



1 this case proceed to trial, the court will provide notice when the motion should be re-filed. Prior  
2 to that time, plaintiff may obtain a sworn affidavit from the identified inmate for purposes of  
3 summary judgment. For these reasons, plaintiff's motion for attendance of witness will be denied  
4 without prejudice as premature.

5 Third, plaintiff has filed a second motion for appointment of counsel. ECF No. 23. This  
6 motion mirrors plaintiff's first, see ECF No. 9, as both rely on factors common to most prisoners,  
7 viz., indigence, lack of legal education, limited law library access, and unsuccessful attempts to  
8 obtain independent counsel. As the court previously informed plaintiff, circumstances  
9 common to most prisoners do not establish the requisite exceptional circumstances warranting  
10 appointment of voluntary counsel. See Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009). The  
11 court's reasoning in denying plaintiff's first motion for appointment of counsel also applies to the  
12 instant motion:

13 [T]he court does not find the required exceptional circumstances at  
14 the present time. Plaintiff capably drafted the FAC, which has been  
15 found cognizable on initial review. The case is relatively  
16 straightforward, with one defendant and one legal claim.  
17 Moreover, it is not apparent at this early stage of the case whether it  
is likely plaintiff will succeed on the merits of his claim. For these  
reasons, plaintiff's request for appointment of counsel will be  
denied without prejudice.

18 ECF No. 11 at 4. For these reasons, plaintiff's motion for appointment of counsel will be denied  
19 without prejudice.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. Plaintiff's discovery request, ECF No. 21, shall remain on the docket but will be  
22 disregarded; plaintiff must serve this discovery request on defendant's counsel.

23 2. Plaintiff's motion to obtain the attendance of an incarcerated witness, ECF No. 22, is  
24 denied without prejudice as premature.

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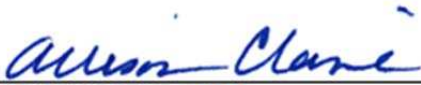
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3. Plaintiff's second motion for appointment of counsel, ECF No. 23, is denied without prejudice.

DATED: April 24, 2018

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE