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

WILLIAM NATHANIEL
WASHINGTON,

Plaintiff,

v.

M. KUERSTEN,

Defendant.

No. 2:15-CV-2302-MCE-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. 63).

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

1 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the
2 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
3 of counsel because:

4 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
5 articulate his claim. The facts he alleged and the issues he raised were not
6 of substantial complexity. The compelling evidence against Terrell made it
extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the court does not at this time find the required exceptional
9 circumstances. Plaintiff argues appointment of counsel is warranted because he has demonstrated
10 a likelihood of success on the merits of his Eighth Amendment medical care claim. The court
11 does not agree. As explained in the court's February 4, 2019, findings and recommendations
12 denying plaintiff's motion for summary judgment, which have been adopted by the District
13 Judge, disputed issues of material fact remain for trial. While plaintiff certainly has some
14 likelihood that he will prevail, whether he is more likely than not to prevail has not been
15 established. Moreover, a review of the record reflects that plaintiff has been able to sufficiently
16 articulate his claims, which are neither legally nor factually complex.

17 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for the
18 appointment of counsel (ECF No. 63) is denied.

19
20 Dated: September 27, 2019



21 DENNIS M. COTA
22 UNITED STATES MAGISTRATE JUDGE