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

KYLE AVERY,

No. CIV S-08-2605-CMK-P

Plaintiff,

vs.

ORDER

JAMES WALKER, et al.,

Defendants.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s second motion for appointment of counsel (Doc. 10). The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court does not at this time find the required exceptional circumstances. Specifically, on the current complaint it does not appear that plaintiff has alleged a viable constitutional claim. See order at Doc. 9, p.8.

1 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for the
2 appointment of counsel (Doc. 10) is denied.

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4 DATED: February 5, 2009

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6 **CRAIG M. KELLISON**
7 UNITED STATES MAGISTRATE JUDGE
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