



1 authorized by Congress.” Tedder v. Odel, 890 F.2d 210, 212-13 (9th Cir. 1989) (brackets in  
2 original) (quoting United States v. MacCollom, 426 U.S. 317, 321 (1976)). The in forma  
3 pauperis statute does not provide for the expenditure of public funds for investigators. 28 U.S.C.  
4 § 1915. Plaintiff’s motion for an investigator will therefore be denied.

5 II. Motion for Counsel

6 Plaintiff has also requested the appointment of counsel for the limited purpose of assisting  
7 him in responding to defendant’s discovery requests. ECF No. 26 at 1-2. He alleges that he  
8 requires access to his central file in order to properly respond to the requests, but that he is being  
9 denied access. Id.

10 Again, plaintiff has yet to establish that he is indigent. However, even if that were not the  
11 case, the United States Supreme Court has ruled that district courts lack authority to require  
12 counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490  
13 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary  
14 assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017  
15 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). The test for  
16 exceptional circumstances requires the court to evaluate the plaintiff’s likelihood of success on  
17 the merits and the ability of the plaintiff to articulate his claims pro se in light of the complexity  
18 of the legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009); Wilborn v.  
19 Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir.  
20 1983). In the present case, the court does not find the required exceptional circumstances and  
21 will deny the request for counsel because plaintiff has not established that he is indigent and what  
22 he seeks, access to his central file, can be accomplished without appointment of counsel.

23 Federal Rule of Civil Procedure 34(a)(1) requires a party to produce only those “items in  
24 the responding party’s possession, custody, or control.” Although inmates are typically afforded  
25 access to the non-confidential portions of their own central file through an Olsen review, if  
26 plaintiff is being denied access to his central file or to confidential documents, then those  
27 documents are not in his possession, custody, or control and he is not obligated to produce them.  
28 However, in addition to responding to the request for production, it appears that plaintiff may

1 require access to documents within his central file in order to respond to interrogatories and that  
2 the documents contained in his central file may also be necessary to support his claims. The court  
3 will therefore require the Attorney General's Office and Deputy Attorney General Michelle M.  
4 Mayer to ensure that plaintiff is provided an opportunity to review the non-confidential portions  
5 of his central file and make copies of any documents therein that he believes are necessary to  
6 respond to the discovery requests or to support his case. Alternatively, counsel for defendant may  
7 choose to produce to plaintiff the relevant, non-confidential portions of his central file. Plaintiff's  
8 responses to defendants' requests for production and interrogatories will be due after he either has  
9 had an opportunity to review and copy his files or is provided a copy of the relevant portions of  
10 his files.

11 Because plaintiff is not obligated to produce documents not in his possession, custody, or  
12 control, the court will not order that he be given access to the confidential portions of his central  
13 file in order to respond to discovery, since those documents would not otherwise be available to  
14 him. To the extent plaintiff may be seeking access to confidential documents that he has  
15 requested through discovery, he will need to file a motion to compel outlining (1) what  
16 documents he requested, (2) defendant's responses and/or objections, and (3) why the responses  
17 and/or objections are insufficient.

### 18 III. Summary

19 Plaintiff's motion for a court-appointed investigator is denied because a court-appointed  
20 investigator is not available under federal law.

21 Plaintiff's motion for counsel is denied because he has not shown that he cannot afford an  
22 attorney and because an attorney is not required to resolve plaintiff's discovery problem. Plaintiff  
23 does not have to produce documents that he does not have or cannot access. Additionally,  
24 defendant's counsel will be required to make sure that plaintiff can either review his non-  
25 confidential central file and make copies, or that he is provided copies of the relevant, non-  
26 confidential portions of his central file. Plaintiff does not have to respond to defendant's requests  
27 for production or interrogatories until he has either reviewed or received a copy of his relevant,  
28 non-confidential central file. If plaintiff wants to see confidential documents that he has

1 requested through discovery, he must file a motion to compel saying (1) what documents he  
2 asked for, (2) what defendant's responses and/or objections were, and (3) why the responses  
3 and/or objections are not good enough.

4 Accordingly, IT IS HEREBY ORDERED that

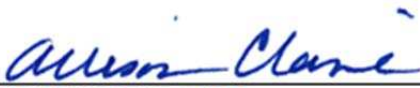
5 1. Plaintiff's motion for a court-appointed investigator (ECF No. 23) is denied.

6 2. Plaintiff's motion for counsel (ECF No. 26) is denied.

7 3. Within thirty days of this order, the Attorney General's Office and Deputy Attorney  
8 General Michelle M. Mayer shall ensure that plaintiff is provided an opportunity to review the  
9 non-confidential portions of his central file and make copies of any documents therein that he  
10 believes are necessary to respond to the discovery requests or to support his case. Alternatively,  
11 counsel for defendant may choose to produce to plaintiff the relevant, non-confidential portions  
12 of his central file. A notice of compliance shall be filed with the court within seven days of  
13 plaintiff reviewing and copying his central file or receiving a copy of the relevant, non-  
14 confidential portions of his central file.

15 4. Plaintiff's responses to defendant's requests for production and interrogatories will be  
16 due twenty-one days after plaintiff either (1) has an opportunity to review his central file and  
17 obtain the necessary copies or (2) receives a copy of the relevant, non-confidential portions of his  
18 central file.

19 DATED: December 4, 2015

20   
21 ALLISON CLAIRE  
22 UNITED STATES MAGISTRATE JUDGE  
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