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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

**SERGIO A. GAMEZ,**  
  
**v.**  
**F. GONZALEZ, et al.,**

Case No. 08cv1113 MJL (PCL)  
**ORDER DENYING MOTION  
FOR APPOINTMENT OF  
COUNSEL**  
  
**(Doc. No. 47)**

**INTRODUCTION**

Plaintiff Sergio A. Gamez, a state prisoner proceeding *pro se* and *in forma pauperis*, filed a civil rights complaint under 42 U.S.C. § 1983 on August 1, 2008. (Doc. No. 1.) On July 21, 2010, Plaintiff filed a motion for appointment of counsel. (Doc. No. 40.) A Motion Hearing was held before this Court on August 11, 2010 and thereafter, on August 18, 2010, this Court issued an Order denying Plaintiff’s Motion. (Doc. No. 46). However, on August 23, 2010,<sup>1/</sup> Plaintiff filed a second Motion for Appointment of Counsel on identical grounds as his first Motion.<sup>2/</sup> (Doc. No. 47). For the reasons set forth below, Plaintiff’s second Motion for Appointment of Counsel is **DENIED**.

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1. Although Plaintiff’s Motion bears a signature date of July 15, 2010, the Court notes Plaintiff has included several letters as exhibits to this Motion bearing dates of July 30, 2010 and August 15, 2010, among others. Therefore, it appears that Plaintiff filed the operative Motion for Appointment of Counsel shortly after the denial of his first Motion for Appointment of Counsel on August 18, 2010, notwithstanding the date attached to his signature on the Motion.

2. Although Plaintiff characterizes this Motion as “Request for Appointment of Voluntary Assistance of Counsel,” the motion remains a Motion for Appointment of Counsel and will be analyzed under the standards applicable to such a Motion.

1 **DISCUSSION**

2 There is no absolute right to appointed counsel in civil proceedings. Hedges v. Resolution  
3 Trust Corp. (In re Hedges), 32 F.3d 1360, 1363 (9th Cir. 1994) (citation omitted). Thus, federal  
4 courts do not have the authority “to make coercive appointments of counsel.” Mallard v. United  
5 States District Court for Southern District of Iowa, 490 U.S. 296, 310 (1989); see also United  
6 States v. \$ 292,888.04 in U.S. Currency, 54 F.3d 564, 569 (9th Cir. 1995). Districts courts have  
7 discretion, however, pursuant to 28 U.S.C. § 1915(e)(1), to “request” that an attorney represent  
8 indigent civil litigants upon a showing of exceptional circumstances. See Mallard, 490 U.S. at  
9 300-301 (U.S. 1989); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Burns v. County of  
10 King, 883 F.2d 819, 823 (9th Cir. 1989). “A finding of exceptional circumstances requires an  
11 evaluation of both the ‘likelihood of success on the merits and the ability of the plaintiff to  
12 articulate his claims pro se in light of the complexity of the legal issues involved. ‘Neither of  
13 these issues is dispositive and both must be viewed together before reaching a decision.’” Id.  
14 (quoting Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)).

15 In support of his second motion for appointment of counsel, Plaintiff asserts the  
16 following: (1) he is unable to afford an attorney; and (2) Defendants refuse to disclose any  
17 confidential reports to Plaintiff under the claim that it would impair security interests of the  
18 CDCR. (Doc. No. 47, Mot. at 2.) As to Plaintiff’s first ground for appointment of counsel, the  
19 Court accepts that Plaintiff, who is proceeding *in forma pauperis*, is unable to afford an attorney.  
20 However, Plaintiff’s ability to afford counsel is a threshold question. In order to be eligible for a  
21 judicial request for counsel under 28 U.S.C. § 1915(e)(1), a plaintiff must demonstrate both  
22 indigence and the existence of exceptional circumstances. See Terrell, 935 F.2d at 1017. In this  
23 case, Plaintiff has failed to show the latter.

24 With regard to the Plaintiff’s second ground for requesting an appointment of counsel,  
25 Plaintiff argues that counsel is necessary because Defendants refuse to provide him with the  
26 discovery he has requested. When determining whether to appoint counsel on behalf of an  
27 indigent plaintiff, the relevant consideration is not one of convenience. See Knaubert v.  
28 Goldsmith, 791 F.2d 722, 729 (9th Cir. 1986) (“the additional assistance provided by attorneys,

1 while significant, is not compelling”) (italics omitted). Rather, the court must determine whether  
2 exceptional circumstances exist so as to necessitate an appointment of counsel. Although  
3 Plaintiff has made a *prima facie* showing of possible success on the merits, this factor alone is  
4 not dispositive of whether the Court should appoint counsel for Plaintiff. See Terrell, 935 F.2d at  
5 1017. The Court must also consider whether Plaintiff has the ability “to articulate his claims pro  
6 se in light of the complexity of the legal issues involved.” Id. Plaintiff has demonstrated that he  
7 has the ability to set forth the factual and legal bases for his claims in a straightforward and  
8 intelligent manner with sufficient clarity to allow them to be addressed on their merits.<sup>3/</sup>  
9 Plaintiff’s legal claims, and the factual basis for those claims in this case, are not so complex as  
10 to require the appointment of counsel. See Hedges, 32 F.3d at 1363. Accordingly, the Court finds  
11 no “exceptional circumstances” to warrant a judicial request for counsel pursuant to 28 U.S.C. §  
12 1915(e)(1).<sup>4/</sup>

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14 3. The Court notes Plaintiff has adequately litigated his claims before this court despite his  
15 continued imprisonment. In addition to filing a Complaint, Plaintiff has also filed First and Second  
16 Amended Complaints (Doc. Nos. 11; 13) after his first Complaint was dismissed for failure to state  
17 a claim, a Motion for Default Judgment (Doc. No. 18), four Motion / Requests for Hearing Date  
18 (Doc. Nos. 24; 27; 35; 55), Motion for Appointment of Expert Witness (Doc. No. 26), a Request  
19 for Protective Order (Doc. No. 37), three Motions to Compel Discovery (Doc. Nos. 39; 41; 50), and  
20 two Motions to Appoint Counsel (Doc. Nos. 40; 47). Plaintiff also continues to litigate his case by  
21 appearing at all Case Management and Status Conferences via telephone and submitting a  
22 confidential settlement brief to the Court. (See Doc. No. 29.) Despite his incarceration in the  
23 segregated housing unit, Plaintiff has demonstrated his ability to adequately and articulately litigate  
24 his claims without the assistance of counsel. See La Mere v. Risley, 827 F.2d 622, 626 (9th Cir.  
25 1987).

26 4. The Court acknowledges Plaintiff’s citations to Terrell v. Brewer, 935 F.2d 1015 (9th Cir.  
27 1990) and Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990) in support of his argument  
28 for court-appointed counsel. However, they do not lend support for Plaintiff’s request. First, the  
Court held in Terrell that the trial court did not abuse its discretion by refusing to appoint counsel  
for Terrell because Terrell demonstrated sufficient writing ability and legal knowledge to articulate  
his claim. (Terrell, 935 F.2d at 1017.) The facts he alleged and the issues he raised were not of  
substantial complexity. (Id.) Similarly, in Wood v. Housewright, the Court held that the trial court  
did not abuse its discretion by failing to appoint counsel for Wood. (Wood, 900 F.2d at 1335.) The  
Court found that counsel should only be appointed in exceptional circumstances, based on such  
factors as the likelihood of success on the merits and the ability of the plaintiff to articulate his  
claims in light of their complexity. (Id.) In that case, the instances that Wood claimed indicated the  
presence of these factors were difficulties which any litigant would have in proceeding pro se and  
did not indicate exceptional factors. (Id. at 1335-36.)

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**CONCLUSION**

Based upon the foregoing, the Court finds Plaintiff has failed to demonstrate that exceptional circumstances exist so as to justify a judicial request for counsel pursuant to 28 U.S.C. § 1915(e)(1). Accordingly, Plaintiff's Motion for Appointment of Counsel is hereby **DENIED.**

DATED: February 4, 2011



U.S. Magistrate Judge  
United States District Court

cc: The Honorable M. James Lorenz  
All Parties and Counsel of Record