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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	JOSUE ORTIZ,	No. 2:13-cv-0617 WBS KJN P
12	Plaintiff,	
13	v.	ORDER
14	CALIFORNIA DEPARTMENT OF CORRECTIONS, et al.,	
15	Defendants.	
16		
17	Plaintiff is a state prisoner proceeding pro se in an action brought under 42 U.S.C. § 1983.	
18	On October 21, 2013, the undersigned recommended that this action be dismissed based	
19	on plaintiff's failure to file an amended complaint as required by this court's September 4, 2013	
20	order. Plaintiff timely filed objections, stating he did not receive a copy of the September 4, 2013	
21	order.	
22	Review of the court's docket reflects that an incorrect image was attached to the court's	
23	docket, but it does not appear that plaintiff was re-served with a copy of the September 4, 2013	
24	order. Good cause appearing, the findings and recommendations are vacated, and plaintiff is	
25	granted an extension of time in which to comply with the September 4, 2013 order.	
26	In addition, plaintiff requests that the court appoint counsel. District courts lack authority	
27	to require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States	
28	<u>Dist. Court</u> , 490 U.S. 296, 298 (1989). In exc	ceptional circumstances, the court may request an
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1	attorney to voluntarily to represent such a plaintiff. See 28 U.S.C. § 1915(e)(1). Terrell v.	
2	Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36	
3	(9th Cir. 1990). When determining whether "exceptional circumstances" exist, the court must	
4	consider plaintiff's likelihood of success on the merits as well as the ability of the plaintiff to	
5	articulate his claims pro se in light of the complexity of the legal issues involved. Palmer v.	
6	Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to	
7	appoint counsel). The burden of demonstrating exceptional circumstances is on the plaintiff. Id.	
8	Circumstances common to most prisoners, such as lack of legal education and limited law library	
9	access, do not establish exceptional circumstances that warrant a request for voluntary assistance	
10	of counsel.	
11	Having considered the factors under Palmer, the court finds that plaintiff has failed to	
12	meet his burden of demonstrating exceptional circumstances warranting the appointment of	
13	counsel at this time.	
14	Accordingly, IT IS HEREBY ORDERED that:	
15	1. The October 21, 2013 findings and recommendations (ECF No. 11) are vacated;	
16	2. Plaintiff is granted thirty days from the date of this order in which to file an amended	
17	complaint that complies with the September 4, 2013 order;	
18	3. The Clerk of the Court is directed to re-serve a copy of the September 4, 2013 orders	
19	(ECF Nos. 7 & 8) on plaintiff; and	
20	4. Plaintiff's motion for the appointment of counsel (ECF No. 12) is denied without	
21	prejudice.	
22	Dated: November 8, 2013	
23	Ferdal P. New man	
24	/orti0617.31kjn KENDALL J. NEWMAN UNITED STATES MAGISTRATE JUDGE	
25	UNITED STATES MADISTRATE JUDGE	
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