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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM JOHNSON,  
Plaintiff,  
v.  
J. CHAU, et al.,  
Defendants.

No. 2:16-cv-1536 JAM KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se, in an action brought under 42 U.S.C. § 1983. This case proceeds on plaintiff’s claims that defendants were deliberately indifferent to plaintiff’s serious medical needs by denying plaintiff medications prescribed at two prior prisons, and which previously successfully managed plaintiff’s severe pain. (ECF No. 13 at 1.) In his recent filing, plaintiff requests that the court appoint counsel. Plaintiff argues that he is “unlearned in the law, and has been assisted throughout this process by a qualified legal assistant.” (ECF No. 31 at 1.) Plaintiff states that this assistant is about to be transferred, leaving plaintiff at a “great disadvantage should he be forced to proceed without such assistance.” (ECF No. 31 at 3.) Plaintiff complains that jailhouse lawyers are not vetted by the California Department of Corrections and Rehabilitation, and often attempt to extort money from unsuspecting prisoners desperate to receive legal assistance.

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1 District courts lack authority to require counsel to represent indigent prisoners in section  
2 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional  
3 circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 28  
4 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.  
5 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional  
6 circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as  
7 well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the  
8 legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not  
9 abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional  
10 circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of  
11 legal education and limited law library access, do not establish exceptional circumstances that  
12 warrant a request for voluntary assistance of counsel.

13 Having considered the factors under Palmer, the court finds that plaintiff has failed to  
14 meet his burden of demonstrating exceptional circumstances warranting the appointment of  
15 counsel at this time. All defendants have not yet filed a responsive pleading, and no discovery  
16 has been propounded. At this stage of the proceeding, the court is unable to determine whether  
17 plaintiff is likely to succeed on the merits of his claim.

18 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion for the appointment of  
19 counsel (ECF No. 31) is denied without prejudice.

20 Dated: January 4, 2018

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE