

1 exceptional. This court is faced with similar cases daily. Moreover, while the court has found
2 that Plaintiff's complaint states cognizable claims, this finding is not a determination that Plaintiff
3 is likely to succeed on the merits and at this juncture, the court cannot find that Plaintiff is likely
4 to succeed on the merits.

5 Plaintiff also argues that he has been prejudiced by Defendants' suppression of his rights
6 to discovery. Plaintiff claims that Defendants have responded to his discovery requests with
7 boilerplate objections and invalid privilege claims, and filed a frivolous opposition to Plaintiff's
8 motion to compel. Plaintiff's motion to compel is now pending before the court and will be
9 resolved in due time. Therefore, at this stage of the proceedings, Plaintiff's claim of prejudice in
10 the discovery process is premature.

11 Plaintiff's case proceeds on only two claims: (1) against defendant Umphenour for
12 retaliation under the First Amendment, and (2) against defendants Umphenour, Szalai, and
13 Alvarez for failure to protect Plaintiff under the Eighth Amendment. In his motion for
14 appointment of counsel, Plaintiff discusses his likelihood of success on claims based on prison
15 policy and due process violations. This action is not proceeding on those claims, and therefore
16 Plaintiff's arguments about success on those claims are not relevant. While Plaintiff's retaliation
17 and failure to protect claims may be challenging, the court finds, based on a review of the record
18 and Plaintiff's present motion, that Plaintiff appears well-informed and able to adequately
19 articulate his claims. Thus, the court does not find the required exceptional circumstances, and
20 Plaintiff's motion shall be denied without prejudice to renewal of the motion at a later stage of the
21 proceedings.

22 For the foregoing reasons, plaintiff's motion for the appointment of counsel is **HEREBY**
23 **DENIED**, without prejudice.

24 **IT IS SO ORDERED.**

25 Dated: **July 24, 2014**

26 **/s/ Gary S. Austin**
27 **UNITED STATES MAGISTRATE JUDGE**