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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS DAVIS,  
Plaintiff,  
v.  
B. JOHNSON, et al.,  
Defendants.

No. 2:17-cv-0544 JAM CKD P

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiff is a California prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. On July 25, 2017, the court screened plaintiff’s complaint as the court is required to do under 28 U.S.C. § 1915A(a). After screening the complaint, the court found “plaintiff’s complaint states claims upon which plaintiff may proceed under the Eighth Amendment against defendants Johnson, Graves, LaPastora, Ingram and Gallegos.” Accordingly, the court ordered that those defendants (defendants) be served with process and defendants filed their answer on October 23, 2017.

On April 2, 2018, defendants requested the district court judge assigned to this case explicitly dismiss a claim plaintiff identifies in his complaint arising under the Fourteenth Amendment. In the complaint, plaintiff essentially complains that defendants caused him to be housed under conditions presenting a substantial risk of serious harm. The facts alleged amount to a claim under the Eighth Amendment. See Farmer v. Brennan, 511 U.S. 825, 828 (1994). This being the case, plaintiff’s “claim must be analyzed under the standard appropriate to that

1 provision, not the rubric of substantive due process” which falls under the Fourteenth  
2 Amendment. U.S. v. Lanier, 520 U.S. 259, 272 n. 7 (1997). To the extent plaintiff attempts to  
3 state a claim under the Equal Protection Clause of the Fourteenth Amendment in his complaint,  
4 plaintiff fails to allege he has been treated differently from others with whom he is similarly  
5 situated and that the unequal treatment was the result of intentional or purposeful discrimination.  
6 Freeman v. Arpaio, 125 F.3d 732, 737 (9th Cir. 1997).

7 For these reasons, the court will recommend that any Fourteenth Amendment claims  
8 identified by plaintiff in his complaint be explicitly dismissed by the district court judge assigned  
9 to this case.

10 Also, the court notes that plaintiff has requested the appointment of counsel. District  
11 courts lack authority to require counsel to represent indigent prisoners in section 1983 cases.  
12 Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the  
13 court may request an attorney to voluntarily represent such a plaintiff. See 28 U.S.C. §  
14 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900  
15 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional circumstances”  
16 exist, the court must consider plaintiff’s likelihood of success on the merits as well as the ability  
17 of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues  
18 involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse  
19 discretion in declining to appoint counsel). The burden of demonstrating exceptional  
20 circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of  
21 legal education and limited law library access, do not establish exceptional circumstances that  
22 warrant a request for voluntary assistance of counsel.

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

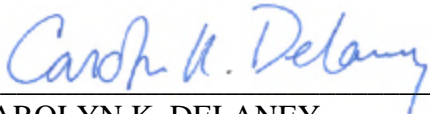
26 Accordingly, IT IS HEREBY ORDERED that plaintiff’s request for the appointment of  
27 counsel (ECF No. 19) be denied; and

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1 IT IS HEREBY RECOMMENDED that any Fourteenth Amendment claim identified by  
2 plaintiff in his complaint be dismissed.

3 These findings and recommendations are submitted to the United States District Judge  
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
5 after being served with these findings and recommendations, any party may file written  
6 objections with the court and serve a copy on all parties. Such a document should be captioned  
7 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
8 objections shall be served and filed within fourteen days after service of the objections. The  
9 parties are advised that failure to file objections within the specified time may waive the right to  
10 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

11 Dated: April 18, 2018

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14 CAROLYN K. DELANEY  
15 UNITED STATES MAGISTRATE JUDGE

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