

1 draft his documents, and is in the disability placement program. However, the Court does not find
2 the required exceptional circumstances. Even if it is assumed that Plaintiff is not well versed in the
3 law and that he has made serious allegations which, if proved, would entitle him to relief, his case
4 is not exceptional. Circumstances common to most prisoners, such as a lack of education or limited
5 law library access, do not alone establish exceptional circumstances that would warrant a request
6 for voluntary assistance of counsel. The legal issues present in this action are not complex. Further,
7 Defendants just filed an answer in this case, and at this early stage of the proceedings, the Court
8 cannot find that Plaintiff is likely to succeed on the merits. Further, there is no indication from the
9 record that Plaintiff has been unable to adequately articulate claims and prosecute this action—
10 whether alone or with inmate assistance. Accordingly, Plaintiff’s fourth motion for the
11 appointment of counsel shall be denied, without prejudice.

12 With regard to Plaintiff’s request for appointment of a guardian *ad litem*, Federal Rule of
13 Civil Procedure 17(c), provides in pertinent part:

14 A minor or an incompetent person who does not have a duly appointed representative
15 may sue by a next friend or by a guardian ad litem. The court must appoint a guardian
16 ad litem – or issue another appropriate order – to protect a minor or incompetent person
who is unrepresented in an action.

17 Fed. R. Civ. P. 17(c)(2). The Ninth Circuit has held that when “a substantial evidence” exists
18 regarding the mental incompetence of a pro se litigant, the district court should conduct a hearing
19 to determine competence so that a guardian ad litem may be appointed if appropriate. Allen v.
20 Calderon, 408 F.3d 1150, 1153 (9th Cir. 2005); Krain v. Smallwood, 880 F.2d 1119, 1121 (9th
21 Cir. 1989). The Ninth Circuit has not clearly stated what constitutes “substantial evidence” of
22 incompetence warranting such a hearing. See Hoang Minh Tran v. Gore, No. 10cv464-GPC
23 (DHB), 2013 WL 1625418, at *3 (S.D. Cal. Apr. 15, 2013). However, the Ninth Circuit has
24 indicated that sworn declarations from the allegedly incompetent litigant, sworn declarations or
25 letters from treating psychiatrists or psychologist, and medical records may be considered in this
26 regard. See Allen, 408 F.3d at 1152-54. Such evidence must speak to the court’s concern as to
27 whether the person in question is able to meaningfully take part in the proceedings. See AT&T
28 Mobility, LLC v. Yeager, 143 F.Supp.3d 1042, 1050 (E.D. Cal. 2015) (citing In re Christina B.,

1 19 Cal.App.4th 1441, 1450 (1993)).

2 As stated above, Plaintiff contends that he is unable to litigate this action because he is
3 illiterate, has mental disabilities, requires the assistance of another inmate to draft his documents,
4 and is in the disability placement program. Plaintiff has not submitted substantial evidence of
5 incompetence. At most, Plaintiff's evidence shows that he has a low TABE score, and that he
6 requires effective communication by prison officials. (ECF No. 74, pp. 5, 8). In addition,
7 Plaintiff's interest in this case appears to be adequately protected, as he has been actively
8 litigating this case with the assistance of other inmates. Accordingly, the Court finds that in the
9 absence of verifiable evidence of incompetence, there is no substantial question regarding
10 Plaintiff's competence and therefore no duty of inquiry. Saddozai v. Spencer, No. 18-04511 BLF
11 (PR), 2019 WL 6838701, at *2 (N.D. Cal. Dec. 16, 2019), reconsideration denied, (N.D. Cal.
12 Apr. 16, 2020) (citing see Allen, 408 F.3d at 1152; Ferrelli v. River Manor Health Care Center,
13 323 F.3d 196, 201-02 (2d Cir. 2003)). Therefore, Plaintiff does not warrant appointment of a
14 guardian *ad litem* under Rule 17(c), and his request shall be denied.

15 Based on the foregoing, it is HEREBY ORDERED that:

- 16 1. Plaintiff's fourth motion for appointment of counsel is denied, without prejudice;
17 and
18 2. Plaintiff's motion for appointment of a guardian *ad litem* under Rule 17(c) is
19 denied.

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21 IT IS SO ORDERED.

22 Dated: June 12, 2020


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UNITED STATES MAGISTRATE JUDGE