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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN EDDIS MOORE,
Plaintiff,
v.
G. TESLUK, et al.,
Defendants.

No. 2:16-cv-2268 KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se, in an action brought under 42 U.S.C. § 1983. Plaintiff requests that the court appoint counsel. District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not

1 establish exceptional circumstances that warrant a request for voluntary assistance of counsel.

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

5 Plaintiff has also filed a request for a forty-five days extension of time to file an amended
6 complaint. On October 14, 2016, the undersigned found that plaintiff's original complaint stated
7 potentially colorable claims for relief and ordered plaintiff to submit the forms necessary to effect
8 service on defendants. (ECF No. 5.) On November 9, 2016, plaintiff submitted these forms.
9 (ECF No. 10.)

10 Plaintiff is granted forty-five days to file an amended complaint. If plaintiff does not file
11 an amended complaint within that time, the undersigned will direct the U.S. Marshal to serve
12 defendants with the original complaint.

13 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
14 about which he complains resulted in a deprivation of plaintiff's constitutional rights. Rizzo v.
15 Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms how each
16 named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983 unless there is
17 some affirmative link or connection between a defendant's actions and the claimed deprivation.
18 Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743
19 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in civil
20 rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

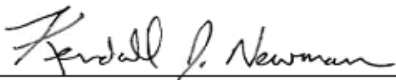
21 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
22 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
23 complaint be complete in itself without reference to any prior pleading. This requirement exists
24 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
25 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
26 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
27 original complaint, each claim and the involvement of each defendant must be sufficiently
28 alleged.

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for the appointment of counsel (ECF No. 9) is denied without prejudice;
2. Plaintiff's motion for an extension of time to file an amended complaint (ECF No. 9) is granted; plaintiff is granted forty-five days from the date of this order to file an amended complaint; if plaintiff does not file an amended complaint within that time, the undersigned will direct the U.S. Marshal to serve defendants with the original complaint.

Dated: December 2, 2016


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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