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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 KJM AC P

ORDER

Plaintiff has requested the appointment of counsel. ECF No. 71. 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 On October 13, 2021, the undersigned issued findings and recommendations which
3 recommended denying defendant's motion for summary judgment. ECF No. 69. The time for
4 filing objections to the findings and recommendations has passed and the findings and
5 recommendations are now pending review by the assigned district judge. Accordingly, there is
6 currently nothing for plaintiff to do, and plaintiff has not shown the existence of extraordinary
7 circumstances warranting the appointment of counsel at this time. In the event the district judge
8 adopts the pending findings and recommendations and this case proceeds, plaintiff may renew his
9 request for counsel at that time.

10 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for the appointment of
11 counsel, ECF No. 71, is DENIED without prejudice.

12 DATED: November 10, 2021

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14 ALLISON CLAIRE
15 UNITED STATES MAGISTRATE JUDGE
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