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

RICHARD V. ROOD,
Plaintiff,
v.
GARY SWARTHOUT, et al.,
Defendants.

No. 2:13-CV-0478-JAM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s third motion for the appointment of counsel (ECF No. 61).

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). A finding of “exceptional circumstances” requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the court does not at this time find the required exceptional
9 circumstances. Plaintiff cites the following reasons supporting the appointment of counsel: (1) he
10 is indigent; (2) prior requests for counsel were denied without prejudice; and (3) plaintiff is
11 incarcerated with limited law library access. These circumstances are not exception but represent
12 the norm for most prisoner litigants. Moreover, at this stage of the proceedings before discovery
13 has been completed and before any dispositive motions have been filed, it cannot be said that
14 plaintiff has demonstrated any particular likelihood of success on the merits. Finally, a review of
15 the file in this case reflects that plaintiff is able to articulate his claims, which are neither factually
16 nor legally complex.

17 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for the
18 appointment of counsel (ECF No. 61) is denied.

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20 Dated: February 12, 2020


21 DENNIS M. COTA
22 UNITED STATES MAGISTRATE JUDGE

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