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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	GRADY HARRIS,	No. 2:16-cv-0830 TLN DB P
12	Plaintiff,	
13	v.	<u>ORDER</u>
14	JEFF MACOMBER, et al.,	
15	Defendants.	
16		
17	Plaintiff has requested the appointment of counsel. (ECF No. 70). This is plaintiff's fifth	
18	motion of this kind. (See generally ECF Nos. 9, 14, 20, 29). Plaintiff has also filed a motion for	
19	the court clerk to issue subpoenas directing prison officials to bring records to a deposition that	
20	took place on October 18, 2019. (ECF No. 71). For the reasons stated below, the court will deny	
21	both motions.	
22	I. MOTION FOR THE APPOINTMENT OF COUNSEL	
23	The United States Supreme Court has ruled that district courts lack authority to require	
24	counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490	
25	U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary	
26	assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017	
27	(9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).	
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plaintiff. Id. Neither of these factors is dispositive and instead must be viewed together. Palmer, 560 F.3d at 970 (citing Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)), but see Richards v. Harper, 864 F.2d 85, 87-88 (9th Cir. 1988) (finding no likelihood of success on merits and not addressing "ability to articulate claims pro se" prong in exceptional circumstances analysis prior to denying motion for counsel). Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not establish exceptional circumstances that warrant a request for voluntary assistance of counsel. See, e.g., Wood, 900 F.2d at 1335-36 (denying appointment of counsel where plaintiff complained he had limited access to law library and lacked legal education).

The fact that this action has not been dismissed outright three years into the proceedings and after substantial discovery has been produced arguably suggests plaintiff has adequately represented himself. Specifically, he has filed appropriate motions at the proper times and then some. Thus, plaintiff clearly understands the proceedings, and he is capable of speaking for himself and of gathering and presenting information needed to continue them. For these reasons,

When determining whether "exceptional circumstances" exist, the court must consider

plaintiff's likelihood of success on the merits as well as the ability of the plaintiff to articulate his

claims pro se in light of the complexity of the legal issues involved. Palmer v. Valdez, 560 F.3d

965, 970 (9th Cir. 2009) (stating same and concluding district court did not abuse discretion in

declining to appoint counsel). The burden of demonstrating exceptional circumstances is on the

II. MOTION FOR SUBPOENAS TO ISSUE

appointment of counsel will therefore be denied.

Plaintiff's motion for subpoenas asks the court to issue subpoenas on his behalf that require defendants to bring certain documents to an October 18, 2019, deposition and that require defendants to provide responses to a list of his questions. For various reasons, this motion is both inappropriate and untimely. Consequently, it shall be denied.

the court does not find the required exceptional circumstances. Plaintiff's request for the

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Accordingly, IT IS HEREBY ORDERED that: 1. Plaintiff's motion for the appointment of counsel, filed October 17, 2019 (ECF No. 70), is DENIED, and 2. Plaintiff's motion for the court clerk to issue subpoenas to prison officials, filed October 17, 2019 (ECF No. 71), is DENIED. Dated: October 21, 2019 UNITED STATES MAGISTRATE JUDGE DLB:13 DB/ORDERS/ORDERS.PRISONER.CIVIL RIGHTS/harr0830.31(5).subp.den