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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VERNON WAYNE McNEAL,
Plaintiff,
v.
EVERT, et al.,
Defendants.

No. 2:05-cv-0441-GEB-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He requests that the court appoint counsel. District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily to represent such a plaintiff. *See* 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional circumstances” exist, the court must consider the likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Having considered those factors, the court finds there are no exceptional circumstances in this case.

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1 Plaintiff indicates in his motion that he desires counsel so that the attorney could gather
2 evidence to be used at trial. ECF No. 315. The time for plaintiff to marshal evidence in support
3 of his claims – i.e., the discovery period – has passed. ECF No. 101.

4 Accordingly, IT IS HEREBY ORDERED that plaintiff's November 28, 2017 motion for
5 appointment of counsel (ECF No. 315) is denied.

6 DATED: December 11, 2017.

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8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
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