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4 **UNITED STATES DISTRICT COURT**

5 EASTERN DISTRICT OF CALIFORNIA

6 DANIEL MASTERSON,

7 Plaintiff,

8 v.

9 S. KILLEN, et al.,

10 Defendants.

Case No. 1:11-cv-01179-LJO-SAB-PC

ORDER DENYING PLAINTIFF’S MOTION
FOR APPOINTMENT OF COUNSEL

[ECF NO. 61]

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12 Plaintiff Masterson is a state prisoner appearing pro se and in forma pauperis in this civil
13 rights action pursuant to 42 U.S.C. § 1983.

14 On September 14, 2015, Plaintiff filed a motion for the appointment of counsel. (ECF
15 No. 61.) Plaintiff has not previously requested appointment of counsel..

16 Plaintiff is advised that there is no constitutional right to appointed counsel in this action,
17 Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require any
18 attorney to represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States
19 District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain
20 exceptional circumstances the court may request the voluntary assistance of counsel pursuant to
21 section 195(e)(1). Rand, 113 F.3d at 1525.

22 Without a reasonable method of securing and compensating counsel, the Court will seek
23 volunteer counsel only in the most serious and exceptional cases. In determining whether
24 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
25 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
26 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

27 In the present case, the Court has considered Plaintiff’s moving papers, but does not find
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1 the required exceptional circumstances. LaMere v. Risley, 827 F.2d 622, 626 (9th Cir. 1987);
2 Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). Plaintiff is proceeding on a claim of
3 retaliation in violation of the First Amendment. The legal issues present in this action are not
4 complex, and Plaintiff has thoroughly set forth his arguments in the November 22, 2013, third
5 amended complaint filed in this action. Plaintiff contends that the issues are complex, that he has
6 no formal legal education, and that his access to legal resources is limited. Plaintiff also refers to
7 Defendants' responses to his interrogatories. Regarding the rules and procedures for discovery,
8 Plaintiff is referred to the November 14, 2014, discovery order (ECF No. 42.) In forma pauperis
9 status alone does not alone entitle Plaintiff to appointed counsel. Plaintiff's lack of a legal
10 education and difficulty in conducting legal research do not constitute exceptional circumstances.

11 While a pro se litigant may be better served with the assistance of counsel, so long as a
12 pro se litigant, such as Plaintiff in this instance, is able to "articulate his claims against the
13 relative complexity of the matter," the "exceptional circumstances" which might require the
14 appointment of counsel do not exist. Rand, 113 F.3d at 1525 (finding no abuse of discretion
15 under 28 U.S.C. §1915(e) when district court denied appointment of counsel despite fact that pro
16 se prisoner "may well have fared better – particularly in the realm of discovery and the securing
17 of expert testimony.") Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for the
18 appointment of counsel is DENIED.

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21 IT IS SO ORDERED.

22 Dated: September 16, 2015


UNITED STATES MAGISTRATE JUDGE