1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA 9 10 11 JAMES W. MILLNER, Case No.: 1:13-cv-02029-SAB (PC) 12 Plaintiff, ORDER DENYING PLAINTIFF'S AMENDED MOTION FOR APPOINTMENT OF COUNSEL 13 v. [ECF No. 26] 14 MARTIN BITER, et al., 15 Defendants. 16 Plaintiff James W. Millner is appearing pro se and in forma pauperis in this civil rights action 17 pursuant to 42 U.S.C. § 1983. 18 On June 25, 2014, Plaintiff filed an amended motion for the appointment of counsel. (ECF No. 19 20 26.) 21 On June 11, 2014, Plaintiff filed a motion for the appointment of counsel. The Court denied Plaintiff's motion for counsel on June 13, 2014, finding exceptional circumstances were not present to 22 23 warrant the appointment of volunteer counsel. 24 In the present amended motion, Plaintiff contends that he is in severe pain since he was assaulted by prison staff on July 14, 2013, and he has not had sufficient time in the law library. As 25 26 with Plaintiff's prior motion, although Plaintiff contends he is physically impaired, he has not 27 provided substantial evidence to demonstrate that he is incapable of understanding and responding to

court orders. "Indeed, Plaintiff filed a second amended complaint in response to the Court's May 8,

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2014, order dismissing the first amended complaint, with leave to amend." Furthermore, Plaintiff's case is not exceptional. Plaintiff alleges Eighth Amendment claims for excessive force and deliberate indifference to a serious medical need. The legal issues present in this action are not complex, and Plaintiff has thoroughly set forth his allegations in the second amended complaint.

Accordingly, Plaintiff's amended motion for the appointment of counsel is DENIED.

 $\frac{1}{100}$ IT IS SO ORDERED.

Dated: **June 27, 2014**

UNITED STATES MAGISTRATE JUDGE