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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WESLEY BIRRELL, et al.,  
Plaintiffs,  
v.  
ROBERT W. FOX,  
Defendant.

No. 2:16-cv-1818 JAM CKD P

ORDER

Plaintiffs are California prisoners proceeding through counsel with a claim for injunctive relief arising under the Eighth Amendment concerning allegedly hazardous conditions at the California Medical Facility in Vacaville. Defendant is the Warden at the California Medical Facility. Before the court is counsel for plaintiffs, Paul R. Martin’s, motion to withdraw.

After considering the motion, plaintiff Birrell’s opposition and defendant’s non-opposition, the court is inclined to grant the motion due to Mr. Martin’s purported deteriorating physical condition and the acrimonious relationship between Mr. Martin and at least two plaintiffs including plaintiff Birrell.

Before the court grants the motion, Mr. Martin will be required to turn over all material in his possession relevant to this case to Mr. Birrell.

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1           Also, while it appears plaintiff Birrell wishes to proceed with this action, it is not clear  
2 that any of the other plaintiffs do.<sup>1</sup> In any case, it is not clear why there are multiple plaintiffs  
3 since there are no allegations in the amended complaint particular to any plaintiff. Good cause  
4 appearing, the court will grant the 16 plaintiffs identified in the amended complaint other than  
5 plaintiff Birrell an opportunity to indicate whether they wish to remain a plaintiff in this case,  
6 and, if so, why.<sup>2</sup> Failure to respond to this order will result in a recommendation of dismissal  
7 without prejudice.

8           In his opposition to Mr. Martin’s motion, plaintiff Birrell requests that the court appoint  
9 counsel. District courts lack authority to require counsel to represent indigent prisoners in section  
10 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional  
11 circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 28  
12 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.  
13 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional  
14 circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as  
15 well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the  
16 legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not  
17 abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional  
18 circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of  
19 legal education and limited law library access, do not establish exceptional circumstances that  
20 warrant a request for voluntary assistance of counsel.

21           Having considered the factors under Palmer, the court finds that plaintiff has failed to  
22 meet his burden of demonstrating exceptional circumstances warranting the appointment of  
23 counsel at this time.

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26 <sup>1</sup> In his opposition, plaintiff Birrell identifies himself as the “primary plaintiff,” and Mr. Martin’s  
27 “final client in this suit.”

28 <sup>2</sup> Under Rule 21 of the Federal Rules of Civil Procedure, “the court may at any time, on just  
terms, add or drop a party.”

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Accordingly, IT IS HEREBY ORDERED that:

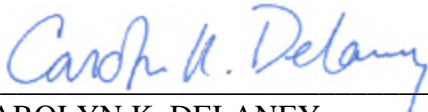
1. Within 30 days, Mr. Paul R. Martin shall turn over all material in his possession relevant to this case to plaintiff David Wesley Birrell and shall file an affidavit with the court indicating he has done so.

2. The Clerk of the Court is directed to serve this order upon the 17 plaintiffs identified in plaintiffs' amended complaint at the addresses identified in Mr. Martin's motion to withdraw.

3. Within 30 days, any of the 16 plaintiffs identified in the amended complaint other than plaintiff Birrell may file with the court notice that they wish to remain a plaintiff in this case, and, if they do wish to remain, they must explain why.

4. Plaintiff Birrell's request for the appointment of counsel is denied.

Dated: October 31, 2018

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

<sup>1</sup>  
brr1818.mtw(p)