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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONDEL DELBERT GARDNER,
Plaintiff,
v.
CDCR, et al.,
Defendants.

No. 2:17-cv-1921 AC P

ORDER

Plaintiff, a state prisoner proceeding pro se with a civil rights action, has requested appointment of counsel and requested that the court serve the complaint on defendants.

I. Motions for Appointment of Counsel

Plaintiff has requested the appointment of counsel. ECF Nos. 6, 8. The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the voluntary assistance of counsel pursuant to 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, a court must consider ‘the likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.’” Palmer v. Valdez, 560 F.3d 965,

1 970 (9th Cir. 2009) (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). The burden
2 of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances common to
3 most prisoners, such as lack of legal education and limited law library access, do not establish
4 exceptional circumstances that would warrant a request for voluntary assistance of counsel.

5 The court has yet to screen plaintiff's complaint and is therefore unable to assess
6 plaintiff's likelihood of success on the merits at this time. Accordingly, the court is unable to find
7 that exceptional circumstances exist at this time and the motions will be denied without prejudice
8 to renewal at a later stage.

9 II. Motion for Summons and Service

10 Plaintiff has also filed a motion requesting that the court issue summons and serve the
11 complaint. ECF No. 10. Since the court has not yet screened the complaint, service of the
12 complaint is premature and the motion will be denied. Furthermore, plaintiff states in his motion
13 that he would like to amend the complaint to add retaliation claims and asks that the court add
14 them to his complaint. If plaintiff wants to amend his complaint, he must file an amended
15 complaint that includes all of the claims that he wants to make, not just the new claims. If
16 plaintiff files an amended complaint, the court will look only at the claims in the amended
17 complaint. Plaintiff shall have thirty days to file an amended complaint and if he does not, the
18 case will proceed on the original complaint.

19 Accordingly, IT IS HEREBY ORDERED that:

20 1. Plaintiff's motions for the appointment of counsel (ECF Nos. 6, 8) are denied without
21 prejudice.

22 2. Plaintiff's motion for summons and service (ECF No. 10) is denied.

23 3. Plaintiff shall have thirty days from service of this order to file an amended complaint.

24 If plaintiff chooses not to file an amended complaint, the case will proceed on the original
25 complaint.

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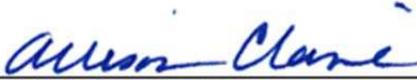
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4. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint form used in this district.

IT IS SO ORDERED.

DATED: November 3, 2017



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE