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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Ryan Evans,

10 Plaintiff,

11 v.

12 Charles Ryan, et al.,

13 Defendants.
14

No. CV-17-00252-PHX-JAT

ORDER

15 On December 21, 2018, Plaintiff filed a Motion for Appointment of Counsel.
16 (Doc. 246). The only remaining Defendant, Annemarie Smith-Whitson, does not oppose
17 Plaintiff's request. For the reasons set forth below, Plaintiff's motion (Doc. 246) is denied.

18 There is no constitutional right to the appointment of counsel in a civil case. *Hedges*
19 *v. Resolution Tr. Corp.*, 32 F.3d 1360, 1363 (9th Cir. 1994); *Ivey v. Bd. of Regents of Univ.*
20 *of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982). The Court, however, does have the discretion
21 to appoint counsel for indigent civil litigants upon a showing of "exceptional
22 circumstances." See 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th
23 Cir. 1991); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). To determine
24 whether exceptional circumstances exist, the Court evaluates the petitioner's likelihood of
25 success on the merits as well as the ability of the petitioner to articulate his or her claim in
26 light of the complexity of the legal issues involved. *Terrell*, 935 F.2d at 1017 (citing
27 *Wilborn*, 789 F.2d at 1331). Neither factor is determinative, and the Court must consider
28 both factors before reaching a decision on a request for appointment of counsel.

1 *See Wilborn*, 789 F.2d at 1331.

2 Plaintiff previously filed a Motion for Appointment of Counsel (Doc. 157) on
3 January 29, 2018. In an Order dated January 31, 2018 (Doc. 162), the Magistrate Judge
4 denied Plaintiff's prior request for appointment of counsel, reasoning:

5 Plaintiff has not demonstrated that he is likely to succeed on
6 the merits of his claims or that he is experiencing difficulty
7 litigating his case because the issues are complex. Any
8 difficulties that Plaintiff may experience due to his lack of legal
9 training and limited access to legal resources are the same
difficulties that most *pro se* prisoner litigants face and do not
establish exceptional circumstances. Accordingly, the Court
denies Plaintiff's motion for appointment of counsel.

10 (Doc. 162).

11 Plaintiff, again, does not meet the standard for appointment counsel. Plaintiff shows
12 little likelihood of success on the merits and has not demonstrated that he is unable to
13 articulate his claims in light of the complexity of the legal issues involved. Plaintiff's facts
14 supporting his purported need for counsel, for example that he has no legal education and
15 is unsure how to prepare for trial, (Doc. 246 at 1–2), are not unlike the situation facing
16 most *pro se* prisoner litigants. Thus, these facts do not represent the sort of “exceptional
17 circumstances” necessary to grant Plaintiff's request for appointment of counsel. Further,
18 although Plaintiff claims he is “unable to contact witnesses,” incarcerated *pro se* litigants
19 have, in the past, proved able to contact and produce witnesses before this Court. Plaintiff
20 has not presented any reason why he, personally, is unable to contact or produce witnesses,
21 nor given any indication that he is deprived access to the same or similar resources as other
22 incarcerated litigants. Finally, while Plaintiff contends that this “is a complex medical
23 claim,” (Doc. 246 at 2), the Court finds nothing novel or complex in the issues as revealed
24 by the record as to justify the appointment of counsel.

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Accordingly,

IT IS ORDERED that Plaintiff's Motion for Appointment of Counsel (Doc. 246) is **DENIED**.

IT IS FURTHER ORDERED that all dates set forth in the Court's December 18, 2018 Order (Doc. 244) and in the Court's December 19, 2018 Order (Doc. 245) shall remain in effect.

Dated this 7th day of January, 2019.

