



1 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.  
2 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional  
3 circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as  
4 well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the  
5 legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not  
6 abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional  
7 circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of  
8 legal education and limited law library access, do not establish exceptional circumstances that  
9 warrant a request for voluntary assistance of counsel.

## 10 **B. Discussion**

11 In support of plaintiff’s motion for the appointment of counsel, plaintiff states that if the  
12 matter proceeds to trial, he will be at a significant disadvantage. (See ECF No. 130 at 3). He also  
13 points out that he has never tried a case to a jury. He further contends that given the court’s  
14 finding that genuine issues of fact exist as to his Fourth Amendment claim, there is a presumption  
15 that he has demonstrated a likelihood of success on the merits. (See id.).

16 As stated above, neither plaintiff’s inexperience with the law nor any perceived resulting  
17 disadvantage constitute exceptional circumstances warranting the appointment of counsel. In  
18 addition, a finding that a genuine issue of fact exists with respect to a claim has no bearing on  
19 said claim’s potential success on the merits. Finally, the record clearly shows that to date,  
20 plaintiff has had no difficulty stating his claims and presenting supporting evidence. (See, e.g.,  
21 ECF Nos. 1, 30, 47, 48, 67 et seq. (substantive legal documents filed by plaintiff, including, but  
22 not limited to complaint and motions to compel)). Thus, having considered the Palmer factors in  
23 the aggregate (see Palmer, 560 F.3d at 970 (citation omitted)), at this time, the court finds that  
24 plaintiff has failed to meet his burden of demonstrating exceptional circumstances that warrant  
25 the appointment of counsel.

## 26 **II. MOTION FOR A TEMPORARY RESTRAINING ORDER**

### 27 **A. Applicable Law**

28 The legal principles applicable to a request for injunctive relief are well established. To

1 prevail, the moving party must show either a likelihood of success on the merits and the  
2 possibility of irreparable injury, or that serious questions are raised and the balance of hardships  
3 tips sharply in the movant's favor. See Coalition for Economic Equity v. Wilson, 122 F.3d 692,  
4 700 (9th Cir. 1997); Oakland Tribune, Inc. v. Chronicle Publ'g Co., 762 F.2d 1374, 1376 (9th  
5 Cir. 1985). The two formulations represent two points on a sliding scale with the focal point  
6 being the degree of irreparable injury shown. Oakland Tribune, Inc., 762 F.2d at 1376. "Under  
7 any formulation of the test, plaintiff must demonstrate that there exists a significant threat of  
8 irreparable injury." Id. In the absence of a significant showing of possible irreparable harm, the  
9 court need not reach the issue of likelihood of success on the merits. Id.

10 In cases brought by prisoners involving conditions of confinement, any preliminary  
11 injunction "must be narrowly drawn, extend no further than necessary to correct the harm the  
12 court finds requires preliminary relief, and be the least intrusive means necessary to correct the  
13 harm." 18 U.S.C. § 3626(a)(2).

#### 14 **B. Discussion**

15 Plaintiff requests injunctive relief "concerning arbitrary actions and conditions of  
16 confinement." (ECF No. 128 at 1). He claims that he has endured "various forms of retaliation  
17 similar to the acts described in his sworn complaint" which include, strip searches without  
18 reasonable suspicion; the confiscation of his property without due process; punitive cell searches  
19 and the falsification of rule violation reports. (See id. at 2). He contends that the grievances,  
20 citizen's complaints and habeas petitions he has filed in an attempt to stop these reprisals have not  
21 been successful. (See id.). An incident that occurred earlier this year in which he was assaulted  
22 by two gang members led to charges levied against him and rehousing. As a result, some of his  
23 property was stolen and he was denied access to the library. (See ECF No. 128 at 3). Plaintiff  
24 contends that these facts establish that he will suffer irreparable harm should he not receive  
25 declaratory and injunctive relief. (See id. at 3-4).

26 The "various forms of retaliation" plaintiff states he has endured during his confinement  
27 are woefully nondescript. Specifically, they are neither narrowly drawn nor specific enough as  
28 the law requires. Plaintiff fails to state how alleged strip searches without reasonable suspicion,

1 property confiscation without due process, or the other incidents plaintiff mentions, constitute  
2 significant threats of irreparable injury or possible irreparable harm. See Oakland Tribune, Inc.,  
3 762 F.2d at 1376. Therefore, it shall be recommended that plaintiff's motion for a temporary  
4 restraining order be denied.

5 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of  
6 counsel (ECF No. 130) is DENIED.

7 IT IS FURTHER RECOMMENDED that plaintiff's motion for a temporary restraining  
8 order (ECF No. 128) be DENIED.

9 These findings and recommendations are submitted to the United States District Judge  
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after  
11 being served with these findings and recommendations, any party may file written objections with  
12 the court and serve a copy on all parties. Such a document should be captioned "Objections to  
13 Magistrate Judge's Findings and Recommendations." Any response to the objections shall be  
14 served and filed within fourteen days after service of the objections. The parties are advised that  
15 failure to file objections within the specified time may waive the right to appeal the District  
16 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 Dated: November 23, 2020

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22 DEBORAH BARNES  
23 UNITED STATES MAGISTRATE JUDGE

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