

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Samuel Latu v. B. Holmes, et al.

Latu v. Holmes · No. 2:20-CV-1518-WBS-DMC-P · Decided August 14, 2025

SUMMARY

The court denied a pro se prisoner's motion seeking appointment of counsel, discovery relief, and additional time to oppose defendants' motion for summary judgment. It concluded that exceptional circumstances did not warrant requesting voluntary counsel, the discovery request was procedurally defective and untimely, and further extensions were unwarranted. The court stated that defendants' summary-judgment motion would be addressed separately through findings and recommendations.

OPINION

(PC) Latu v. Mc Fadden

PER CURIAM.

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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 SAMUEL LATU, No. 2:20-CV-1518-WBS-DMC-P

12 Plaintiff, 13 v. ORDER 14 B. HOLMES, et al., 15 Defendants. 16 17 Plaintiff, a prisoner
proceeding pro se, brings this civil rights action pursuant to 18 42 U.S.C. § 1983. Pending before
the Court is Plaintiff's motion to compel discovery, to appoint 19 counsel, and for an extension of
time. See ECF No. 58. 20 Turning first to Plaintiff's request for the appointment of counsel, the
United 21 States Supreme Court has ruled that district courts lack authority to require counsel to
represent 22 indigent prisoners in § 1983 cases. See *Mallard v. United States Dist. Court*, 490 U.S.
296, 298 23 (1989). In certain exceptional circumstances, the district court may request the
voluntary 24 assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See *Terrell v. Brewer*, 935
F.2d 1015, 25 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir.
1990). The test 26 for "exceptional circumstances" requires the Court to evaluate the plaintiff's
likelihood success 27 on the merits and the ability of the plaintiff to articulate his claims on his
own in light of the 28 complexity of the legal issues involved. See *Wilborn v. Escalderon*, 789
F.2d 1328, 1331 (9th

1 Cir. 1986); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to

2 most prisoners, such as lack of legal education and limited law library access, do not establish 3
exceptional circumstances that would warrant a request for voluntary assistance of counsel. 4

Plaintiff argues that the Court should appoint counsel because he does not speak 5 English well, because he is not an attorney, and because it is not receiving any legal assistance. 6 See ECF No. 58. The Court does not find that these circumstances are exceptional. Further, the 7 record in this case reflects that, despite proceeding pro se, Plaintiff has been able to articulate his 8 claims. The Court also finds that Plaintiff's claim in this case, which asserts that Defendants 9 violated his constitution rights by failing to provide adequate protection, is not factually or legally 10 complex. 11 Plaintiff's motion also seeks to compel Defendants to provide discovery. See ECF 12 No. 58. This request is defective for two reasons. First, it is not a motion to compel in the sense 13 that discovery requests were served, responses served, and Plaintiff is objecting to the sufficiency 14 of responses. Instead, Plaintiff's motion appears to be a discovery request directly to the Court. 15 Second, Plaintiff's motion is untimely because it was filed on July 18, 2025 – long after the close 16 of discovery in 2024. See ECF NO. 44 (scheduling order). To the extent Plaintiff seeks to re- 17 open discovery, that request will be denied for the same reason. 18 Finally, Plaintiff's motion seeks an extension of time to file an opposition to 19 Defendants' pending motion for summary judgment. See ECF No. 58. This request will be 20 denied. The docket reflects that Defendants' motion for summary judgment was filed on January 21 9, 2025. See ECF No. 51. A few days after Plaintiff's opposition was due, Plaintiff moved for an 22 extension of time on February 14, 2025. See ECF No. 52. Defendants did not oppose, see ECF 23 No. 53, and the Court granted a 30-day extension of time on May 12, 2025, see ECF No. 54. 24 Plaintiff sought a second extension of 60 days on May 27, 2025. See ECF No. 55. The Court 25 granted this request in part on June 3, 2025, providing Plaintiff an additional 30 days from the 26 date of the order to file an opposition brief. See ECF No. 56. As of July 14 – more than 30 days 27 after the June 3, 2025, order – Plaintiff had not filed any opposition to Defendants' motion for 28 summary judgment. Now, again after expiration of the time provided to file and serve an 1 || opposition brief, Plaintiff again seeks an extension of time. See ECF No. 58. Having already 2 | been provided numerous extensions of time since Defendants' motion was filed in January 2025, 3 || the Court declines to provide further extensions particularly where, as here, the request is made 4 || after expiration of the applicable deadline. 5 The Court will address Defendants' motion for summary judgment by separate 6 || findings and recommendations. 7 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion, ECF No. 58, is 8 | DENIED as to all requests for relief. 9 10 | Dated: August 13, 2025 Ss..c0_,

DENNIS M. COTA

2 UNITED STATES MAGISTRATE JUDGE

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