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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TINO TUFUNO,
Plaintiff,
v.
L. PARKER, et al.,
Defendants.

No. 2:16-cv-2448 MCE DB P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action under 42 U.S.C. § 1983. Plaintiff moved the court to appoint counsel, notified the court prison officials were not allowing him use of the law library, and requested verification that the court received his amended complaint. (ECF No. 14.) The court received plaintiff's First Amended Complaint on December 11, 2017.

I. Motion to Appoint Counsel

Plaintiff requested the court assist him with finding an attorney and stated he is not being allowed access to the law library, but provided no other reason for the appointment. (ECF No. 14.) The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

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1 The test for exceptional circumstances requires the court to evaluate the plaintiff's
2 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
3 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
4 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
5 common to most prisoners, such as lack of legal education and limited law library access, do not
6 establish exceptional circumstances that would warrant a request for voluntary assistance of
7 counsel. In the present case, where the court has not yet screened plaintiff's amended complaint,
8 the court cannot make a determination regarding plaintiff's likelihood of success and does not
9 find the required exceptional circumstances.

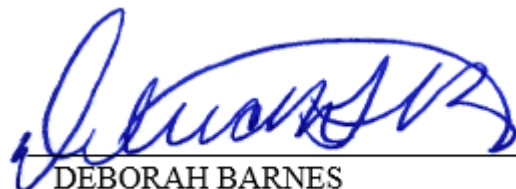
10 **II. Law Library Access**

11 Plaintiff informed the court he is being denied access to the law library, but he does not
12 appear to be seeking an order from the court directing prison officials to grant him access.
13 Plaintiff does not currently have a deadline in this case. At present, there is nothing plaintiff is
14 required to prepare or complete. Once the court screens the amended complaint, plaintiff will
15 receive instructions regarding how to proceed.

16 If later in this case plaintiff is denied library access to meet a deadline imposed by this
17 court, he should first seek help through the prison grievance system. If that is unsuccessful,
18 plaintiff may then notify the court of his problems and seek court intervention.

19 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of
20 counsel (ECF No. 14) is denied.

21 Dated: January 12, 2018

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25 DEBORAH BARNES
26 UNITED STATES MAGISTRATE JUDGE

27 DLB12
28 DLB1/Orders/Prisoner Civil-Rights/tufo2448.31+lawlib