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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ANTHONY DAVIS,  
Plaintiff,  
v.  
Z. WHEELER, et al.,  
Defendants.

No. 2:16-CV-2917-TLN-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court are Plaintiff’s motions for the appointment of counsel (ECF Nos. 37 and 44).

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). A finding of “exceptional circumstances” requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment  
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to  
4 articulate his claim. The facts he alleged and the issues he raised were not  
5 of substantial complexity. The compelling evidence against Terrell made it  
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional  
9 circumstances. Plaintiff argues that he should receive appointed counsel because: (1) he is a  
10 patient with “developmental disabilities”; (2) he has been denied law library access and access to  
11 stationary; and (3) he requires professional assistance to conduct proper discovery. However,  
12 despite these assertions, the Court is unconvinced that Plaintiff is entitled to assistance by this  
13 Court is obtaining counsel. Plaintiff claims to suffer from mental impairments, however, Plaintiff  
14 does not describe what these impairments are, nor how they frustrate his ability to litigate his  
15 claims. Quite the contrary, the docket reflects that Plaintiff has articulated his claims sufficient to  
16 pass screening and has drafted multiple motions for injunctive relief. Also, to the extent that  
17 Plaintiff argues he lacks either the resources or expertise to properly litigate his claims, the Court  
18 notes that such a condition is common among pro se litigants and does not present an  
19 “exceptional circumstance.”

20 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s requests for the  
21 appointment of counsel (ECF Nos. 37 and 44) are denied.

22 Dated: September 23, 2020



23 DENNIS M. COTA  
24 UNITED STATES MAGISTRATE JUDGE