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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL DAVID JOHNSON,
Plaintiff,
v.
J. A. BEARD, et al.,
Defendants.

No. 2:15-cv-01313-TLN-KJN

ORDER

Plaintiff Paul David Johnson (“Plaintiff”), a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 16, 2020, the magistrate judge filed findings and recommendations which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within thirty days. (ECF No. 72.) Plaintiff filed objections to the Findings and Recommendations. (ECF No. 74.)

This Court reviews de novo those portions of the proposed findings of fact to which objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). As to any portion of the proposed findings of fact to which no objection has been made, the Court assumes its correctness and decides the motions on the applicable law. See Orand v. United

1 States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are
2 reviewed de novo. See *Britt v. Simi Valley Unified Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

3 Having carefully reviewed the entire file under the applicable legal standards, the Court
4 finds the Findings and Recommendations to be supported by the record and by the magistrate
5 judge's analysis.

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

19 Review of the record demonstrates that Plaintiff is able to articulate his claims and has
20 diligently represented himself in this action. Moreover, at this stage of the proceedings, the court
21 is unable to ascertain Plaintiff's likelihood of success on the merits. Having considered the
22 factors under *Palmer*, the court finds that Plaintiff has failed to meet his burden of demonstrating
23 exceptional circumstances warranting the appointment of counsel at this time.

24 Accordingly, IT IS HEREBY ORDERED that:

- 25 1. The Findings and Recommendations filed June 16, 2020 (ECF No. 72), are adopted in
26 full;
- 27 2. Defendant Dr. Chen's motion to dismiss (ECF No. 69) is GRANTED;
- 28 3. Plaintiff's claims against Dr. Chen are dismissed from this action; and

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4. Plaintiff's request for appointment of counsel is denied without prejudice.

IT IS SO ORDERED.

DATED: July 27, 2020



Troy L. Nunley
United States District Judge