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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 TIMOTHY SOLOMON,
12 Plaintiff,

13 v.

14 JONATHAN SHELDON,
15 Defendant.
16

No. 2:18-CV-3012-JAM-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's second motion, ECF No. 63, for the
19 appointment of counsel.

20 The United States Supreme Court has ruled that district courts lack authority to
21 require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist.
22 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the
23 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935
24 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
25 A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success
26 on the merits and the ability of the plaintiff to articulate his claims on his own in light of the
27 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is
28 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional
9 circumstances. Plaintiff states that the following factors warrant appointment of counsel:
10 (1) indigency; (2) extended lock-down; (3) complexity of issues; and (4) inability to retain
11 counsel. See ECF No. 63. The Court does not find these circumstances exceptional. A review of
12 the docket reflects that Plaintiff has been able to sufficiently articulate his claims on his own.
13 Further, at this stage of the proceedings, the Court cannot say that Plaintiff has established any
14 particular likelihood of success on the merits. Finally, contrary to Plaintiff's suggestion, the
15 factual and legal issues involved in this case, which presents an Eighth Amendment excessive
16 force claim, are not complex.

17 Accordingly, IT IS HEREBY ORDERED that Plaintiff's second motion for the
18 appointment of counsel, ECF No. 63, is denied.

19 Dated: November 18, 2020



20 DENNIS M. COTA
21 UNITED STATES MAGISTRATE JUDGE
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