

1 for Defendants.” (ECF No. 62.) Review of the document shows that it is responsive to
2 defendants’ motion for summary judgment and plaintiff states it is opposition to the motion for
3 summary judgment. (See ECF No. 62 at 13.) Accordingly, the court will construe this document
4 as plaintiff’s opposition.

5 Plaintiff has also filed a motion to appoint counsel. (ECF No. 63.) Plaintiff argues the
6 court should appoint counsel because he is uneducated in the law, cannot afford counsel, and is
7 unable to obtain discovery materials because he is incarcerated.

8 The United States Supreme Court has ruled that district courts lack authority to require
9 counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490
10 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the
11 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d
12 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

13 The test for exceptional circumstances requires the court to evaluate the plaintiff’s
14 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
15 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
16 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
17 common to most prisoners, such as lack of legal education and limited law library access, do not
18 establish exceptional circumstances that would warrant a request for voluntary assistance of
19 counsel.

20 In the present case, the court does not find the required exceptional circumstances.
21 Plaintiff has not shown that he is unable to articulate his claims pro se. He has stated a potentially
22 cognizable claim, filed responsive documents, and cited relevant legal authority. Accordingly,
23 the court will deny plaintiff’s motion to appoint counsel without prejudice to its renewal in the
24 future.

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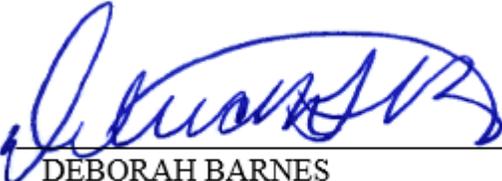
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Accordingly, IT IS HEREBY ORDERED that:

1. The court construes plaintiff's Objections filed November 26, 2018 (ECF No. 62) as his opposition to defendants' motion for summary judgment; and
2. Plaintiff's motion to appoint counsel (ECF No. 63) is denied without prejudice.

Dated: December 5, 2018



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DLB:12
DLB:1/Orders/Prisoner Civil Rights/car12843.mta