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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VINCENT ANTHONY CALLENDER,  
  
  Plaintiff,  
  
  v.  
  
J. RAMM, et al.,  
  
  Defendants.

No. 2:16-cv-0694 JAM AC P

ORDER

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Pending before the court are defendants’ motion to compel production of documents (ECF No. 38), plaintiff’s motion to appoint counsel (ECF No. 39), and plaintiff’s motion to compel discovery (ECF No. 40). For the reasons stated below, defendants’ motion will be granted and plaintiff’s motions will be denied.

I. DEFENDANTS’ MOTION TO COMPEL

Defendants seek an order requiring plaintiff to produce the following documents: (1) the declaration of inmate Eric Jones, dated January 25, 2017; (2) the declaration of inmate James Logan, dated January 26, 2017, and (3) Form 104 Property and Cash receipt, dated May 11, 2016. See ECF No. 38 at 3-5. Defendants aver that these documents come within the scope of the

1 request for production of documents that was made in relation to plaintiff's deposition, and that  
2 plaintiff testified at his deposition that he possessed the documents. The deposition was  
3 conducted via teleconference, and plaintiff refused defendants' request that the documents be  
4 photocopied by correctional staff during the deposition. See ECF No. 38 at 3-6.

5 Plaintiff's objections to producing these documents are overruled. Plaintiff may not  
6 withhold from defendants' evidence that is relevant to his claims and proportional to the needs of  
7 the case. Fed. R. Civ. P. 26(b)(1). Plaintiff may satisfy his obligation of production in either of  
8 two ways. If he believes that the requested documents are pertinent to the pending motion for  
9 summary judgment (ECF No. 42), he may submit them in opposition. Otherwise, he must serve  
10 them on defendants within 30 days of today's date, the same day that his opposition to summary  
11 judgment is due. See ECF No. 46 (order directing response to summary judgment motion). All  
12 three requested documents must be provided in one of these two ways.

13 **II. PLAINTIFF'S MOTION TO COMPEL**

14 Plaintiff seeks the following documents:

- 15 1. Any and all custodial records of any citizen complaints.
- 16 2. Any and all records of inmate complaint of physical abuse.
- 17 3. Any and all records of inmate complaints of racial discrimination.
- 18
- 19 11. Any and all record of CDCR Form 104 (Property and Cash Receipts –  
20 Arrival) of inmate(s) which corresponds with each inmate and plaintiff(s) [sic]  
21 complaint of missing, destruction, physical abuse, racial discrimination, moral  
turpitude, complaints of retaliation, and failure of performance of their duties in  
between the years of 1-1-2013 to 1-1-2017.
- 22 12. Any and all records of misconduct by defendants.
- 23 13. Any and all records of disciplinary actions by CDCR Administrative Agency  
24 in which the defendant(s) has been disciplined for or put on a probationary period  
25 due to the defendant(s) either . . . failure of performance of duties, physical abuse,  
26 racial discrimination, moral turpitude, retaliation, displacement of an inmates [sic]  
27 property, or the intentional displacement of an inmates [sic] property, on any  
occasion while the defendants were on any assigned watch first, second or third  
while being employed by CDCR as an [sic] correctional officer.
- 28 14. Any and all Department of Operations Manual Section cites upon which

1 corresponds with [sic] the procedures in the performance of the duties as an [sic]  
2 CDCR correctional officer must, shall and are legally obligated to perform under  
3 D.O.M. Section Article 43 – Inmates Property.

4 ECF No. 40 at 4-5 (brackets added) (omission of Request Nos. 4-10 in original).

5 Federal Rule of Civil Procedure 26(b)(1) establishes the scope of discovery. It states in  
6 relevant part:

7 Parties may obtain discovery regarding any nonprivileged matter that  
8 is relevant to any party's claim or defense and proportional to the  
9 needs of the case, considering the importance of the issues at stake  
10 in the action, the amount in controversy, the parties' relative access  
11 to relevant information, the parties' resources, the importance of the  
12 discovery in resolving the issues, and whether the burden or expense  
13 of the proposed discovery outweighs its likely benefit. Information  
14 within this scope of discovery need not be admissible in evidence to  
15 be discoverable.

16 Fed. R. Civ. P. 26(b)(1).

17 This case proceeds on plaintiff's claims that defendants Ramm and Sesnaros conspired to  
18 violate, and did violate, his right of access to the court by destroying his legal documents and  
19 papers. See ECF No. 19 (screening order) at 3-4, 6-7. Citizen complaints, and inmate complaints  
20 of physical abuse, racial discrimination, moral turpitude, and failure of performance of duties are  
21 not relevant to these claims and are therefore not discoverable.

22 Plaintiff has also failed to establish the relevance of (1) all inmate property inventory  
23 forms filed by defendants over a three-year period; (2) records related to misconduct by  
24 defendants and the discipline of defendants, and (3) complaints by other inmates related to  
25 personal property destruction, missing property, retaliation, and failure of performance of duties.  
26 This sort of evidence would be inadmissible on the question whether defendants intentionally  
27 destroyed plaintiff's property and/or denied plaintiff access to the courts. See Fed. R. Evid.  
28 404(b) (stating evidence of wrong or other act not admissible to prove person's character to show  
that on particular occasion the person acted in accordance with character). Even if such  
documents could theoretically be relevant, the undersigned finds that their production is  
disproportionate to the needs of this case.

1 As to plaintiff's request for pertinent sections of the Department of Operations Manual, it  
2 appears that defendants have provided this information. See ECF No. 40 at 2 (indicating that  
3 Article 43 – Inmate Property is only item defendants have proffered to date in response to  
4 plaintiff's discovery requests).

5 For all these reasons, plaintiff's motion to compel (ECF No. 40) will be denied.

6 III. PLAINTIFF'S MOTION TO APPOINT COUNSEL

7 A. Plaintiff's Argument

8 Plaintiff requests the appointment of counsel on grounds that he "is unlearned in the law,"  
9 only has a G.E.D. (general equivalency degree), is indigent, cannot afford to obtain counsel, and  
10 has been unable to gather evidence "that only an attorney can obtain through cooperation." See  
11 ECF No. 39 at 1.

12 District courts lack authority to require counsel to represent indigent prisoners in section  
13 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional  
14 circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 28  
15 U.S.C. § 1915(e)(1); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.  
16 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether "exceptional  
17 circumstances" exist, the court must consider plaintiff's likelihood of success on the merits as  
18 well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the  
19 legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (stating same and  
20 concluding district court did not abuse discretion in declining to appoint counsel). The burden of  
21 demonstrating exceptional circumstances is on the plaintiff. Id.

22 Having considered both plaintiff's arguments and the governing law, including all  
23 authorities offered by plaintiff, the court concludes that appointment of counsel is not appropriate  
24 in this case. The law is clear: neither plaintiff's indigence, nor his lack of education, nor his lack  
25 of legal expertise warrant the appointment of counsel. See Wood, 900 F.2d at 1335-36; see also  
26 Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984) (finding court was within its discretion  
27 when it denied appointment of counsel to sixty-year old appellant proceeding in forma pauperis  
28 with no background in law who thoroughly presented issues in petition).

1           The issues in this case are not terribly complex. Plaintiff has clearly shown that he is  
2 capable of adequately litigating this matter and expressing his thoughts and concerns. At no point  
3 throughout these proceedings has the court been uncertain of either the substance of plaintiff's  
4 claims or of his litigation concerns. For these reasons, the court finds that exceptional  
5 circumstances which warrant the appointment of counsel do not exist. Therefore, the motion  
6 (ECF No. 39) will be denied.

7           Accordingly, IT IS HEREBY ORDERED that:

- 8           1. Defendants' motion to compel (ECF No. 38) is GRANTED;
- 9           2. Plaintiff shall provide the following documents either as attachments to his opposition  
10           to defendants' motion for summary judgment, or by separate service on defendants no  
11           later than 30 days from the effective date of this order:
  - 12           a. The declaration of inmate Eric Jones, dated January 25, 2017;
  - 13           b. The declaration of inmate James Logan, dated January 26, 2017; and
  - 14           c. Form 104 Property and Cash receipt, dated May 11, 2016;
- 15           3. Plaintiff's motion to compel (ECF No. 40) is DENIED; and
- 16           3. Plaintiff's motion to appoint counsel (ECF No. 39) is DENIED.

17 DATED: December 10, 2018

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19 ALLISON CLAIRE  
20 UNITED STATES MAGISTRATE JUDGE  
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