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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

GEORGE K. COLBERT,)	Case No.: 1:10-cv-00250-AWI-SAB (PC)
)	
Plaintiff,)	
)	ORDER DENYING PLAINTIFF’S MOTION FOR
v.)	APPOINTMENT OF COUNSEL, WITHOUT
)	PREJUDICE
P. CHAVEZ, et al.,)	
)	[ECF No. 73]
Defendants.)	
)	
)	
)	

Plaintiff George K. Colbert is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Now pending before the Court is Plaintiff’s motion for the appointment of counsel, filed October 5, 2015.

There is no constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the Court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

Without a reasonable method of securing and compensating counsel, the court will seek volunteer counsel only in the most serious and exceptional cases. In determining whether “exceptional circumstances exist, the district court must evaluate both the likelihood of success on the

1 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the
2 legal issues involved.” Id. (internal quotation marks and citations omitted).

3 In the present case, the Court finds that neither the interests of justice nor exceptional
4 circumstances warrant appointment of counsel at this time. LaMere v. Risley, 827 F.2d 622, 626 (9th
5 Cir. 1987); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). While counsel may be able to
6 cross-examine witnesses at trial, so long as a pro se litigant, like Plaintiff in this case, is able to
7 “articulate his claims against the relative complexity of the matter,” the “exceptional circumstances”
8 which might require the appointment of counsel do not exist. Rand, 113 F.3d at 1525 (finding no
9 abuse of discretion under 28 U.S.C. § 1915(e) when district court denied appointment of counsel
10 despite fact that pro se prisoner “may well have fared better-particular in the realms of discovery and
11 the security of expert testimony.”) Indeed, any pro se litigant “would be better served with the
12 assistance of counsel.” Id.

13 In this case, Plaintiff is proceeding on a claim of excessive force against Defendants Chavez,
14 Lindsey, Emard, Flores, Ramirez, and Farnsworth, and against Defendants Chavez, Lindsey, Emard,
15 Flores, and Ramirez for retaliation. Defendant Douncan was dismissed from the action pursuant to
16 Rule 4(m) of the Federal Rules of Civil Procedure. (ECF No. 38.) To date, Plaintiff has demonstrated
17 an ability to articulate the factual and legal basis for his arguments and has effectively litigated this
18 case. In addition, circumstances common to most prisoners, such as lack of legal education and
19 limited law library access, do not establish exceptional circumstances that would warrant a request for
20 voluntary assistance of counsel. Furthermore, Defendants have filed a motion for summary judgment
21 which is presently pending before the Court and the Court cannot determine at this juncture whether
22 Plaintiff is likely to proceed on the merits of his claims. Accordingly, Plaintiff’s motion for the
23 appointment of counsel is DENIED, without prejudice.

24
25 IT IS SO ORDERED.

26 Dated: October 6, 2015



27 UNITED STATES MAGISTRATE JUDGE