

1 “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the
2 likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his claims
3 *pro se* in light of the complexity of the legal issues involved.’” Palmer v. Valdez, 560 F.3d 965,
4 970 (9th Cir. 2009) (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). The burden
5 of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances common to
6 most prisoners, such as lack of legal education and limited law library access, do not establish
7 exceptional circumstances that would warrant a request for voluntary assistance of counsel.

8 In the present case, plaintiff has not demonstrated a likelihood of success on the merits
9 and his claims of indigency, limited legal knowledge and access to the law library, and the
10 general limitations experienced due to being in prison are common to most prisoners and
11 therefore do not establish the required exceptional circumstances. Furthermore, it is not yet clear
12 that this case will proceed to trial, so appointment of counsel on that ground is not warranted. To
13 the extent plaintiff is claiming that he is being retaliated against for pursuing this lawsuit, there are
14 insufficient facts to demonstrate that the loss or destruction of his property is retaliatory.
15 Moreover, even if plaintiff is being retaliated against, it is not clear that appointment of counsel
16 would be the most appropriate remedy, and plaintiff is free to pursue a separate action for
17 retaliation if he wants.

18 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion for the appointment of
19 counsel (ECF No. 27) is denied.

20 DATED: October 3, 2019

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22 ALLISON CLAIRE
23 UNITED STATES MAGISTRATE JUDGE
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