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8   UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

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11   DAVID ZWIRN,   No. 2:16-cv-2853 CKD P

12   Plaintiff,

13   v.   ORDER

14   A. RUGGIERO, et al.,

15   Defendants.

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17   Plaintiff is a state prisoner proceeding pro se in an action brought under 42 U.S.C. § 1983.

18   Plaintiff has filed a document the court construes as plaintiff's third request for the appointment

19   of counsel. District courts lack authority to require counsel to represent indigent prisoners in

20   section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In

21   exceptional circumstances, the court may request an attorney to voluntarily represent such a

22   plaintiff. See 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991);

23   Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether

24   "exceptional circumstances" exist, the court must consider plaintiff's likelihood of success on the

25   merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity

26   of the legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court

27   did not abuse discretion in declining to appoint counsel). The burden of demonstrating

28   exceptional circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such

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as lack of legal education and limited law library access, do not establish exceptional circumstances that warrant a request for voluntary assistance of counsel.

Having considered the factors under Palmer, the court finds that plaintiff has failed to meet his burden of demonstrating exceptional circumstances warranting the appointment of counsel at this time.

Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of counsel (ECF No. 21) is denied without prejudice.

Dated: September 13, 2017

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CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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