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

DURRELL ANTHONY PUCKETT,
Plaintiff,
v.
A. AGBOLI, et al.,
Defendants.

No. 2:14-CV-2776-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. 80).

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 Plaintiff states that, out of a recent 50-day period, he was on suicide watch for 22
9 of those days. See ECF No. 80. He also states: “Some days I’m fine, some days not so good.”
10 Id. Plaintiff adds that, while he knows “somewhat more than average about civil law,” he does
11 not know about trials or “have access to options of legal documents to study more than 3 hrs. a
12 week.” Id.

13 In the present case, the court does not at this time find the required exceptional
14 circumstances. First, as plaintiff concedes and as demonstrated by the record in this case, he has
15 adequate legal knowledge to articulate his claims on his own. Second, the remaining Eighth
16 Amendment excessive force claims are not novel in terms of the law or facts. Third, the
17 circumstances of which plaintiff currently complains – difficulties with access to legal research
18 and lack of knowledge regarding civil trials – are not exceptional but describe nearly every
19 incarcerated litigant. Fourth, to the extent plaintiff’s suicidality or days on which he feels “not so
20 good” hamper his ability to meet deadlines, the court will entertain reasonable requests for
21 extensions of time for good cause shown. Finally, though plaintiff’s case has survived summary
22 judgment, the court finds the factors discussed above weigh against the appointment of counsel
23 notwithstanding a potentially increased likelihood of success on the merits.

24 The court sua sponte extends the deadline for plaintiff to submit his pre-trial status
25 report. Plaintiff is cautioned that failure to file a status report within the time provided may result
26 in dismissal of this action. See Local Rule 110.

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's request for the appointment of counsel (ECF No. 80) is denied;
2. Plaintiff shall file a status report consistent with the court's June 14, 2019, order within 30 days of the date of this order; and
3. Defendants' status report shall be filed within 30 days after service of plaintiff's status report.

Dated: August 13, 2019



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE