

1 HONORABLE RICHARD A. JONES  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 KYNTREL T. JACKSON,

11 Plaintiff,

12 v.

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14 DEPARTMENT OF CORRECTIONS  
15 WASHINGTON, et al.,

16 Defendants.

CASE NO. C16-1856-RAJ-MAT

ORDER

17 This matter comes before the court on Plaintiff's Motion to Appoint Counsel  
18 ("Motion"). Dkt. # 49. Defendants have opposed the Motion, and Plaintiff has filed a  
19 reply. Dkt. ## 50, 51.

20 This is a case brought under 42 U.S.C. § 1983 and, as a general matter, Plaintiff  
21 has no right to counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981).  
22 However, a court may under "exceptional circumstances" appoint counsel for indigent  
23 civil litigants pursuant to 28 U.S.C. § 1915(e)(1). *Agyeman v. Corrs. Corp. of Am.*, 390  
24 F.3d 1101, 1103 (9th Cir. 2004). When determining whether "exceptional  
25 circumstances" exist, a court must consider "the ability of the petitioner to articulate his  
26 claims *pro se* in light of the complexity of the legal issues involved." *Weygandt v. Look*,

1 718 F.2d 952, 954 (9th Cir. 1983). A plaintiff must plead facts that show he has an  
2 insufficient grasp of his case or the legal issue involved and an inadequate ability to  
3 articulate the factual basis of his claim. *Agyeman*, 390 F.3d at 1103.

4 Plaintiff requests appointment of counsel on the grounds that his imprisonment  
5 will limit his ability to litigate this case, which Plaintiff alleges contains “complex” issues  
6 that will require “significant research and investigation.” Dkt. # 49 at 1. However, the  
7 Court finds that the legal issues raised by Plaintiff are not sufficiently complex to warrant  
8 the appointment of counsel. This case centers on whether Plaintiff is allergic to the IMU  
9 toothpaste, and whether Defendants denied Plaintiff a viable toothpaste option from  
10 August 2015 to July or August 2016, when he began receiving a fluoride rinse. Dkt. #  
11 45. The factual allegations and arguments set forth by Plaintiff in his Amended  
12 Complaint (Dkt. # 6) and summary judgment briefing (Dkt. # 42) show that he is able to  
13 articulate his claims and otherwise represent himself *pro se*. Plaintiff’s incarceration has  
14 not stopped Plaintiff from pleading a 1983 claim, participating successfully in discovery,  
15 and prevailing on summary judgment. Dkt. ## 45, 48. Although most parties would  
16 benefit from attorney representation, that is not the standard for appointment of counsel  
17 in a civil case. *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*  
18 *grounds*, 154 F. 3d 952 (9th Cir. 1998). Plaintiff must show *exceptional* circumstances  
19 and he has failed to make that showing here.

20 Plaintiff also argues, for the first time on reply, that he is both educationally  
21 challenged and mentally ill, and that his medications keep him in such a “sedative state”  
22 that he is unable to represent himself at trial. Dkt. # 51 at 1. At the outset, the Court is  
23 inclined to disregard this argument, as “arguments raised for the first time in a reply brief  
24 are waived.” *Graves v. Arpaio*, 623 F.3d 1043, 1048 (9th Cir. 2010). Even if this Court  
25 did consider Plaintiff’s argument, it would not change the result. Plaintiff’s only  
26 evidence of his mental illness are unverified descriptions of medications he allegedly  
27 takes. Dkt. # 51-1 at 2-4. If Plaintiff is arguing that his alleged and unnamed mental

1 illness renders him incompetent, the Court cannot conclude as such based on this slim  
2 record.<sup>1</sup> To date, Plaintiff has been able to properly file appropriate pleadings and papers  
3 to bring forth claims and persuasively argue his positions, despite his alleged mental state  
4 and educational level.

5 Accordingly, the Court **DENIES** Plaintiff's Motion to Appoint Counsel. Dkt. #  
6 49.

7 DATED this 12th day of October, 2018  
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12 The Honorable Richard A. Jones  
13 United States District Judge  
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26 <sup>1</sup> At the very least, the Court finds that at this stage, Plaintiff has not shown “substantial  
27 evidence” of incompetence to warrant a competency hearing. *Allen v. Calderon*, 408 F.3d 1150,  
1153 (9th Cir. 2005).