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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

Willie D. Randle,)	No. CV 1-08-00845-JAT
Plaintiff,)	ORDER
vs.)	
L.V. Franklin, et al.,)	
Defendants.)	

Pending before the Court is Plaintiff’s motion to appoint counsel (Doc. 63).

The district court may appoint pro bono counsel for an indigent *pro se* litigant in a civil [action] pursuant to 28 U.S.C. § 1915(e)(1) in cases presenting exceptional circumstances. *See United States v. McQuade*, 647 F.2d 938, 940 (9th Cir.1981). “[T]here is no absolute right to counsel in civil proceedings.” *Hedges v. Resolution Trust Corp. (In re Hedges)*, 32 F.3d 1360, 1363 (9th Cir.1994) (citation omitted). Thus, federal courts do not have the authority “to make coercive appointments of counsel.” *Mallard v. United States District Court*, 490 U.S. 296, 310 (1989); *see also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir.1995). Districts courts have discretion, however, pursuant to 28 U.S.C. § 1915(e)(1), to “request” that an attorney represent indigent civil litigants upon a showing of exceptional circumstances. *See Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.1991); *Burns v. County of King*, 883 F.2d 819, 823 (9th Cir.1989). “A finding of exceptional circumstances requires an evaluation of both the ‘likelihood of success on the merits and the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved.’ Neither of these issues is dispositive and both must be viewed together before reaching a decision.’ ” *Id.* (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir.1986)).

Rayford v. Giurbino, 2008 WL 4997607 (S. D. Cal. 2008).

1 In this case, Plaintiff seeks to have counsel appointed because he does not have money
2 to pay for counsel, there are multiple issues in this case, there are multiple defendants in the
3 case, due to his incarceration, Plaintiff has “limited” access to legal materials, and because
4 Plaintiff has demanded a jury trial. Doc. 63. Preliminarily, the Court notes that the
5 undersigned, at the request of the Court of Appeals, is sitting as a visiting Judge in California
6 in this case. Because the undersigned does not normally preside in California, the Court has
7 limited contacts with counsel in California that the Court could “request” undertake this
8 representation. Obviously, this fact does not relieve this Court of its obligation to apply the
9 law, but highlights the difficulty in requiring the Court to affirmatively locate counsel for a
10 party.

11 The fact that Plaintiff is indigent and has limited access to library materials is the same
12 in many inmate cases and does not rise to the level of extraordinary circumstances. Whether
13 Plaintiff’s case has merit is a particularly difficult inquiry in a case like this one wherein the
14 Defendants did not move for summary judgment. Thus, the Court must assess any potential
15 merit from the untested allegations of the amended complaint.

16 Plaintiff claims both excessive force and failure to protect. Doc. 23. The Court finds
17 these allegations are sufficient to make the complaint non-frivolous, but not significantly
18 more meritorious than any other excessive force complaints.¹ Next, the Court must consider
19 Plaintiff’s ability to articulate his claims pro se. The Court has reviewed the amended
20 complaint, the motion to compel discovery and the motion to appoint counsel and finds
21 Plaintiff is quite capable of articulating his claims excessive force and failure to protect
22 theories pro se. Thus, although trial presents additional complexities, the Court finds
23 Plaintiff is capable of presenting his own case.

24 Therefore, **IT IS ORDERED** that the motion to appoint counsel (Doc. 63) is denied.

25 _____
26 ¹ In other cases, this Court has found that surviving summary judgment and going to
27 trial shows that a particular prisoner complaint has more merit than the average prisoner
28 complaint. However, because no motion to dismiss nor motion for summary judgment was
filed in this case, the fact that this case is going to trial does not weigh the same as it has in
other cases.

