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

ETUATE SEKONA,
Plaintiff,
v.
F. CUSTINO, et al.,
Defendants.

No. 2:16-CV-0517-JAM-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 renewed motion for the appointment of counsel (ECF No. 138). Also before the court is plaintiff’s motion for a settlement conference (ECF No. 137).

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. As to success on the merits, while the court has recommended denial of
10 defendants' motion for summary judgment as to plaintiff's Eighth Amendment safety claim
11 against defendant Custino, plaintiff has not demonstrated any particular likelihood of success on
12 the merits of that claim. At this point in the proceedings, the record merely demonstrates that
13 there are genuine disputes of material fact as to plaintiff's claim against defendant Custino, not
14 that plaintiff is likely to prevail on that claim. Moreover, the court finds the Eighth Amendment
15 safety claim is not complex legally or factually, and plaintiff has demonstrated an adequate ability
16 to articulate them on his own.

17 Turning to plaintiff's motion for a settlement conference, the record does not
18 indicate that defendants are willing to participate in a settlement conference at this time. Should
19 defendants express a desire to discuss settlement, the court will set a settlement conference. In
20 the meantime, plaintiff's motion will be denied.

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff's request for the appointment of counsel (ECF No. 138) is denied;
23 and
24 2. Plaintiff's motion for a settlement conference (ECF No. 137) is denied.

25
26 Dated: October 2, 2019



27 DENNIS M. COTA
28 UNITED STATES MAGISTRATE JUDGE