

1 time provided, he has managed to file numerous other documents with the court (ECF Nos. 33,
2 34, 36, 37, 39-49, 51-53) and recently initiated a new lawsuit (Foust v. Kuko-ojo, Case No. 2:16-
3 cv-02731 AC, opened Nov. 17, 2016). In light of plaintiff's failure to file an amended complaint
4 in this case, the undersigned will recommend dismissal of the case for failure to comply with
5 court orders.

6 To the extent any of plaintiff's most recent letters could be construed as requests for
7 counsel, they will be denied. The United States Supreme Court has ruled that district courts lack
8 authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United
9 States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the district
10 court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell
11 v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36
12 (9th Cir. 1990).

13 “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the
14 likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his claims
15 *pro se* in light of the complexity of the legal issues involved.’” Palmer v. Valdez, 560 F.3d 965,
16 970 (9th Cir. 2009) (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). The burden
17 of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances common to
18 most prisoners, such as lack of legal education and limited law library access, do not establish
19 exceptional circumstances that would warrant a request for voluntary assistance of counsel.

20 In screening the complaint, the court outlined the applicable legal standards for plaintiff
21 and explained to him what he would have to show in order to state a claim. ECF No. 30. There is
22 no evidence that plaintiff has attempted to follow the instructions given by the court and been
23 unable to do so, despite several reminders of what is required of him (ECF Nos. 35, 38, 50), and
24 his recent initiation of a new lawsuit indicates he is capable of proceeding without counsel at this
25 stage. The court therefore finds that appointment of counsel is not warranted.

26 Accordingly, IT IS HEREBY ORDERED that plaintiff's requests for counsel (ECF Nos.
27 51-53) are denied.


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IT IS FURTHER RECOMMENDED that this case be dismissed for failure to comply with court orders. See L.R. 110.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being served with these findings and recommendations, plaintiff may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: December 9, 2016



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE