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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JESSIE L. SERRANO,

12 Plaintiff,

13 vs.

14 SERGEANT JEFFERY L. LUCAS,

15 Defendant.
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1:11-cv-00399-EPG-PC

ORDER DENYING PLAINTIFF'S
MOTIONS FOR COURT-APPOINTED
COUNSEL
(ECF Nos. 93, 99.)

18 This case is scheduled for trial on March 8, 2016. On February 4, 2016 and February
19 17, 2016, Plaintiff filed motions for the appointment of counsel. (ECF Nos. 93, 98.)

20 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.
21 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require an attorney to
22 represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court
23 for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional
24 circumstances the Court may request the voluntary assistance of counsel pursuant to section
25 1915(e)(1). Rand, 113 F.3d at 1525.

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

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

3 In the present case, Plaintiff argues that exceptional circumstances exist because he has
4 been relying on other inmates to litigate for him and has no one to help him prepare for trial.
5 Plaintiff also asserts that he has been diagnosed with neurological impairment resulting from a
6 gunshot to his head, and he takes two types of seizure medications. Further, Plaintiff asserts
7 that he is a mental health prisoner and is taking psychiatric medications. Plaintiff contends that
8 there is a high probability he will succeed on the merits at trial, because Defendant admits that
9 Plaintiff was severely beaten by inmates and shot on the top of his head by officers.

10 Plaintiff has not set forth any evidence that he was diagnosed with neurological
11 impairment, and his recent handwritten motions do not reflect mental impairment. That said,
12 Plaintiff’s physical and mental issues and lack of knowledge alone do not make Plaintiff’s case
13 exceptional. Even if Defendant agrees that Plaintiff was injured, the fact that Plaintiff suffered
14 injuries does not prove that Defendant failed to protect Plaintiff. The Court cannot find that
15 Plaintiff is likely to prevail on the merits at trial. Plaintiff’s failure-to-protect claims are not
16 complex, and based on Plaintiff’s participation in the January 25, 2016 telephonic hearing, it
17 appears that Plaintiff can adequately articulate his claims. Thus, the Court does not find the
18 required exceptional circumstances, and Plaintiff’s motions shall be denied.

19 For the foregoing reasons, IT IS HEREBY ORDERED that Plaintiff’s motions for the
20 appointment of counsel, filed on February 4, 2016 and February 17, 2016, are DENIED.

21 IT IS SO ORDERED.
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23 Dated: February 24, 2016

24 /s/ Eric P. Gray
25 UNITED STATES MAGISTRATE JUDGE
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