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

JAMES R. O'BRIEN,

No. 2:14-cv-0702-CMK-P

Plaintiff,

vs.

ORDER

FRED FOULK, et al.

Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and no other party has been served or appeared in the action. Pending before the court is plaintiff's motion for reconsideration (Doc. 27), motion for a temporary restraining order (Doc. 28), and motion to appoint counsel (Doc. 29).

On April 20, 2016, the court issued an order for plaintiff to show cause why defendants Swingle, Lee and Abdur-Rahman should not be dismissed from this action for failure to state a claim. Plaintiff's motion for reconsideration is his response thereto. As the court explained in prior orders, prisoners have no stand-alone due process rights related to the administrative grievance process. See Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988).

1 Plaintiff fails to provide any additional facts to show that the doctors had any involvement in his
2 dietary care beyond reviewing his inmate grievance. While plaintiff alleges Dr. Abdur-Rahman
3 failed to address the issue of whether the food served was in compliance with prison guidelines,
4 the undersigned does not find such allegations sufficient to rise to the level of personal
5 involvement required under 42 U.S.C. § 1983. Accordingly, these three individuals will be
6 dismissed from this action as set forth in the court's prior orders, but will continue as to the
7 remaining two defendants.

8 As to plaintiff's motion for temporary restraining order, this is plaintiff's second
9 attempt to have the court issue an order against individuals other than the defendants to this
10 action. As the court already informed plaintiff, where a prisoner is seeking injunctive relief with
11 respect to conditions of confinement, the prisoner's transfer to another prison renders the request
12 for injunctive relief moot, unless there is some evidence of an expectation of being transferred
13 back. See Prieser v. Newkirk, 422 U.S. 395, 402-03 (1975); Johnson v. Moore, 948 F.3d 517,
14 519 (9th Cir. 1991) (per curiam). In addition, this court is unable to issue an order against
15 individuals who are not parties to a suit pending before it. See Zenith Radio Corp. v. Hazeltine
16 Research, Inc., 395 U.S. 100, 112 (1969). This action is against officials at High Desert State
17 Prison. Plaintiff is requesting the court issue an order directing the action of officials at Folsom
18 State Prison. Such a request must be denied as beyond the scope of this action. In addition,
19 plaintiff has now been transferred to San Quinton State Prison, and there is no indication that
20 plaintiff will be transferred back to High Desert State Prison in the near future. Plaintiff's
21 request for preliminary injunction must be denied.

22 Finally, plaintiff has again filed a request for the appointment of counsel. As
23 plaintiff has been informed, the United States Supreme Court has ruled that district courts lack
24 authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v.
25 United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the
26 court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See

1 Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332,
2 1335-36 (9th Cir. 1990). A finding of “exceptional circumstances” requires an evaluation of
3 both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims
4 on his own in light of the complexity of the legal issues involved. See Terrell, 935 F.2d at 1017.
5 Neither factor is dispositive and both must be viewed together before reaching a decision. See
6 id.

7 Here, plaintiff requests the appointment of counsel based solely on his inability to
8 afford counsel, his limited legal knowledge, and the general difficulties of being a pro se prison
9 litigant. There is nothing in his motion to change the determination the court previously made
10 that plaintiff does not meet the required exceptional circumstances. As the court previously
11 determined, plaintiff appears capable of articulating his claim, the facts of the case are not
12 exceptionally complex, and it is not clear at this stage of the proceedings that plaintiff is likely to
13 prevail in this action. Thus, his request will be denied.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff’s motion for reconsideration (Doc. 27) is construed as his
16 response to the order to show cause and shall be denied as such;
- 17 2. Defendants Swingle, Lee and Abdur-Rahman are dismissed from this
18 action;
- 19 3. Plaintiff’s motion for preliminary injunction (Doc. 28) is denied; and
- 20 4. Plaintiff’s motion to appoint counsel (Doc. 29) is denied.

21
22 DATED: December 15, 2016

23 
24 **CRAIG M. KELLISON**
25 UNITED STATES MAGISTRATE JUDGE
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