

1 section 1983 claim for failing to provide medical treatment and a state-law claim for medical
2 malpractice. Defendants now move for summary judgment.

3 ANALYSIS

4 **A. Standard for Summary Judgment**

5 A court must grant summary judgment if the pleadings and supporting documents,
6 viewed in the light most favorable to the non-moving party, “show that there is no genuine
7 issue as to any material fact and that the moving party is entitled to a judgment as a matter
8 of law.” Fed. R. Civ. P. 56(c). The party opposing summary judgment “may not rest upon
9 the mere allegations or denials of [the party’s] pleading, but . . . must set forth specific facts
10 showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e).

11 **B. Plaintiff Is Not Entitled to an Expert Witness or Appointment of Counsel**

12 Plaintiff asks the Court to appoint an expert witness to support his claims. (Doc. 69,
13 76). Federal Rule of Evidence 706 permits a court, in an exercise of its discretion, to appoint
14 an independent expert. This case does not, however, involve exceptionally complex medical
15 issues. *See McKinney v. Anderson*, 924 F.2d 1500, (9th Cir. 1991), *overruled on other*
16 *grounds by Helling v. McKinney*, 502 U.S. 903 (1991) (stating expert may be appointed when
17 case is complex). The Court is able to resolve Plaintiff’s § 1983 claims under a
18 straightforward application of relevant law. Plaintiff’s request for an expert will be denied.

19 Plaintiff also seeks the appointment of counsel. (Doc. 75). Plaintiff does not have a
20 constitutional right to appointed counsel in this action, *Rand v. Rowland*, 113 F.3d 1520,
21 1525 (9th Cir. 1997), and the court cannot require an attorney to represent plaintiff pursuant
22 to 28 U.S.C. § 1915(e)(1). *Mallard v. United States Dist. Court for the S. Dist. of Iowa*, 490
23 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request
24 the voluntary assistance of counsel pursuant to section 1915(e)(1). *Rand*, 113 F.3d at 1525.

25 The Court seeks volunteer counsel only in the most serious and exceptional cases.
26 When determining whether “exceptional circumstances exist, the district court must evaluate
27 both the likelihood of success of the merits [and] the ability of the [plaintiff] to articulate his
28 claims *pro se* in light of the complexity of the legal issues involved.” *Id.* (internal quotation

1 marks and citations omitted). Plaintiff ably presented his claims but his § 1983 claim fails
2 under a straightforward application of relevant law. The Court will not seek volunteer
3 counsel.

4 **C. Defendants Are Entitled to Summary Judgment on the Section 1983 Claim**

5 “Under 42 U.S.C. § 1983, to maintain an Eighth Amendment claim based on prison
6 medical treatment, an inmate must show deliberate indifference to serious medical needs.”
7 *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.2006). The claim will fail if the condition did
8 not qualify as a “serious medical need” or if defendants were not deliberately indifferent to
9 that need. *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000). “Serious medical needs”
10 include “a medical condition that significantly affects an individual’s daily activities; or the
11 existence of chronic and substantial pain.” *Id.* To establish “deliberate indifference” a
12 plaintiff “must show that the course of treatment the doctors chose was medically
13 unacceptable under the circumstances and . . . that they chose this course in conscious
14 disregard of an excessive risk to plaintiff’s health.” *Jackson v. McIntosh*, 90 F.3d 330, 332
15 (9th Cir. 1996). Mere negligence or the “inadvertent failure to provide adequate medical
16 care” will not sustain a § 1983 claim. *Estelle v. Gamble*, 429 U.S. 97, 105 (1976).

17 Here, the undisputed evidence shows that Plaintiff was seen by Dr. Vo for an alleged
18 skin condition. At that time, Plaintiff did not state he was in extreme pain. Dr. Vo examined
19 Plaintiff and determined no medical treatment was necessary. Plaintiff did not seek follow-
20 up treatment for the skin condition. There is no evidence that the skin condition affected
21 Plaintiff’s daily activities or that it caused him substantial pain. Accordingly, Plaintiff has
22 not presented evidence showing his condition qualified as a “serious medical need.” *Lopez*,
23 203 F.3d at 1131. Moreover, Plaintiff has not presented any evidence that Dr. Vo
24 disregarded an excessive risk to Plaintiff’s health. The only evidence presented to the Court
25 is that Plaintiff disagrees with Dr. Vo’s opinion regarding proper medical treatment. This
26 is not sufficient to establish a deliberate indifference claim. *See Jackson v. McIntosh*, 90
27 F.3d 330, 332 (9th Cir. 1996) (stating difference of opinion does not support deliberate
28 indifference claim).

1 Because Plaintiff has not established a deliberate indifference claim with respect to
2 the medical treatment provided by Dr. Vo, the claims against Dr. Hall and Dr. Tate also fail.
3 Defendants are entitled to summary judgment on Plaintiff's § 1983 claim.

4 **D. Plaintiff's Medical Malpractice Claim Will Be Dismissed**

5 Having determined Plaintiff's § 1983 claim fails, the Court will dismiss Plaintiff's
6 state-law based medical malpractice claim. *See Gini v. Las Vegas Metro. Police Dept.*, 40
7 F.3d 1041, 1046 (9th Cir. 1994) (state-law claims should be dismissed when federal-law
8 claims are eliminated before trial).

9 Accordingly,

10 **IT IS ORDERED** the Motion for Summary Judgment (Doc. 56) is **GRANTED**.


11 **IT IS FURTHER ORDERED** the Motions for Appointment of Expert Witness (Doc.
12 69, 76) and Motion for Appointment of Counsel (Doc. 75) are **DENIED**.

13 **IT IS FURTHER ORDERED** the Emergency Application (Doc. 83) is **DENIED AS**
14 **MOOT**.

15 **IT IS FURTHER ORDERED** Plaintiff's state-law claims are **DISMISSED**
16 **WITHOUT PREJUDICE**.

17 **IT IS FURTHER ORDERED** the Clerk shall close this case.

18 DATED this 19th day of July, 2010.

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22 Roslyn O. Silver
23 United States District Judge
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