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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
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10 THOMAS EARL PUTNEY,
11 Plaintiff,
12 v.
13 WARDEN ROBERT FOX, et al.,
14 Defendants.
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No. 2:17-cv-1507 DB P

ORDER

16 Plaintiff, a state prisoner proceeding pro se with a civil rights action, has requested
17 appointment of counsel on the grounds that he is incarcerated, is unlearned in the law, has only a
18 ninth grade education, is indigent and unable to obtain counsel, and is unable to obtain discovery
19 as only an attorney can.


20 The United States Supreme Court has ruled that district courts lack authority to require
21 counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490
22 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the
23 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d
24 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

25 The test for exceptional circumstances requires the court to evaluate the plaintiff's
26 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
27 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
28 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances

1 common to most prisoners, such as lack of legal education and limited law library access, do not
2 establish exceptional circumstances that would warrant a request for voluntary assistance of
3 counsel. Furthermore, plaintiff's complaint has not yet been screened, and the court is thus unable
4 to say whether plaintiff has a likelihood of success on the merits. In the present case, then, the
5 court does not find the required exceptional circumstances.

6 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of
7 counsel (ECF No. 4) is denied.

8 Dated: August 15, 2017

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11 
12 DEBORAH BARNES
13 UNITED STATES MAGISTRATE JUDGE

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