1 HONORABLE RONALD B. LEIGHTON 2 3 4 5 6 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON 7 AT TACOMA 8 JAMES M HINKLEY. CASE NO. C12-5969 RBL 9 Plaintiff. ORDER ON VARIOUS MOTIONS 10 [DKT. #s 75, 76, 78, 81] v. 11 ELDON VAIL, et al., 12 Defendants. 13 14 THIS MATTER is before the Court on the following Motions: Plaintiff's (Second) 15 Motion to Appoint Counsel [Dkt. #76], Plaintiff's "Notice of Appeal" [Dkt. #78] of Magistrate 16 Judge Strombom's Order [Dkt. #73] denying his Motion to Compel Discovery [Dkt. #58]; and 17 Plaintiff's Objections [Dkt. #81]to the Magistrate Judge's Report and Recommendation [Dkt. 18 #75], which advises this court to Deny Plaintiff's Motion for Summary Judgment [Dkt. #42] and 19 to Grant in part the Defendants' Motion for Summary Judgment [Dkt. #44], and to dismiss the 20 case. 21 The case involves a prisoner who claims that his constitutional rights were violated when 22 he was placed on "dry cell watch/search" in connection with suspected drug or other contraband 23 use. Plaintiff sought to compel the production of information that the Magistrate Judge refused 24

to compel, correctly determining that the discovery would implicate and perhaps jeopardize confidential informants. See Dkt. #73. Plaintiff's appeal of that order is DENIED for the 2 3 reasons outlined in the Order. Under 28 U.S.C. § 1915(e)(1), the Court may, in exceptional circumstances, request an 4 attorney to represent any person unable to afford counsel. Franklin v. Murphy, 745 F.2d 1221, 5 1236 (9th Cir. 1984). To find exceptional circumstances, the court must evaluate the likelihood of success on the merits and the ability of the petitioner to articulate the claims pro se in light of 7 the complexity of the legal issues involved. Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 8 1983). Plaintiff has not shown that he has any likelihood of success on the merits (as is discussed below), and is able to articulate his claims, though they are not meritorious. 10 11 Plaintiff's Motion for appointment of an attorney [Dkt. #76] is DENIED. 12 Finally, for the reasons articulated in the Magistrate Judge's Report and Recommendation 13 [Dkt. #75] the Plaintiff's Motion for Summary Judgment is DENIED and the Defendants' Motion for Summary Judgment is GRANTED in part. The Plaintiff's claims against all 14 15 defendants are Dismissed under Rule 56; except that the claims against Defendants DeMars and Arlow are dismissed with prejudice for failure to state a claim. 16 17 IT IS SO ORDERED. Dated this 4th day of September, 2013. 18 19 20 RONALD B. LEIGHTON UNITED STATES DISTRICT JUDGE 21 22 23 24