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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DOMINGO L. CLEVELAND, SR.,  
Plaintiff,  
v.  
JANSSEN PHARMACEUTICALS,  
Defendant.

No. 2:16-cv-02308-MCE-AC

ORDER

The court is in receipt of plaintiff’s fourth motion to appoint counsel. ECF No. 89. Counsel was previously appointed for plaintiff for the purposes of settlement. ECF No. 45. Counsel moved to withdraw following the failure of settlement negotiations, ECF No. 54, and that motion was recently granted by District Judge Morrison C. England, Jr. ECF No. 60. Plaintiff is now in pro se, and the case is accordingly referred back to the undersigned. E.D. Cal. Local Rule 302(c)(21).

**I. Motion**

Plaintiff requests that the court appoint counsel, asserting that the case has substantial merit, plaintiff’s ability to litigate is hampered by the fact that he is incarcerated, and that the case is complex. ECF No. 89 at 1-2.

**II. Analysis**

There is no right to counsel in civil cases; “the appointment of counsel in a civil case is, as is the privilege of proceeding in forma pauperis, a matter within the discretion of the district

1 court. It is a privilege and not a right.” U. S. ex rel. Gardner v. Madden, 352 F.2d 792, 793 (9th  
2 Cir. 1965). In exceptional circumstances, the court may request an attorney to voluntarily  
3 represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); Terrell v. Brewer, 935 F.2d 1015, 1017  
4 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335–36 (9th Cir. 1990). When  
5 determining whether “exceptional circumstances” exist, the court must consider the likelihood of  
6 success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of  
7 the complexity of the legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009).

8 Having considered the relevant factors, the court finds there are no exceptional  
9 circumstances in this case, and that appointment of counsel is not warranted at this time.  
10 Plaintiff’s imprisonment and lack of resources to afford counsel are not a reason to appoint  
11 counsel. “Circumstances common to most prisoners, such as lack of legal education and limited  
12 law library access, do not establish exceptional circumstances that would warrant a request for  
13 voluntary assistance of counsel.” Kent v. U.C. Davis Med. Ctr., No. 215CV1924WBSACP, 2016  
14 WL 4208572, at \*1 (E.D. Cal. Aug. 10, 2016).

### 15 III. Conclusion

16 Plaintiff’s motion to appoint counsel (ECF No. 89) is DENIED. The court will not  
17 consider any further motions from plaintiff to appoint counsel. IT IS SO ORDERED.

18 DATED: April 8, 2019

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20 ALLISON CLAIRE  
21 UNITED STATES MAGISTRATE JUDGE  
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