

1 No responsive pleading has been filed yet by the Defendants and Plaintiff may amend his
2 Complaint as a matter of course. Fed. R. Civ. Proc. 15(a). Plaintiff's Motion is **GRANTED** as to
3 amendment of his Complaint.

4 It is further **ORDERED**:

5 1) The Clerk of the Court is directed to docket the Plaintiff's First Amended Complaint,
6 attached to his Motion as Exhibit One.

7 2) The Clerk shall issue a summons as to Plaintiff's First Amended Complaint upon all
8 named Defendants except the California Department of Corrections, which remains terminated
9 from this action, and shall forward it to Plaintiff along with a blank U.S. Marshal Form 285 for
10 each Defendant. In addition, the Clerk shall provide Plaintiff with a certified copy of this Order
11 and a certified copy of his Complaint and the summons so that he may serve Defendants. Upon
12 receipt of this "IFP Package," Plaintiff is directed to complete the Form 285s as completely and
13 accurately as possible, and to return them to the United States Marshal according to the
14 instructions provided by the Clerk in the letter accompanying his IFP package. Upon receipt, the
15 U.S. Marshal shall serve a copy of the Amended Complaint and summons upon Defendants as
16 directed by Plaintiff on the USM Form 285s. All costs of service shall be advanced by the United
17 States. See 28 U.S.C. § 1915(d); Fed. R. Civ. Proc. 4(c)(3).

18 **2. Appointment of Counsel**

19 There is no right to counsel in cases brought under 42 U.S.C. § 1983. Wilborn v.
20 Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Franklin v. Murphy, 745 F.2d 1221, 1236 (9th
21 Cir. 1984). Counsel may be appointed only in "exceptional circumstances." Wilborn, 789 F.2d at
22 1331. In order to demonstrate exceptional circumstances, the court must evaluate both plaintiff's
23 likelihood of success on the merits and the plaintiff's ability to articulate his claims in light of the
24 complexity of the legal issues involved. Id. Plaintiff requests counsel because he has had
25 difficulty receiving mail from the Court in the past and wishes "to avoid any more
26 miscommunications in this civil litigation." (Doc. No. 11 at 2). Plaintiff's claim does not show
27 his likelihood of success on the merits nor his inability to articulate his claims. Furthermore,
28 Plaintiff filed a Change of Address with the Court (Doc. No. 9) which appears to have corrected

1 his difficulty receiving mail. Accordingly, Plaintiff's Motion is **DENIED** as it pertains to
2 appointment of counsel.

3 **IT IS SO ORDERED.**

4 DATED: October 6, 2011

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6 Hon. Mitchell D. Dembin
7 U.S. Magistrate Judge
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