

1 Because of the nature of plaintiff's allegations, and the court's concern for plaintiff's
2 mental health, the undersigned has considered whether to construe plaintiff's request for the
3 appointment of counsel to include a request for injunctive relief. As discussed more fully below,
4 the court declines to construe the motion in this way, and declines to appoint counsel at this time.

5 I. Plaintiff's Claims and Background

6 In his request, plaintiff claims that California State Prison, Sacramento ("CSP-SAC")
7 "administration" personnel are retaliating against plaintiff because plaintiff exercises his First
8 Amendment right to file grievances and civil rights complaints against prison officials, resulting
9 in significant harm to plaintiff's mental and physical well-being. Plaintiff states that in 2014, he
10 was placed on single-cell status by the Classification Committee for mental health reasons and
11 pending a mental health evaluation, but claims that such evaluation has not occurred. (ECF No.
12 74 at 2.) In February of 2015, a Classification Committee reported that plaintiff was double-cell
13 cleared, but alerted the receiving institution to which plaintiff is to be transferred, that plaintiff
14 should be single cell housed upon arrival, directing their attention to plaintiff's May 28, 2014
15 chrono referenced in the February 25, 2015 Classification Committee Chrono [filed in Coleman
16 v. Turner, Case No. 2:13-cv-2322 CMK (E.D. Cal. June 19, 2015) (ECF No. 14 at 25)]. Plaintiff
17 claims the 2014 chrono demonstrates that he should not have been double-cell cleared. It appears
18 that at the time of the 2015 classification hearing, plaintiff was held in ad seg. (Id.)

19 Plaintiff provided the Renewal of Involuntary Medication Notice completed on June 10,
20 2015, by psychiatrist Damon Walcott, MD, stating that plaintiff has had a favorable response to
21 the psychiatric medication ordered under California Penal Code § 2602, and was able to go from
22 the Enhanced Outpatient Program ("EOP") level of care to the Correctional Clinical Case
23 Management System ("CCCMS"). (ECF No. 74 at 10.) Plaintiff claims that since 1995 or 1996
24 he has always been at the CCCMS level of care and has never been at the EOP level of care.
25 (ECF No. 14 at 23.)

26 As of October 22, 2015, the inmate locator website for the California Department of
27 Corrections and Rehabilitation reflects that plaintiff remains housed at CSP-SAC, and was
28 admitted to custody on June 18, 1991.

1 II. Legal Standards

2 District courts lack authority to require counsel to represent indigent prisoners in section
3 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional
4 circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 28
5 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.
6 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional
7 circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as
8 well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the
9 legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not
10 abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional
11 circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of
12 legal education and limited law library access, do not establish exceptional circumstances that
13 warrant a request for voluntary assistance of counsel.

14 III. Discussion

15 Here, the instant action is based on concrete actions that took place at CSP-SAC from
16 2011 to 2012, including, *inter alia*, a challenge to plaintiff’s placement in a side-by-side bed cell
17 rather than a bunk bed type cell. Plaintiff did not raise a claim that he was required to be housed
18 in a single cell without a cellmate, and plaintiff’s 2014 classification took place after he filed the
19 instant action. Because plaintiff’s new claims will not receive a hearing on the merits in this
20 action, it is inappropriate for plaintiff to raise such new claims here.¹

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23 ¹ In addition, plaintiff’s efforts to raise unrelated claims in this 2013 action risk further delays if
24 he seeks court intervention, because he is required to exhaust his administrative remedies as to
25 such claims prior to filing them in federal court. (See ECF No. 67 at 3-5.) If plaintiff believes
26 that prison officials are retaliating against him in response to his First Amendment activities, by
27 revoking his single cell status, or by falsely accusing him of conduct linked to his mental illness,
28 or has other new claims not at issue here, plaintiff must raise such claims by filing a 602 appeal
through the third level of review. (Id.) There are time constraints involved in pursuing such
administrative appeals or grievances, and plaintiff risks losing the ability to pursue such claims in
federal court unless he complies with the administrative grievance process. Plaintiff may also file
a health care appeal if medical staff fails to respond to his request for medical care.

1 Moreover, despite plaintiff being “cleared” for double cell housing in February of 2015, as
2 of October 15, 2015, plaintiff was not double celled. Plaintiff claims he was only recently and
3 “formally” made aware that his housing status changed, and the chrono does state that plaintiff
4 refused to appear at the February 25, 2015 hearing. (Case No. 2:13-cv-2322 CMK (ECF No. 14
5 at 25.)) However, on June 19, 2015, plaintiff attached a copy of the February 25, 2015 chrono
6 authorizing such double cell housing to a filing in his other case.² Id. Thus, court records reflect
7 that plaintiff was aware of the decision to double cell house him at least as early as June 19, 2015,
8 when he filed the chrono with the court. Also, plaintiff does not indicate how he was “formally”
9 made aware of the change in housing status, and fails to identify the source of an imminent threat
10 that he will be double celled. Plaintiff has previously filed motions for injunctive relief and was
11 informed of the legal standards governing such a request. (ECF No. 30 at 2-3.)

12 In addition, findings and recommendations concerning plaintiff’s alleged failure to first
13 exhaust his administrative remedies are presently pending. Plaintiff filed objections, and the
14 district court has not decided which claims will proceed. Thus, at present, plaintiff has no
15 deadlines for filing in the instant action because the findings and recommendations are pending,
16 and defendants have not filed an answer. Plaintiff is an articulate writer who timely responds
17 when appropriate and court records reflect that he diligently prosecutes his actions. Although
18 plaintiff is correct that he is not permitted to retain his legal materials in ad seg, prison regulations
19 provide for inmates to obtain access to their legal materials. If plaintiff requires additional time to
20 file a document with the court because of restricted access to his legal materials, plaintiff may
21 seek an extension of time.

22 For all of these reasons, the court declines to construe plaintiff’s filing as a request for
23 injunctive relief, and finds that at this juncture the appointment of counsel is premature.

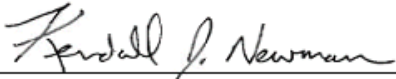
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27 ² In the committee comments section of the February 25, 2015 chrono, it states that the
28 “committee elects to: . . . place on D/C housing status. . . . Double Cell with compatible housing
status based on no documented history of in cell violence, no predatory behavior, and no
victimization concerns” Case No. 2:13-cv-2322 CMK (ECF No. 14 at 25.)

1 IV. Conclusion

2 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion (ECF No. 74) is denied
3 without prejudice.

4 Dated: October 27, 2015

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7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE

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