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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARNELL DUKES,

 Plaintiff,

v.

K. SPENCE, et al.,

 Defendants.

CIVIL NO. 09-1463-L(WVG)

ORDER DENYING PLAINTIFF'S
MOTIONS FOR SANCTIONS AND
FOR FOR APPOINTMENT OF
COUNSEL (Doc. # 70)

On December 13, 2011, the Court denied Plaintiff's Motion for Appointment of Counsel. In the Motion, Plaintiff claimed that he was entitled to the appointment of counsel because he could not afford to pay counsel, had limited access to the law library, had limited time to study available legal materials and conduct legal research, had no knowledge of the Federal Rules, and had no legal education. Further, he alleged that he had been diagnosed with brain damage, was being deprived of needed medication, and continued to suffer from various neurological symptoms.

Defendants filed an Opposition to Plaintiff's Motion. Defendants argued that there were no exceptional circumstances

1 present to justify appointment of counsel for Plaintiff in this
2 case. Further, Defendants' counsel provided the Court with evidence
3 relating to Plaintiff's alleged brain damage and his alleged
4 medication deprivation.

5 On December 29, 2011, Plaintiff filed "Plaintiff's Reply To
6 Defendant's Ex Parte Application For An Order To Reopen Discovery
7 and Delay Briefing on Plaintiff's Request for Appointment of
8 Counsel."^{1/} However, a fair reading of the Plaintiff's "Reply" is that
9 again Plaintiff seeks appointment of counsel and sanctions against
10 Defendants' counsel. Plaintiff's December 29, 2011 "Reply" will be
11 referred to as "Motion."

12 Plaintiff's Motion seeks sanctions against Defendants' counsel
13 due to her alleged misrepresentations contained in documents she
14 filed with the Court. First, Plaintiff claims that Defendants'
15 counsel stated, "discovery closed on June 7, 2011 and as of that
16 date, defense counsel was not aware of any *diagnoses* that Plaintiff
17 had brain damage." (Motion at 1-2) (emphasis added). Second,
18 Plaintiff claims that prior to June 7, 2011, Defendants' counsel
19 already had possession of Plaintiff's medical files, and at his
20 deposition on April 21, 2010, he stated that he was deprived of much
21 needed prescribed medication regarding brain damage. Further,
22 Plaintiff contends that his May 26, 2010 settlement brief served on
23 Defendants' counsel mentioned his brain damage. (Motion at 2).
24 Plaintiff concludes that "defense counsel... purposely used means of
25 deceit and manipulation of the discovery process and other

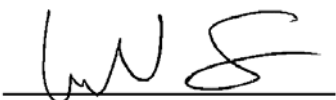
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27 ^{1/}On November 3, 2011, Defendants' *Ex Parte* Motion for Order To Reopen
28 Discovery and Delay Briefing on Plaintiff's Motion for Appointment of Counsel was
granted. Discovery was reopened for the sole purpose of allowing Defendants'
counsel to subpoena Plaintiff's medical records to oppose Plaintiff's Motion for
Appointment of Counsel.

1 misconduct in order to keep (him) at a disadvantage by any necessary
2 means." (Motion at 2).

3 The Court finds that Plaintiff's counsel's comments in these
4 regards were not false. In the December 13, 2011 Order Denying
5 Plaintiff's Motion for Appointment of Counsel, the Court found that
6 Defendants' counsel provided to it substantial evidence that belied
7 Plaintiff's assertions that he suffered brain damage due to
8 Defendants' use of excessive force on him. In fact, in the evidence
9 provided by Defendants' counsel, there was no such *diagnosis*.
10 Further, the Court found that Plaintiff's assertion that he was not
11 receiving his prescribed medication was belied by the evidence
12 presented by Defendants' counsel. Therefore, the Court finds that
13 Defendants' counsel did not "purposely use means of deceit and
14 manipulation of the discovery process and other misconduct in order
15 to keep Plaintiff at a disadvantage by any means necessary." As a
16 result, Plaintiff's Motion for Sanctions is DENIED.

17 Additionally, since Plaintiff's Motion does not provide any
18 further information regarding his alleged entitlement to an
19 appointed attorney, Plaintiff's Motion for Appointment of Counsel is
20 DENIED.

21 DATED: January 5, 2012

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24 Hon. William V. Gallo
25 U.S. Magistrate Judge
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