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3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5

6 NICHOLAS BART ELLIS,

No. C 07-5126 SBA (pr)

7 Plaintiff,

**ORDER GRANTING MOTION FOR
APPOINTMENT OF COUNSEL;
REFERRING CASE TO FEDERAL
PRO BONO PROJECT; APPOINTING
COUNSEL; AND SETTING
BRIEFING SCHEDULE**

8 v.

9 A. NAVARRO, et al.,

10 Defendants.
11 _____/

12 Before the Court is Plaintiff's motion for appointment of counsel.
13

14 The appointment of counsel is a matter for the Court's discretion, to be granted only in
15 exceptional circumstances. See Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984). Here,
16 Plaintiff alleges that Defendants used excessive force against him in an incident on August 14, 2006,
17 and that he suffered extensive injuries as a result of this incident. In an Order dated September 30,
18 2009, the Court found that Plaintiff stated a cognizable Eighth Amendment claim against Defendants
19 Navarro, Juarez and Gardner, as well as cognizable First Amendment claim against Defendant
20 Wilber for attempting to stifle Plaintiff's administrative grievances related to the August 14, 2006
21 incident. The circumstances surrounding the allegations relating to the amount of force used by
22 Defendants Navarro, Juarez and Gardner, as well as the actions of Defendant Wilber in violating
23 Plaintiff's right to access to the courts, are critical to determining the viability of Plaintiff's claims.
24 Moreover, Plaintiff's evidence as to the excessive force claim will largely consist of his version of
25 the events. Now pending before this Court is Defendants' dispositive motion, which was filed on
26 March 19, 2010. At this time, the Court finds that exceptional circumstances exist which warrant
27 the appointment of counsel to assist Plaintiff. Accordingly, Plaintiff's motion for appointment of
28 counsel (docket no. 24) is GRANTED.

1 The Court having determined that it would be beneficial to have counsel assist Plaintiff in
2 this matter and having located volunteer counsel willing to be appointed to represent Plaintiff,

3 IT IS HEREBY ORDERED that Plaintiff's claims against Defendants Navarro, Juarez,
4 Gardner and Wilber shall be referred to the Court's Federal Pro Bono Project, and that Tom Loran,
5 Esq. (SBN 95255) and Marc Axelbaum, Esq. (SBN 209855) of Pillsbury Winthrop Shaw Pittman
6 LLP are appointed as counsel for Plaintiff in this matter pursuant to 28 U.S.C. § 1915(e)(1) and the
7 Court's Federal Pro Bono Project guidelines.

8 The Clerk of the Court shall send a copy of this Order to Mr. Loran and Mr. Axelbaum at
9 Pillsbury Winthrop Shaw Pittman LLP, Post Office Box 7880, San Francisco, California
10 94120-7880. The Clerk of the Court shall also send a copy of this Order to Plaintiff, and to
11 Defendants' counsel.

12 Because Mr. Loran and Mr. Axelbaum have just been appointed to represent Plaintiff in this
13 action, the Court GRANTS Plaintiff an extension of time to file an opposition to Defendants'
14 dispositive motion. The time in which Plaintiff may file an opposition will be extended up to and
15 including **June 18, 2010**.

16 If Defendants wish to file a reply brief, they shall do so no later than **fifteen (15) days** after
17 the date Plaintiff's opposition is filed.

18 Any further requests for extensions of time are not favored, though reasonable extensions
19 will be granted. However, the party making a motion for an extension of time is not relieved from
20 his or her duty to comply with the deadlines set by the Court merely by having made a motion for an
21 extension of time. The party making the motion must still meet the deadlines set by the Court until
22 an order addressing the motion for an extension of time is issued. Any motion for an extension of
23 time must be filed no later than **ten (10) days** prior to the deadline sought to be extended.

24 This Order terminates Docket no. 24.

25 IT IS SO ORDERED.

26 DATED: 3/23/10

27 
28 SAUNDRA BROWN ARMSTRONG
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

NICHOLAS BART ELLIS,

Plaintiff,

v.

SERGEANT A. NAVARRO et al,

Defendant.

Case Number: CV07-05126 SBA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 24, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

MR. LORAN
MR. AXELBAUM
PILLSBURY WINTHROP SHAW PITTMAN LLP
P.O. BOX 7880
SAN FRANCISCO CA 94120-7880

Nicholas Bart Ellis K-16024
Pelcian Bay State Prison
P.O. Box 7500
Crescent City, CA 95532

Dated: March 24, 2010

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk