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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAMUEL SALDANA,
Plaintiff,
v.
M.E. SPEARMAN, et al.,
Defendants.

No. 2:18-cv-0319 AC P

ORDER

Plaintiff has requested the appointment of counsel. ECF No. 32. 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, 970 (9th Cir. 2009) (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). The burden of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not establish

1 exceptional circumstances that would warrant a request for voluntary assistance of counsel.

2 Plaintiff requests counsel on the grounds that he is indigent and his incarceration will
3 greatly limit his ability to litigate. ECF No. 32. He also asserts that an attorney would be better
4 able to present evidence and cross-examine witnesses. Id. These circumstances are common to
5 most prisoners and are therefore not exceptional. Furthermore, it has not yet been determined that
6 this case will proceed to trial, so any requests for counsel based on the need for representation at
7 trial are premature.

8 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for the appointment of
9 counsel (ECF No. 32) is denied.

10 DATED: December 16, 2019

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12 ALLISON CLAIRE
13 UNITED STATES MAGISTRATE JUDGE
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