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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Lee Michael Beitman,  
10 Plaintiff,

11 v.

12 S. Herrick,  
13 Defendant.  
14

No. CV-17-08229-PCT-JAT

**ORDER**

15 Pending before the Court is Plaintiff's Motion for Appointment of Counsel. (Doc.  
16 270). As set forth below, the Court denies the motion.

17 Plaintiff claims that he will not be able to represent himself at trial because he will  
18 be required to both ask himself questions and answer those questions before the jury, which  
19 the jury will "find to be a comedy." (Doc. 270 at 2). Plaintiff also claims that because  
20 Defendants "have made erroneous and unreliable excuses for non-performance of  
21 compliance measures," Plaintiff will need counsel "with expertise" to question Defendant  
22 at trial. (*Id.* at 3). Plaintiff further contends that appointing him counsel will save the Court  
23 time and money, will help prevent Plaintiff from looking like a fool, will ensure a fair trial,  
24 and will "avoid the chances of appeal." (*Id.* at 5).

25 There is no constitutional right to the appointment of counsel in a civil case. *See*  
26 *Ivey v. Bd. of Regents*, 673 F.2d 266, 269 (9th Cir. 1982). In proceedings *in forma pauperis*,  
27 the court may request an attorney to represent any person unable to afford one. 28 U.S.C.  
28 § 1915(e)(1). Appointment of counsel under 28 U.S.C. § 1915(e)(1) is required only when

1 “exceptional circumstances” are present. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.  
2 1991). A determination with respect to exceptional circumstances requires an evaluation  
3 of the likelihood of success on the merits as well as the ability of Plaintiff to articulate his  
4 claims *pro se* in light of the complexity of the legal issues involved. *Id.* “Neither of these  
5 factors is dispositive and both must be viewed together before reaching a decision.” *Id.*  
6 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

7 Having considered both elements, it does not appear that exceptional circumstances  
8 are present that would require the appointment of counsel in this case. Plaintiff is in no  
9 different position than many *pro se* prisoner litigants that lack legal training and have  
10 limited access to legal resources. Further, the Court does not find that this Plaintiff is more  
11 likely to succeed on the merits of his claims than any other *pro se* prisoner litigant before  
12 the Court.<sup>1</sup>

13 In addition, Plaintiff has not demonstrated that he is experiencing difficulty  
14 litigating the case because the issues are complex. Indeed, the two remaining parties are  
15 the only witnesses that will be testifying at trial and Plaintiff has only identified two  
16 exhibits that he seeks to present to the jury. And, as noted in this Court’s Order on summary  
17 judgment, the only remaining issues for trial are whether Defendant Herrick was aware of  
18 Plaintiff’s serious medical need and failed to take any action in response to his alleged  
19 severe pain during a period of five weeks while housed at the Kingman Facility, and  
20 whether Plaintiff suffered harm as a result of Defendant Herrick’s conduct. (*See* Doc. 198  
21 at 31). Moreover, Plaintiff’s Third Amended Complaint and his various motions for  
22 counsel and pretrial filings in this case are articulate and well-reasoned, that is, Plaintiff  
23 has demonstrated his ability to proceed as a *pro se* litigant. Thus, the Court will deny  
24 Plaintiff’s Motion for the Appointment of Counsel.


25 Accordingly,

26  
27 <sup>1</sup> Indeed, as discussed in its prior Orders regarding Plaintiff’s requests for appointment of  
28 counsel, the Court finds a low likelihood of success on the merits in this case because  
Defendant Herrick testified in the prior case regarding her treatment of Plaintiff’s facial  
injuries, which is central to the issues underpinning both this case and the previous one,  
and the jury found in favor of the Defendants. (*See* Doc. 249 at 2; Doc. 223 at 2).

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**IT IS ORDERED** that Plaintiff's Motion for Appointment of Counsel (Doc. 270) is DENIED.

Dated this 18th day of March, 2022.



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James A. Teilborg  
Senior United States District Judge