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

ETUATE SEKONA,  
Plaintiff,  
v.  
F. CUSTINO,  
Defendant.

No. 2:16-CV-0517-JAM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action. Pending before the Court is Plaintiff’s motion, ECF No. 173, for the appointment of counsel.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in civil rights 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 Ninth Circuit concluded the district court did not abuse its discretion with respect

1 to appointment of counsel because:

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

5 Id. at 1017.

6 In the present case, the Court does not at this time find the required exceptional  
7 circumstances. According to Plaintiff, appointment of counsel is warranted because: (1) he is  
8 indigent; (2) he has been granted in forma pauperis status; and (3) the case is complex. See ECF  
9 No. 173, pgs. 1-2. Being indigent and being granted in forma pauperis status are not exceptional  
10 circumstances. To the contrary, they are common among inmate litigants. Further, as stated in a  
11 previous order denying counsel, the claims raised—an Eighth Amendment safety claim and a due  
12 process claim—are not complex legally or factually. See ECF No. 129, pg. 2. Additionally,  
13 Plaintiff has sufficiently been able to articulate his claims thus far. Finally, Plaintiff has not  
14 argued the likelihood of success on the merits. Plaintiff has made cognizable claims and passed  
15 summary judgment thus far, but this is not dispositive as to Plaintiff's likelihood of success.

16 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the  
17 appointment of counsel, ECF No. 173, is denied.

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19 Dated: November 5, 2021



20 DENNIS M. COTA  
21 UNITED STATES MAGISTRATE JUDGE

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