timely oppose such a motion may be deemed a
28 waiver of opposition to the motion and may result in the imposition of sanctions. See Local Rule
230(1).

1 Plaintiff's motions in this regard do not appear to be meritorious. Plaintiff appears to have
2 failed to comply with most, if not all, of the procedural requirements to bring a motion to compel
3 discovery responses, as set forth in Federal Rule of Civil Procedure 37 and Local Rule 251. For
4 example, plaintiff has failed to reproduce or include a copy of the discovery requests that he
5 alleges he served on defendants. See Local Rule 251(c). While the court does not hold litigants
6 proceeding pro se to the same standards that it holds attorneys, at a minimum, plaintiff, as the
7 moving party, has the burden of demonstrating which discovery requests are the subject of his
8 motion to compel and why the information he seeks through discovery is relevant to the
9 prosecution of this action. See, e.g., Brooks v. Alameida, No. 2:03-cv-2343 JAM EFB, 2009 WL
10 331358 at *2 (E.D. Cal. Feb.10, 2009) ("Without knowing which responses plaintiff seeks to
11 compel or on what grounds, the court cannot grant plaintiff's motion."); Nelson v. Runnels,
12 No. 2:06-cv-1289 LKK DAD, 2009 WL 2776854 at *2 (E.D. Cal. Aug. 27, 2009) ("Plaintiff is
13 advised that the court is unable to rule on his motion to compel in its present form because it is
14 not clear what plaintiff was asking for in his discovery requests or whether plaintiff's discovery
15 requests were proper."). Plaintiff has also failed to file a proof of service indicating that he served
16 the discovery requests on the defendants, yet another reason to deny his motion. See, e.g.,
17 Bridges v. Hubbard, No. 2:09-cv-0940 GEB DAD, 2012 WL 1901301 at *1 (E.D. Cal. May 24,
18 2012) ("Because plaintiff has failed to demonstrate that he properly served defendants with his
19 discovery requests, the court has no basis on which to grant this aspect of his motion to
20 compel."); Palmer v. Crotty, No. 1:07-CV-0148 LJO DLB, 2010 WL 4279423 at *1 (E.D. Cal.
21 Oct. 22, 2010) (denying motion to compel because plaintiff failed to submit any evidence that he
22 served discovery requests on defendant).

23 More importantly, plaintiff has entirely failed to demonstrate diligence in pursuing
24 discovery in this action. "The district court does not abuse its discretion by denying further
25 discovery if the movant has failed diligently to pursue discovery in the past." Conkle v. Jeong, 73
26 F.3d 909, 914 (9th Cir. 1995). See also Nidds v. Schindler Elevator Corp., 113 F.3d 912, 921
27 (9th Cir. 1997) (holding that a party's failure to diligently pursue discovery in the past is
28 sufficient reason for the court to deny further discovery). On August 21, 2014, the court in this

1 case initially set a discovery deadline of October 25, 2013 and a pretrial motion deadline of
2 January 17, 2014. (ECF No. 23.) On August 27, 2013, based on defendants' objections to these
3 dates, the court extended the discovery deadline to April 25, 2014 and the pretrial motion
4 deadline to June 17, 2014. (ECF No. 27.) Yet, plaintiff states that he did not serve the request for
5 production of documents at issue until May 2014, i.e., after the discovery deadline had passed and
6 more than eight months after the discovery deadline in this case was first extended. The court
7 cannot countenance this lack of diligence. As for plaintiff's arguments regarding his placement in
8 administrative segregation and loss of legal documents, they are also unavailing. Plaintiff did not
9 enter administrative segregation until July 3, 2014, after both the discovery and pre-trial motion
10 deadlines had passed; it is therefore unclear why this placement in administrative segregation
11 would have had any effect on plaintiff's ability to conduct timely discovery in this action.

12 Accordingly, the court will deny plaintiff's motions for an extension of the discovery
13 deadline and to compel responses to his requests for production of documents.

14 D. Defendants' motion to compel

15 On April 16, 2014, defendants filed a motion seeking to compel plaintiff to respond to
16 special interrogatories. (ECF No. 42.) Defendants allege in their motion that they propounded
17 special interrogatories on plaintiff on August 22, 2013, and that plaintiff subsequently failed to
18 respond. Defendants claim that they then wrote to plaintiff on April 1, 2014, requesting
19 responses by April 11, 2014, and that none were forthcoming. Plaintiff has not filed an
20 opposition to this motion.

21 As is the case with plaintiff's motion to compel, discussed above, defendants have failed
22 to reproduce or include a copy of the special interrogatories which they claim to have served on
23 plaintiff. Instead, defense counsel merely writes:

24 Defendants . . . propounded special interrogatories to obtain all
25 facts supporting Plaintiff's contention that each defendant was
26 deliberately indifferent to his medical needs while he was
27 incarcerated at Mule Creek State Prison. The special
28 interrogatories also appropriately sought all facts supporting his
claim that he had exhausted all of his administrative remedies
against the Defendants prior to bringing suit. These interrogatories
are relevant to the issues of liability and damages.

1 (ECF No. 42 at 4). Defendants' counsel, Deputy Attorney General Nguyen, has included a
2 supporting declaration, which also fails to reproduce, or include as an attachment, the
3 interrogatories in question. The court cannot merely rely on defendants' representations
4 regarding the nature of the interrogatories. Federal Rule of Civil Procedure 26 provides that
5 "[f]or good cause, the court may order discovery of any matter relevant to the subject matter
6 involved in the action." Fed. R. Civ. P. 26(b)(1). Without being able to examine the discovery
7 requests at issue, the court cannot make a determination as to whether this relevancy standard has
8 been satisfied. Accordingly, the court will also deny defendants' motion to compel.

9 E. Plaintiff's motion for appointment of counsel

10 On August 5, 2014, plaintiff filed a renewed⁷ motion for appointment of counsel. (ECF
11 No. 54.) He therein states his reasons for seeking the appointment of counsel as follows:

- 12 1. Plaintiff is not able to afford counsel.
- 13 2. The issues involved in this case are complex.
- 14 3. The prison limits the hours that plaintiff may have access to the
15 prison library and the law materials contained there are very
16 limited.
- 17 4. The Prisoner Frederick w. Smith [who was assisting plaintiff] is
18 in a depression and stressing, the record will show he just came
19 back to the prison May 29, 2014, from suicide watch, and can not
20 (sic) continue to help me. And I am unable to do it myself can not
(sic) file a respond with the needed discovery for documents, and
pursuant to FRCP 34, 26 etc.
- 21 5. The ends of justice would best be served in this case if an
attorney was appointed to represent the plaintiff.

22 (ECF No. 54 at 1-2.)

23 As the court previously advised plaintiff, the United States Supreme Court has ruled that
24 district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases.

25 Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional
26 circumstances, the district court may request the voluntary assistance of counsel pursuant to 28
U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.

27 ⁷ On February 12, 2014, the court denied a previous motion by plaintiff for appointment of
28 counsel. (ECF No. 36.)

1 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

2 The test for exceptional circumstances requires the court to evaluate the plaintiff's
3 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
4 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
5 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
6 common to most prisoners, such as lack of legal education and limited law library access, do not
7 establish exceptional circumstances that would warrant a request for voluntary assistance of
8 counsel. In the present case, which involves a straightforward medical deliberate indifference
9 claim against two defendants, the court previously failed to find the required exceptional
10 circumstances. Nothing in plaintiff's renewed motion for appointment of counsel has changed
11 this assessment. Accordingly, plaintiff's renewed motion for appointment of counsel will be
12 denied at this time.

13 **III. Conclusion**

14 Based on the foregoing, IT IS HEREBY ORDERED that:

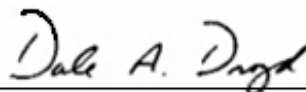
- 15 1. Defendants' motion for an order compelling plaintiff to participate in a video
16 deposition is granted. Defendants shall re-notice plaintiff's deposition so that it takes
17 place no later than February 28, 2015. Defendants may apply to the court for an order
18 and writ of habeas corpus ad testificandum if one is required to produce plaintiff
19 outside the facility where he is currently incarcerated. Defendants' motion for
20 discovery sanctions (ECF No. 43) is otherwise denied.
- 21 2. The court's August 21, 2013 Discovery and Scheduling Order, as modified by
22 subsequent order, is hereby amended as follows:
 - 23 a. The April 25, 2014 deadline for discovery and to file any motions to compel
24 discovery is vacated, and reset for March 15, 2015, solely for the purposes of
25 allowing defendants to take plaintiff's deposition. Neither party is granted
26 leave to propound additional discovery requests.
 - 27 b. The June 17, 2014 deadline to file pretrial motions (except motions to compel)
28 is vacated, and reset for April 15, 2015.

- 1 3. Defendants' motion to compel discovery responses (ECF No. 42) is denied.
- 2 4. Plaintiff's motion for monetary sanctions (ECF No. 46) is denied.
- 3 5. Plaintiff's motion for an extension of time in which to conduct discovery (ECF
- 4 No. 52) is denied.
- 5 6. Plaintiff's motion to compel discovery responses (ECF No. 53) is denied.
- 6 7. Plaintiff's motion for appointment of counsel (ECF No. 54) is denied.
- 7 8. Within fourteen (14) days of filing of this order, counsel for defendants shall file a
- 8 status report informing the court whether plaintiff currently has access to his legal
- 9 materials, and if not, what arrangements have been made to allow plaintiff adequate
- 10 access so that he can prepare for his deposition and file an opposition to any
- 11 forthcoming motion for summary judgment.

12 IT IS HEREBY RECOMMENDED that Defendants' motion for summary judgment (ECF
13 No. 50) be denied without prejudice to its re-filing in compliance with the new April 15, 2015
14 deadline for the filing of pretrial motions.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
20 objections shall be served and filed within fourteen days after service of the objections. The
21 parties are advised that failure to file objections within the specified time may waive the right to
22 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 Dated: January 6, 2015

24 

25 _____
26 DALE A. DROZD
27 UNITED STATES MAGISTRATE JUDGE

26 DAD:10
27 coop0602.discovery