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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL XAVIER BELL,
Plaintiff,
v.
MICHAEL MARTEL, et al.,
Defendants.

No. 2:17-cv-0063 MCE CKD P

ORDER

On August 10, 2018, Plaintiff filed Motions for Reconsideration and Appointment of Counsel (ECF No. 34), asking the Court to reconsider the Magistrate Judge’s July 31, 2018 order (ECF No. 32) denying Plaintiff’s Motion for Discovery (ECF No. 31). Pursuant to Local Rule 303(f), a Magistrate Judge’s orders shall be upheld unless “clearly erroneous or contrary to law.” Upon review of the entire file, the Court finds that it does not appear that the Magistrate Judge’s ruling was clearly erroneous or contrary to law.

Additionally, Plaintiff has requested the appointment of counsel. District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the Court may request an attorney to voluntarily represent such a Plaintiff. See 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). When determining whether “exceptional circumstances” exist, the Court

1 must consider a plaintiff's likelihood of success on the merits as well as the ability of the plaintiff
2 to articulate his claims pro se in light of the complexity of the legal issues involved. Palmer v.
3 Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to
4 appoint counsel). The burden of demonstrating exceptional circumstances is on the plaintiff. Id.
5 Circumstances common to most prisoners, such as lack of legal education and limited law library
6 access, do not establish exceptional circumstances that warrant a request for voluntary assistance
7 of counsel.


8 Having considered the factors under Palmer, the Court finds that Plaintiff has failed to
9 meet his burden of demonstrating exceptional circumstances warranting the appointment of
10 counsel at this time.

11 Therefore, it is hereby ordered that:

- 12 1. Upon reconsideration, the Order of the Magistrate Judge filed July 31, 2018 (ECF No.
13 32), is AFFIRMED; and
- 14 2. Plaintiff's request for the Appointment of Counsel (ECF No. 34) is denied without
15 prejudice.

16 IT IS SO ORDERED.

17 Dated: October 23, 2018

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19 MORRISON C. ENGLAND, JR.
20 UNITED STATES DISTRICT JUDGE
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