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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH HILL,
Plaintiff,
v.
SCOTT KERNAN, et al.,
Defendants.

No. 2:16-cv-3020 KJN P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has not, however, filed an in forma pauperis affidavit or paid the required filing fee of \$350.00 plus the \$50.00 administrative fee.¹ See 28 U.S.C. §§ 1914(a), 1915(a). Therefore, plaintiff will be provided the opportunity either to submit the appropriate affidavit in support of a request to proceed in forma pauperis or to submit the required fees totaling \$400.00.

Plaintiff is cautioned that the in forma pauperis application form includes a section that must be completed by a prison official, and the form must be accompanied by a certified copy of plaintiff's prison trust account statement for the six-month period immediately preceding the

¹ If leave to file in forma pauperis is granted, plaintiff will still be required to pay the filing fee but will be allowed to pay it in installments. Litigants proceeding in forma pauperis are not required to pay the \$50.00 administrative fee.

1 filing of this action.

2 In addition, plaintiff requests that the court appoint counsel. District courts lack authority
3 to require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States
4 Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an
5 attorney to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1). Terrell v. Brewer,
6 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir.
7 1990). When determining whether “exceptional circumstances” exist, the court must consider
8 plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to articulate his
9 claims pro se in light of the complexity of the legal issues involved. Palmer v. Valdez, 560 F.3d
10 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to appoint counsel).
11 The burden of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances
12 common to most prisoners, such as lack of legal education and limited law library access, do not
13 establish exceptional circumstances that warrant a request for voluntary assistance of counsel.

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

17 In accordance with the above, IT IS HEREBY ORDERED that:

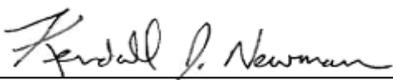
18 1. Plaintiff shall submit, within thirty days from the date of this order, an affidavit in
19 support of his request to proceed in forma pauperis on the form provided by the Clerk of Court, or
20 the required fees in the amount of \$400.00; plaintiff’s failure to comply with this order will result
21 in a recommendation that this action be dismissed;

22 2. The Clerk of the Court is directed to send plaintiff a new Application to Proceed In
23 Forma Pauperis By a Prisoner; and

24 3. Plaintiff’s motion for the appointment of counsel (ECF No. 2) is denied without
25 prejudice.

26 Dated: January 4, 2017

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28 hill3020.3a+31


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE