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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 IRA DON PARTHMORE,

No. 2:13-cv-0819 KJM AC P

12 Plaintiff,

13 v.

ORDER

14 B. KISSELL, et al.,

15 Defendants.
16

17 Plaintiff, a state prisoner proceeding pro se with a civil rights action, has requested
18 appointment of counsel. ECF No. 67. Plaintiff argues that appointment of counsel is necessary
19 because he is indigent, is limited in his ability to litigate due to his imprisonment, lacks legal
20 education, has limited law library access, is in poor health, and is unable to conduct research or
21 cross-examine medical experts and other medical staff. Id. He also argues that the issues in this
22 case are complex and he will require an expert witness, which he requires counsel to obtain. Id.

23 The United States Supreme Court has ruled that district courts lack authority to require
24 counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490
25 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the
26 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d
27 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

28 The test for exceptional circumstances requires the court to evaluate the plaintiff's

1 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
2 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
3 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). When determining
4 whether “exceptional circumstances” exist, the court must consider plaintiff’s likelihood of
5 success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of
6 the complexity of the legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009).
7 The burden of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances
8 common to most prisoners, such as lack of legal education and limited law library access, do not
9 establish exceptional circumstances that would warrant a request for voluntary assistance of
10 counsel.

11 In the present case, the court finds that the complaint, liberally construed, states a claim
12 upon which relief could be granted if the allegations are proven at trial. However, the allegations
13 of the complaint, without more, do not provide a sufficient basis upon which to assess the
14 strength of the merits. The court further finds that plaintiff has demonstrated an ability to
15 articulate his claims pro se and that the legal issues are not complex in this matter. Plaintiff is
16 capable of identifying additional evidence that would support his claims and formulating his
17 discovery requests accordingly.¹ Moreover, the need for investigation and expert testimony alone
18 does not warrant a finding of exceptional circumstances. See Rand v. Rowland, 113 F.3d 1520,
19 1525 (9th Cir. 1997) (denying plaintiff’s motion to appointment of counsel even though “had he
20 had the assistance of counsel during the early stages of the proceedings, he may well have fared
21 better-particularly in the realms of discovery and the securing of expert testimony”), partially
22 overruled on other grounds by 154 F.3d 952 (9th Cir. 1998) (en banc).

23 Most actions require development of further facts during litigation
24 and a *pro se* litigant will seldom be in a position to investigate

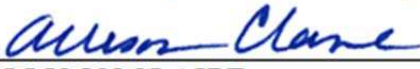
25 ¹ Plaintiff’s discovery requests may include the following: (1) requests for admission (yes-or-no
26 statements of fact) directed to each defendant, see Fed. R. Civ. P. 36; (2) up to twenty-five
27 interrogatories (questions) directed to each defendant, see Fed. R. Civ. P. 33; and (3) requests for
28 copies of documents, electronically stored information, or other tangible evidence directed to
each defendant, see Fed. R. Civ. P. 34. If plaintiff believes that he requires additional time to
seek discovery, he should file a motion for extension with the court explaining how much
additional time he seeks and why the additional time is necessary.

1 easily the facts necessary to support the case. If all that was
2 required to establish successfully the complexity of the relevant
3 issues was a demonstration of the need for development of further
4 facts, practically all cases would involve complex legal issues.

5 Wilborn, 789 F.2d at 1331. For these reasons, the court does not find the required exceptional
6 circumstances and plaintiff's request will be denied without prejudice.

7 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of
8 counsel (ECF No. 67) is denied without prejudice.

9 DATED: August 26, 2015

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11 ALLISON CLAIRE
12 UNITED STATES MAGISTRATE JUDGE
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