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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HERMAN RENE ONTIVEROS,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

No. 2:17-cv-1740 CKD P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983 together with a request for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff has not, however, filed his application for leave to proceed in forma pauperis on the form used by this district. Accordingly, plaintiff’s application will be dismissed and plaintiff will be provided the opportunity to submit the application on the appropriate form.

Plaintiff also requests that the court appoint 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 must consider

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

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

10 In accordance with the above, IT IS HEREBY ORDERED that:

11 1. Plaintiff's application to proceed in forma pauperis (ECF No. 2) is dismissed without
12 prejudice;

13 2. The Clerk of the Court is directed to send plaintiff a new Application to Proceed In
14 Forma Pauperis By a Prisoner;

15 3. Plaintiff shall submit, within thirty days from the date of this order, a completed
16 application to proceed in forma pauperis. Plaintiff's failure to comply with this order will result
17 in dismissal; and

18 4. Plaintiff's motion for the appointment of counsel (ECF No. 3) is denied.

19 Dated: August 24, 2017



20 CAROLYN K. DELANEY
21 UNITED STATES MAGISTRATE JUDGE

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