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

KAIAN BRANDON,
Plaintiff,
v.
L. WILLIAMS, et al.,
Defendants.

No. 2:14-CV-2883-TLN-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 motion for the appointment of counsel, ECF No. 128. For the reasons set forth below, this motion will be denied.

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
extremely unlikely that he would succeed on the merits.

6 Id. at 1017.

7 Plaintiff's motion comes several months after the denial of his request for issuance
8 of writs of habeas corpus ad testificandum for the attendance of three inmate witnesses to testify
9 at the time of trial in this matter.¹ ECF No. 122. Plaintiff's request for the writs was premised on
10 his own affidavit, wherein he claimed that the witnesses informed him sometime between 2014
11 and 2017 of their willingness to testify. As explained in the March 30, 2022 order denying this
12 request, the Court found that the inmate witnesses' expressions of their willingness to testify were
13 too remote in time to indicate a current willingness. Plaintiff now seeks a limited appointment of
14 counsel to contact the incarcerated witnesses and ascertain their current willingness to testify. He
15 argues that this appointment is necessary because the inmate witnesses are no longer housed in
16 the same institution as him and because he is not permitted to communicate with inmates at other
17 institutions.

18 Defendant Hendricks opposes Plaintiff's motion.² ECF No. 129. He argues that the
19 requirements for the appointment of counsel have not been met, as Plaintiff has not identified any
20 legal issue, let alone one of complexity, that requires such an appointment. Instead, argues
21 Defendant, Plaintiff's request goes to the investigation of his claim and the procurement of
22 potential witnesses, which does not warrant appointment of counsel. Defendant then attaches
23 contact information for the three witnesses whose willingness to testify is at issue and
24 recommends that Plaintiff contact them directly.

25 The Court finds that Plaintiff has not demonstrated exceptional circumstances
26 warranting appointment of counsel. That is, he has not shown that he is likely to succeed on the

27 ¹ These witnesses have been identified as Gilbert Berry, CDCR #G34851; Daniel Evans, CDCR #AL3159; and
28 Anthony Tarkington, CDCR #K77464.

² Defendants Muhammad, Williams, Busig, and Mitchell take no position on Plaintiff's motion. ECF No. 130.

1 merits and that he is unable to articulate his claims on his own. In fact, the record plainly
2 demonstrates Plaintiff's ability to file motions, respond to court orders, and articulate his claims.
3 Moreover, Plaintiff's understanding of his ability to correspond with inmates at other institutions
4 is incorrect. Pursuant to California Code of Regulations section 3139, "Inmates shall obtain
5 written authorization from the Warden . . . to correspond with . . . (1) Inmates under the
6 jurisdiction of any county, state or federal, juvenile or adult correctional agency." An inmate may
7 initiate a request to correspond "by contacting their Correctional Counselor I (CCI)." Cal. Code
8 Reg., § 3139(b). Here, Plaintiff makes no showing that he initiated this request with his CCI as to
9 any of the three witnesses. His motion for appointment of counsel is therefore also premature.

10 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the
11 appointment of counsel, ECF No. 128, is denied.

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13 Dated: July 22, 2022



14
15 DENNIS M. COTA
16 UNITED STATES MAGISTRATE JUDGE
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