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4 **UNITED STATES DISTRICT COURT**

5 EASTERN DISTRICT OF CALIFORNIA

6 C. DWAYNE GILMORE,

7 Plaintiff,

8 v.

9 C. LOCKARD, et al.,

10 Defendants.

Case No. 1:12-cv-00925-LJO-SAB PC

ORDER DENYING PLAINTIFF’S SECOND  
MOTION FOR APPOINTMENT OF  
COUNSEL

(ECF NO. 182)

11  
12 Plaintiff C. Dwayne Gilmore a state prisoner appearing pro se and in forma pauperis in  
13 this civil rights action pursuant to 42 U.S.C. § 1983.

14 On March 21, 2016, Plaintiff filed a motion for the appointment of counsel. (ECF No.  
15 182.) Plaintiff’s first motion for appointment of counsel was denied on July 9, 2015. (ECF No.  
16 132.)

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

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

1 In the present case, the Court has considered Plaintiff's moving papers, but does not find  
2 the required exceptional circumstances. LaMere v. Risley, 827 F.2d 622, 626 (9th Cir. 1987);  
3 Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). Plaintiff is proceeding on claims of  
4 excessive force and denial of medical care. The legal issues present in this action are not  
5 complex, and Plaintiff has thoroughly set forth his arguments in the complaint filed in this  
6 action. Plaintiff argues that there is a settlement conference set for May 13, 2016, and that if this  
7 case does not settle it will be set for trial. Plaintiff argues that "it would benefit Plaintiff,  
8 Defendants and the Court by expediting pretrial conference and conducting trial proceedings, by  
9 appointing counsel to represent Plaintiff." (ECF No. 182, 5:22-24.) In forma pauperis status  
10 alone does not alone entitle Plaintiff to appointed counsel. That a case is set for jury trial does  
11 not constitute exceptional circumstances.

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

20 IT IS SO ORDERED.

21 Dated: March 23, 2016

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24 UNITED STATES MAGISTRATE JUDGE  
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