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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 CHARLES V REED,

11 Plaintiff,

12 v.

13 RICHARD MORGAN, G. STEVEN
HAMMOND, LARA STRICK, ROB
14 WEBER, MARGARET GILBERT,

15 Defendants.

CASE NO. 3:16-CV-05993-BHS-DWC

ORDER

16 The District Court has referred this 42 U.S.C. § 1983 action to United States Magistrate
17 Judge David W. Christel. Presently before the Court is Plaintiff Charles V. Reed's "Motion for
18 Order to Compel Discovery, and to Find Defendants Non-responsive Admissions as Admitted"
19 ("Motion to Compel") and "Second Request on Motion for the Appointment of Counsel, and to
20 Appoint Expert Witness" ("Motion for Counsel"). Dkt. 32, 34.¹
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23 ¹ Also before the Court is Defendants Margaret Gilbert, G. Steven Hammond, Richard Morgan, Lara
24 Strick, and Rob Weber's Motion for Summary Judgment, which will now be ready for the Court's consideration on
December 22, 2017. *See* Dkt. 40.

1 The Court concludes Plaintiff failed to timely serve his interrogatories. Further,
2 Plaintiff's requests for admissions are unduly burdensome. Therefore, Plaintiff's Motion to
3 Compel (Dkt. 32) is denied. The Court also finds Plaintiff has not shown the appointment of
4 counsel or an expert witness is necessary at this time. Accordingly, the Motion for Counsel (Dkt.
5 34) is denied.

6 **I. Motion to Compel (Dkt. 32)**

7 Plaintiff filed the Motion to Compel on August 3, 2017, requesting the Court order
8 Defendants to respond to his requests for admissions and interrogatories. Dkt. 32.

9 A party may obtain discovery regarding any nonprivileged information that is relevant to
10 any claim or defense in his or her case. Fed. R. Civ. P. 26(b)(1). Once the party seeking
11 discovery has established the request meets this relevancy requirement, "the party opposing
12 discovery has the burden of showing that the discovery should be prohibited, and the burden of
13 clarifying, explaining or supporting its objections." *Bryant v. Ochoa*, 2009 WL 1390794, at *1
14 (S.D. Cal. May 14, 2009). When a party believes the responses to his requests are incomplete, or
15 contain unfounded objections, he may move the court for an order compelling disclosure.
16 Fed.R.Civ.P. 37. The movant must show he conferred, or made a good faith effort to confer, with
17 the party opposing disclosure before seeking court intervention. *Id.*

18 Plaintiff states he served requests for admission on June 22, 2017 and requests for
19 interrogatories on June 25, 2017. Dkt. 32. Defendants contend the discovery requests were
20 untimely. Dkt. 38.

21 Under this Court's Mandatory Pretrial Discovery and Scheduling Order Pursuant to
22 Amended General Order 09-16, all discovery had to be completed by July 24, 2017. Dkt. 22.
23 This "discovery deadline represents the latest date upon which discovery responses may be due
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1 and accordingly, any written discovery requests [must have been] served sufficiently in advance
2 of this date to ensure compliance with this deadline.” *Id.* at p. 6. Further, for discovery to be
3 timely, a party must serve discovery at least 30 days prior to the discovery deadline in order to
4 allow the other party sufficient time to respond. *See* Fed. R. Civ. P. 33(b)(2), 36(a)(3). If the
5 discovery requests are served by mailing, the party serving discovery must also allow for an
6 additional three days. *See* Fed. R. Civ. P. 5(b)(2)(C), 6(a) and (d).

7 As Plaintiff served his discovery requests by mail, Plaintiff was required to serve the
8 discovery requests at least 33 days prior to the discovery deadline to allow Defendants time to
9 answer. The discovery period closed on July 24, 2017. Dkt. 22. Plaintiff signed – effectively
10 mailing – his requests of admissions on June 22, 2017 and interrogatories on June 25, 2017. Dkt.
11 32. Thus, Defendants’ responses to Plaintiff’s requests for admissions were due on July 25, 2017
12 and their responses to Plaintiff’s interrogatories were due on July 28, 2017. As Defendants’
13 responses were due after July 24, 2017, Plaintiff did not allow adequate time for Defendants to
14 respond to the discovery requests prior to the close of discovery. Therefore, Plaintiff’s discovery
15 requests were untimely and the Court declines to compel Defendants to respond. Accordingly,
16 the Motion to Compel (Dkt. 32) is denied.

17 The Court, however, finds the interests of justice dictate that the parties should be
18 allowed to serve additional discovery. *See Oakes v. Halvorsen Marine Ltd.*, 179 F.R.D. 281, 283
19 (C.D. Cal. 1998) (“the purpose of discovery is to remove surprise from trial preparation so the
20 parties can obtain evidence necessary to evaluate and resolve their dispute”). Therefore, the
21 Court will allow the parties to serve 20 requests for admissions, 10 interrogatories, and 5
22 requests for production pursuant to the deadlines provided below. *See infra*, Section III.

1 **II. Motion for Counsel (Dkt. 34)**

2 On February 23, 2017, the Court denied Plaintiff’s requests for court-appointed counsel
3 and a court-appointed expert witness. Dkt. 18. Plaintiff has now filed a second Motion for
4 Counsel, again requesting court-appointed counsel and a court-appointed expert witness. Dkt. 34.

5 No constitutional right to appointed counsel exists in a § 1983 action. *Storseth v.*
6 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see United States v. \$292,888.04 in U.S.*
7 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is
8 discretionary, not mandatory”). However, in “exceptional circumstances,” a district court may
9 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28
10 U.S.C. § 1915(d)). *Rand v. Roland*, 113F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*
11 *grounds*, 154 F.3d 952 (9th Cir. 1998). To decide whether exceptional circumstances exist, the
12 Court must evaluate both “the likelihood of success on the merits [and] the ability of the
13 [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.”
14 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718
15 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts showing he has an insufficient grasp
16 of his case or the legal issues involved and an inadequate ability to articulate the factual basis of
17 his claims. *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).

18 In the Motion for Counsel and documents filed in support of the Motion for Counsel,
19 Plaintiff states he is unable to afford counsel. Dkt. 34, 35, 36. He states court-appointed counsel
20 is necessary because the issues in his case are complex, he is suffering from medical problems
21 which prevent meaningful litigation, he has limited knowledge of the law, and his status as a
22 prisoner limits his access to expert witnesses. Dkt. 34, 35, 36.

1 At this time, Plaintiff has not shown, nor does the Court find, this case involves complex
2 facts or law. Plaintiff has also not shown an inability to articulate the factual basis of his claims
3 in a fashion understandable to the Court, nor has he shown he is likely to succeed on the merits
4 of his case. The Court notes Plaintiff has adequately articulated his claims in the Amended
5 Complaint, and the Motion to Compel and requests for counsel were organized and
6 understandable to the Court. *See* Dkt. 8, 9, 32, 34, 35. While Plaintiff has provided additional
7 information alleging medical problems, the information does not show Plaintiff is likely to
8 succeed on the merits. Dkt. 35. Further, “Plaintiff’s incarceration and limited access to legal
9 materials are not exceptional factors constituting exceptional circumstances that warrant the
10 appointment of counsel. Rather, they are the type of difficulties encountered by many pro se
11 litigants.” *Dancer v. Jeske*, 2009 WL 1110432, *1 (W.D. Wash. Apr. 24, 2009).

12 Plaintiff also requests appointment of an expert witness. Dkt. 34. However, Plaintiff’s
13 request is conclusory. He states the medical evidence will likely require a medical expert to help
14 assist the trier of fact at trial. He does not, however, provide any explanation for why he needs an
15 expert witness appointed at this time. As in his previous motion, Plaintiff believes his case will
16 likely require an expert medical witness, which he states supports his need for court-appointed
17 counsel. *See* Dkt. 35, p. 5; Dkt. 36, p. 4.

18 For the above stated reasons, the Court finds Plaintiff has failed to show the appointment
19 of counsel or an expert witness is appropriate at this time. Accordingly, Plaintiff’s Motion for
20 Counsel (Dkt. 34) is denied without prejudice.

21 **III. Conclusion**

22 Plaintiff’s Motion to Compel (Dkt. 32) is denied. The parties, however, are given leave to
23 serve a total 20 requests for admissions, 10 interrogatories, and 5 requests for production on or
24

1 before October 20, 2017.² The discovery requests cannot contain sub-parts and must comply
2 with the Federal Rules of Civil Procedure regarding substance and form. The parties must
3 respond to any discovery requests on or before November 24, 2017. If there are discovery
4 disputes, the parties may, after complying with Rule 37, file motions on or before December 8,
5 2017.

6 Plaintiff's Motion for Counsel (Dkt. 34) is denied.

7 Because the Court has extended the time for discovery, the Court also extends the time to
8 respond to Defendants' Motion for Summary Judgment as follows:

- 9 • Plaintiff's response to the Motion for Summary Judgment is due on or before
10 December 18, 2017; and
- 11 • Defendants' reply is due on or before December 22, 2017.

12 The Clerk is directed to re-note Defendants' Motion for Summary Judgment (Dkt. 40) for
13 December 22, 2017.

14 Dated this 4th day of October, 2017.

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16 _____
17 David W. Christel
18 United States Magistrate Judge

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22 _____
23 ² Plaintiff is allowed to serve a total of 20 requests for admissions, 10 interrogatories, and 5 requests for
24 production. He may not serve 20 requests for admissions, 10 interrogatories, and 5 requests for production per
Defendant.