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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
10

11 ETUATE SEKONA,

12 Plaintiff,

13 v.

14 F. CUSTINO, et al.,

15 Defendants.  
16

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

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to  
18 42 U.S.C. § 1983. Pending before the court is plaintiff's motion for the appointment of counsel  
19 (Doc. 76).

20 The United States Supreme Court has ruled that district courts lack authority to  
21 require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist.  
22 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the  
23 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935  
24 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).  
25 A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success  
26 on the merits and the ability of the plaintiff to articulate his claims on his own in light of the  
27 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is  
28 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment  
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to  
4 articulate his claim. The facts he alleged and the issues he raised were not  
5 of substantial complexity. The compelling evidence against Terrell made it  
6 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 defendants have filed an answer, no discovery  
10 has been conducted and no issues have been briefed. Therefore, the court cannot say at this stage  
11 of the proceedings plaintiff has any particular likelihood of success on the merits. Moreover, the  
12 court finds the claims raised in this case – an Eighth Amendment safety claim and a due process  
13 claim – are not complex legally or factually, and plaintiff has demonstrated an adequate ability to  
14 articulate them on his own.

15 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for the  
16 appointment of counsel (Doc. 76) is denied.

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18 Dated: October 29, 2018



19 DENNIS M. COTA  
20 UNITED STATES MAGISTRATE JUDGE  
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