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

KEENAN WILKINS,  
Plaintiff,  
v.  
JEFF MACOMBER, et al.,  
Defendants.

No. 2:16-CV-0475-TLN-DMC-P

ORDER

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. Pending before the Court is Plaintiff’s motion for appointment of counsel and modification discovery deadlines. ECF No. 42. The Court denies the motion for appointment of counsel but will extend discovery by 30 days.

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 United States Court of Appeals for the Ninth Circuit concluded the district court did not abuse its  
3 discretion with respect to appointment 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 of  
6 substantial complexity. The compelling evidence against Terrell made it  
extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 Here, the exceptional circumstances warranting a request by the Court for  
9 voluntary assistance of counsel do not exist. Plaintiff contends that he requires counsel because of  
10 limited access to a prison law library and recent lockdowns due to the ongoing COVID-19  
11 pandemic. ECF No. 42 at 2–3. He argues that he is unable to keep up with the discovery schedule  
12 and research contemporaneous court opinions. Id. The Court does not find these allegations  
13 exceptional. Review of the docket indicates that Plaintiff has been able to articulate his claims on  
14 his own. He has adequately followed various deadlines, including into 2020 as COVID-19  
15 countermeasures began in state prisons. Further, at the present stage of the proceedings, the Court  
16 cannot say that Plaintiff has established a particular likelihood of success on the merits. Finally,  
17 Plaintiff alleges fairly straightforward constitutional violations, including Eighth Amendment  
18 cruel and unusual punishment claims and Equal Protection claims. See generally ECF No. 1. The  
19 factual and legal issues involved in this case are not particularly complex.

20 Considering Plaintiff’s claims of recent and multiple medical lockdowns at the  
21 prison, however, the Court will extend the discovery deadline by 30 days. The parties may  
22 conduct discovery until February 18, 2021.

23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. Plaintiff’s motion for appointment of counsel is DENIED; and  
25 2. Plaintiff’s motion for a modification of the discovery schedule is  
26 GRANTED. The parties may conduct discovery for an additional 30 days, until February 18,  
27 2021. All requests for discovery pursuant to Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45 shall be

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1 served by this discovery cut-off date. Any motions necessary to compel discovery shall be filed  
2 within 60 from this cutoff date.

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4 Dated: December 18, 2020



5 DENNIS M. COTA  
6 UNITED STATES MAGISTRATE JUDGE

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