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

MICHAEL MCNEIL,  
  
                    Plaintiff,  
  
          v.  
  
LVN HAYES, et al.,  
  
                    Defendants.

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Case No. 1:10-cv-01746-AWI-SKO (PC)  
  
ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL  
  
(Doc. 145)

Plaintiff Michael McNeil, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on September 23, 2010. On July 15, 2014, Plaintiff filed a motion seeking the appointment of counsel.

Plaintiff does not have a constitutional right to the appointment of counsel in this action. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009); *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The Court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1), but it will do so only if exceptional circumstances exist. *Palmer*, 560 F.3d at 970; *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). In making this determination, the Court must evaluate the likelihood of success on the merits and the ability of Plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. *Palmer*, 560 F.3d at 970 (citation and quotation marks omitted); *Wilborn*, 789 F.2d at 1331. Neither consideration is dispositive and they must be viewed together. *Palmer*, 560 F.3d at 970 (citation and quotation marks omitted); *Wilborn* 789 F.2d at 1331.

1           In the present case, the Court does not find the required exceptional circumstances. Even  
2 if it is assumed that Plaintiff is not well versed in the law and that he has made serious allegations  
3 which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with  
4 similar cases almost daily. Further, at this stage in the proceedings, the Court is unable to make a  
5 determination that Plaintiff is likely to succeed on the merits, and based on a review of the record  
6 in this case, the Court does not find that Plaintiff cannot adequately articulate his claims. Palmer,  
7 560 F.3d at 970. While the Court recognizes that Plaintiff is at a disadvantage due to his pro se  
8 status and his incarceration, the test is not whether Plaintiff would benefit from the appointment of  
9 counsel. See Wilborn, 789 F.2d at 1331 (“Most actions require development of further facts  
10 during litigation and a pro se litigant will seldom be in a position to investigate easily the facts  
11 necessary to support the case.”) The test is whether exceptional circumstances exist and here, they  
12 do not.

13           Accordingly, for the foregoing reasons, Plaintiff’s motion for the appointment of counsel is  
14 **HEREBY DENIED.**

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16 **IT IS SO ORDERED.**

17 Dated: **August 22, 2014**

**/s/ Sheila K. Oberto**  
**UNITED STATES MAGISTRATE JUDGE**

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