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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES DAVID LOGAN, II,

Plaintiff,

v.

EVALYN HORWITZ, et al.,

Defendants.

No. 2:15-cv-0121 MCE AC P

ORDER

On October 16, 2017, defendants filed a motion for summary judgment. ECF No. 135. After plaintiff filed a notice of change of address in which he stated that he was unable to access the law library at his previous institution, he was granted a thirty-day extension of time to file a response to the motion. ECF No. 139. Thirty days have now passed and plaintiff has not opposed the motion. Plaintiff will be given an additional twenty-one days to respond to the motion for summary judgment. Failure to file a response will result in a recommendation that this action be dismissed.

Plaintiff has also filed a number of motions for counsel and a motion for discovery. ECF Nos. 121, 122, 124, 127, 131. The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell

1 v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36
2 (9th Cir. 1990).

3 “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the
4 likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his claims
5 *pro se* in light of the complexity of the legal issues involved.’” Palmer v. Valdez, 560 F.3d 965,
6 970 (9th Cir. 2009) (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). The burden
7 of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances common to
8 most prisoners, such as lack of legal education and limited law library access, do not establish
9 exceptional circumstances that would warrant a request for voluntary assistance of counsel.
10 Plaintiff has not shown that he has a likelihood of success on the merits and has thus far been
11 capable of articulating his claims. The court therefore does not find the required exceptional
12 circumstances and plaintiff’s requests for counsel will be denied without prejudice.

13 In his motion for discovery, plaintiff requests that the court provide his medical file and
14 subpoena doctors for trial. ECF No. 124. If plaintiff wants his medical file, he must follow the
15 procedures for obtaining a copy from the California Department of Corrections and
16 Rehabilitation. With respect to his request to subpoena doctors for trial, it has yet to be
17 determined whether this case will proceed to trial and the request is denied. To the extent
18 plaintiff is requesting the court appoint an expert witness to testify on his behalf, the court has
19 already addressed this issue and denied the request. ECF No. 111 at 2-3. Plaintiff has not
20 identified any change in circumstances that would warrant a different outcome and the request
21 will be denied.

22 Accordingly, IT IS HEREBY ORDERED that:

23 1. Within twenty-one days after the filing date of this order, plaintiff shall file and serve
24 an opposition to the motion for summary judgment or a statement of non-opposition. Failure to
25 comply with this order will result in a recommendation that this action be dismissed without
26 prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).


27 2. Plaintiff’s motions for appointment of counsel (ECF Nos. 121, 122, 127, 131) are
28 denied.

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3. Plaintiff's motion for discovery (ECF No. 124) is denied.

SO ORDERED.

DATED: January 3, 2018



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE