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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GRADY HARRIS,  
Plaintiff,  
v.  
J. MACOMBER, et al.,  
Defendants.

No. 2:16-cv-0830 DB P

ORDER

**I. Introduction**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to the jurisdiction of a magistrate judge. (ECF No. 8.) No appearances have been made by any defendants.

Plaintiff initiated this action on April 21, 2016. On April 29, 2016, plaintiff’s complaint was screened and dismissed with leave to amend for improper joinder of claims and defendants in violation of Federal Rule of Civil Procedure 20(a).

Plaintiff has since filed a motion for guardian ad litem (“GAL”), competency hearing and/or motion to appoint counsel. (ECF No. 9.) He has also filed a first amended complaint. (ECF No. 10.)

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1     **II.     Plaintiff's Competence**

2             In his motion for GAL, competency hearing and/or motion to appoint counsel, plaintiff  
3 contends he suffers from serious mental disorders that require prescribed psychotropic  
4 medications that affect his ability to think, eat, sleep, read and comprehend court orders and  
5 requirements in this action. He also claims that he relies on other inmates to prepare, serve and  
6 file legal pleadings, and to read and explain court orders to him. In support of his motion, plaintiff  
7 submits a November 2007 order issued by the Honorable Jan M. Adler from the Southern District  
8 of California in a federal habeas action filed by plaintiff, Harris v. Wong, Case No. 06-cv-1747  
9 JLS JMA (S.D. Cal. Nov. 6, 2007). There, Magistrate Judge Adler granted plaintiff's application  
10 for a competency hearing based on evidence that plaintiff's mental health and related medications  
11 affected his ability to proceed on his own. See Pl.'s Mot. Guardian Ad Litem ("GAL") Ex. A.  
12 Judge Adler's motion was based on a review of plaintiff's voluminous psychiatric records and the  
13 declaration of an inmate assisting plaintiff with his federal filings. Here, plaintiff submits no  
14 medical documentation of his mental disorder, no evidence of the type and amount of medication  
15 he is prescribed, and no declaration from any inmate stating that plaintiff is incapable of  
16 prosecuting this action without assistance.

17             Federal Rule of Civil Procedure 17(c) requires a court to "appoint a guardian ad litem-or  
18 issue another appropriate order—to protect a minor or incompetent person who is unrepresented  
19 in an action." Fed. R. Civ. P. 17(c)(2). "A party proceeding pro se in a civil lawsuit is entitled to a  
20 competency determination when substantial evidence of incompetence is presented." Allen v.  
21 Calderon, 408 F.3d 1150, 1153 (9th Cir. 2005). In determining whether substantial evidence of  
22 incompetence is presented, the district court may consider sworn declarations from the pro se  
23 party or other inmates, sworn declarations or letters from treating psychiatrists or psychologists,  
24 and his medical history. Id. at 1152-54.

25             A person's capacity to sue is measured by the standard of the law of his domicile, Fed. R.  
26 Civ. P. 17(b)(1), here California state law. "In California, a party is incompetent if he or she lacks  
27 the capacity to understand the nature or consequences of the proceeding, or is unable to assist  
28 counsel in the preparation of the case." Golden Gate Way, LLC v. Stewart, 2012 WL 4482053, at

1 \*2 (N.D. Cal. Sept. 28, 2012) (citing In re Jessica G., 93 Cal. App. 4th 1180, 1186 (2001); Cal.  
2 Civ. Proc. Code § 372; and In re Sara D., 87 Cal. App. 4th 661, 666-67 (2001)).

3 Since plaintiff has presented no evidence concerning his current mental health condition,  
4 no evidence concerning the medications he is prescribed, and no evidence that others assist and/or  
5 prepare his legal filings, his motion for a competency hearing and for appointment of a GAL will  
6 be denied at this time.

7 Insofar as plaintiff seeks the appointment of counsel, district courts lack authority to  
8 require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States  
9 Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an  
10 attorney to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1). Terrell v. Brewer,  
11 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir.  
12 1990). When determining whether “exceptional circumstances” exist, the court must consider  
13 plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to articulate his  
14 claims pro se in light of the complexity of the legal issues involved. Palmer v. Valdez, 560 F.3d  
15 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to appoint counsel).  
16 The burden of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances  
17 common to most prisoners, such as lack of legal education and limited law library access, do not  
18 establish exceptional circumstances that warrant a request for voluntary assistance of counsel.  
19 Additionally, plaintiff’s claim that he suffers from a mental health condition is unsupported by  
20 any evidence. Having considered the factors under Palmer, the court finds that plaintiff has failed  
21 to meet his burden of demonstrating exceptional circumstances warranting the appointment of  
22 counsel at this time.

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1 **III. Conclusion**

2 Based on the foregoing, IT IS HEREBY ORDERED that plaintiff's May 25, 2016, motion  
3 (ECF No. 9) is DENIED without prejudice to its renewal with proper evidentiary support.

4 Dated: November 14, 2016

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7 DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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