

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEON E. MORRIS,
Plaintiff,
v.
GUFFEE et al.,
Defendants.

No. 2:13-cv-1171 TLN DAD P

ORDER

Plaintiff is a state prisoner proceeding pro se with this civil rights action brought pursuant to 42 U.S.C. § 1983.

On March 16, 2015, Magistrate Judge Kendall J. Newman granted plaintiff a two-and-a-half-month extension of time up to and including May 31, 2015, to file written oppositions to the defendants’ pending motions to dismiss in this case. Magistrate Judge Newman cautioned plaintiff that no further extensions would be granted for that purpose. On March 17, 2015, District Judge Troy L. Nunley issued a related case order and reassigned this case to himself and the undersigned for all further proceedings. To date, plaintiff has not filed an opposition to either pending motion to dismiss in accordance with Magistrate Judge Newman’s prior order.

Local Rule 230(l) provides in part: “Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion” On November 5, 2014, plaintiff was advised of the requirements

1 for filing an opposition to a motion to dismiss and that failure to oppose such a motion may be
2 deemed a waiver of opposition to the motion.

3 Local Rule 110 provides that failure to comply with the Local Rules “may be grounds for
4 imposition of any and all sanctions authorized by statute or Rule or within the inherent power of
5 the Court.” In the order filed November 5, 2014, plaintiff was advised that failure to comply with
6 the Local Rules may result in a recommendation that the action be dismissed. In the interest of
7 justice, the court will grant plaintiff a final fourteen days to file his oppositions to the pending
8 motions to dismiss. Plaintiff is advised that his failure to comply with this order will result in a
9 recommendation that this action be dismissed due to his failure to prosecute the action and to
10 comply with the court’s orders.

11 Also pending before the court is plaintiff’s motion for appointment of counsel. As the
12 court previously advised plaintiff, the United States Supreme Court has ruled that district courts
13 lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v.
14 United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the
15 district court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1).
16 Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332,
17 1335-36 (9th Cir. 1990).

18 The test for exceptional circumstances requires the court to evaluate the plaintiff’s
19 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
20 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
21 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
22 common to most prisoners, such as lack of legal education and limited law library access, do not
23 establish exceptional circumstances that would warrant a request for voluntary assistance of
24 counsel. In the present case, the court does not find the required exceptional circumstances.

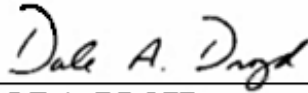
25 Accordingly, IT IS HEREBY ORDERED that:

26 1. Within fourteen days of the date of service this order, plaintiff shall file an opposition
27 to both pending motions to dismiss in this case. Failure to file the oppositions will be deemed as
28 statements of non-opposition and shall result in a recommendation that this action be dismissed

1 pursuant Federal Rule of Civil Procedure 41(b). Alternatively, if plaintiff no longer wishes to
2 pursue this action he may file a request to voluntarily dismiss this case; and

3 2. Plaintiff's motion for appointment of counsel (Doc. No. 41) is denied.

4 Dated: June 11, 2015

5 

6

DALE A. DROZD
7 UNITED STATES MAGISTRATE JUDGE

8 DAD:9
9 morr1171.46

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28