| 1         2         3         4         5         6         7         8         UNITED STATES DISTRICT COURT         9         AMAGE SUMMER SUMMER SUMMERS |    |  |   |
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| 2         3         4         5         6         7         8         UNITED STATES DISTRICT COURT         9         EASTERN DISTRICT OF CALIFORNIA         10         11         12         13         v.         14         MARTIN BITER, et al.,         15         16         17         Plaintiff James W. Miller is appearing pro se and in forma pauperis in this civil rights action         18         19         10         11         12         13         v.         14         MARTIN BITER, et al.,         15         16         17         Plaintiff James W. Millner is appearing pro se and in forma pauperis in this civil rights action         17         Plaintiff previously filed two motions for the appointment of counsel.         18         19         10         111         112         113         114         115         115  |    |  |   |
| 2         3         4         5         6         7         8         UNITED STATES DISTRICT COURT         9         EASTERN DISTRICT OF CALIFORNIA         10         11         12         13         v.         14         MARTIN BITER, et al.,         15         16         17         Plaintiff James W. Miller is appearing pro se and in forma pauperis in this civil rights action         18         19         10         11         12         13         v.         14         MARTIN BITER, et al.,         15         16         17         Plaintiff James W. Millner is appearing pro se and in forma pauperis in this civil rights action         17         Plaintiff previously filed two motions for the appointment of counsel.         18         19         10         111         112         113         114         115         115  | 1  |  |   |
| 3       4         4       5         5       6         7       7         8 <b>LUNITED STATES DISTRICT COURT</b> 9 <b>LEASTERN DISTRICT OF CALIFORNIA</b> 10       1         11       JAMES W. MILLNER, Case No.: 1:13-ev-02029-SAB (PC)         12       Plaintiff, Case No.: 1:13-ev-02029-SAB (PC)         13       v. Case No.: 1:13-ev-02029-SAB (PC)         14       MARTIN BITER, et al., ORDER DENYING PLAINTIFF'S THIRD V. MOTION FOR APPOINTMENT OF COUNSEL         16       ORDER DENYING PLAINTIFF'S THIRD V. MOTION FOR APPOINTMENT OF COUNSEL         17       Plaintiff James W. Millner is appearing prose and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.         19       On September 10, 2014, Plaintiff filed a third motion for the appointment of counsel.         18       On September 10, 2014, Plaintiff filed a third motion for the appointment of counsel.         19       On September 10, 2014, Plaintiff filed a third motion for the appointment of counsel.         19       On September 10, 2014, respectively.         20       As Plaintiff was previously advised, Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v, Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the cour  | -  |  |   |
| 5         6         7         8       UNITED STATES DISTRICT COURT         9       EASTERN DISTRICT OF CALIFORNIA         10         11       JAMES W. MILLINER, Case No.: 1:13-cv-02029-SAB (PC)         12       Plaintiff, ORDER DENVING PLAINTIFF'S THIRD         13       v.         14       MARTIN BITER, et al., ORDER DENVING PLAINTIFF'S THIRD         15       Defendants.         16       Image: Case No.: 1:13-cv-02029-SAB (PC)         17       Plaintiff James W. Millner is appearing pro se and in forma pauperis in this civil rights action         18       pursuant to 42 U.S.C. § 1983.         19       On September 10, 2014, Plaintiff filed a third motion for the appointment of counsel.         11       Plaintiff previously filed two motions for the appointment of counsel.         12       Plaintiff reviously advised, Plaintiff does not have a constitutional right to appointed         13       on June 13, 2014, and June 27, 2014, respectively.         14       As Plaintiff was previously advised, Plaintiff does not have a constitutional right to appointed         15       District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain         16       Pistrict Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain         17  |    |  |   |
| 6       7         7       8         7       8         7       8         9       EASTERN DISTRICT OF CALIFORNIA         10       11         11       JAMES W. MILLNER,  | 4  |  |   |
| 7       8       UNITED STATES DISTRICT COURT         9       CASTERN DISTRICT OF CALIFORNIA         10       Case No.: 1:13-cv-02029-SAB (PC)         11       JAMES W. MILLNER, Case No.: 1:13-cv-02029-SAB (PC)         12       Plaintiff, Case No.: 1:13-cv-02029-SAB (PC)         13       ORDER DENYING PLAINTIFF'S THIRD         13       V.         14       MARTIN BITER, et al., ECF No. 31]         15       Defendants.         16       OR September 10, 2014, Plaintiff filed a third motion for the appointment of counsel.         17       Plaintiff James W. Millner is appearing pro se and in forma pauperis in this civil rights action         18       our sugart to 42 U.S.C. § 1983.         19       On September 10, 2014, Plaintiff filed a third motion for the appointment of counsel.         11       Plaintiff previously filed two motions for the appointment of counsel.         12       On September 10, 2014, respectively.         12       As Plaintiff was previously advised, Plaintiff does not have a constitutional right to appointed         13       our sugart to 42 U.S.C. § 1915(c)(1). Mallard v. United States         14       District Court for the Southern District of  | 5  |  |   |
| 8       UNITED STATES DISTRICT COURT         9       CASE NO. 1:13 COURT         10       CASE NO. 1:13 COURT         11       JAMES W. MILLNER, Case No. 1:13 - CV-02029-SAB (PC)         12       Plaintiff, Case No. 1:13 - CV-02029-SAB (PC)         13       ORDER DENYING PLAINTIFF'S THIRD         14       MARTIN BITER, et al., Case No. 1:13 - CV-02029-SAB (PC)         15       ORDER DENYING PLAINTIFF'S THIRD         16       ORDER DENYING PLAINTIFF'S THIRD         17       MARTIN BITER, et al., Case No. 1:10 - FOR APPOINTMENT OF COUNSEL         16       ORDER DENYING PLAINTIFF'S THIRD         17       Plaintiff James W. Millner is appearing prose and in forma pauperis in this civil rights action         18       pursuant to 42 U.S.C. § 1983.         19       OR September 10, 2014, Plaintiff filed a Hird motion for the appointment of counsel.         12       As Plaintiff was previously advised, Plaintiff does not have a constitutional right to appointed         13       counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot         14       require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(c)(1). Mallard v. United States         15   | 6  |  |   |
| 9       EASTERN DISTRICT OF CALIFORNIA         10       Case No.: 1:13-cv-02029-SAB (PC)         11       JAMES W. MILLNER,  | 7  |  |   |
| 10         11       JAMES W. MILLNER,       )       Case No.: 1:13-cv-02029-SAB (PC)         12       Plaintiff,       )       ORDER DENYING PLAINTIFF'S THIRD         13       v.       )       MOTION FOR APPOINTMENT OF COUNSEL.         14       MARTIN BITER, et al.,       )       [ECF No. 31]         15       Defendants.       )         16  | 8  | UNITED STATES DISTRICT COURT                       |   |
| 11       JAMES W. MILLNER,       Case No.: 1:13-cv-02029-SAB (PC)         12       Plaintiff,       ORDER DENVING PLAINTIFF'S THIRD         13       v.       MOTION FOR APPOINTMENT OF COUNSEL         14       MARTIN BITER, et al.,       [ECF No. 31]         15       Defendants.       ]         16  | 9  | EASTERN DISTRICT OF CALIFORNIA                     |   |
| 12       Plaintiff,       ORDER DENYING PLAINTIFF'S THIRD         13       v.       MOTION FOR APPOINTMENT OF COUNSEL         14       MARTIN BITER, et al.,       [ECF No. 31]         15       Defendants.       )         16  | 10 |  |   |
| 13       v.       ORDER DENYING PLAINTIFF'S THIRD<br>MOTION FOR APPOINTMENT OF COUNSEL         14       MARTIN BITER, et al.,       [ECF No. 31]         15       Defendants.       )         16   | 11 | JAMES W. MILLNER,                                  | ) Case No.: 1:13-cv-02029-SAB (PC)          |
| MARTIN BITER, et al.,               [ECF No. 31]           Image: Defendants.              [ECF No. 31]          Defendants.              [ECF No. 31]          Plaintiff James W. Millner is appearing pro se and in forma pauperis in this civil rights action          pursuant to 42 U.S.C. § 1983.         On September 10, 2014, Plaintiff filed a third motion for the appointment of counsel.         Plaintiff previously filed two motions for the appointment of counsel which were both denied         on June 13, 2014, and June 27, 2014, respectively.         As Plaintiff was previously advised, Plaintiff does not have a constitutional right to appointed         counsel in this action, <u>Rand v. Rowland</u> , 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot         require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). <u>Mallard v. United States</u> District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain         exceptional circumstances the court may request the voluntary assistance of counsel pursuant to         section 1915(e)(1). <u>Rand</u> , 113 F.3d at 1525.  | 12 | Plaintiff,   | )<br>)<br>) ORDER DENYING PLAINTIFF'S THIRD |
| 15       Defendants.         16  | 13 | v.   | ) MOTION FOR APPOINTMENT OF COUNSEL         |
| <ul> <li>16</li> <li>17</li> <li>Plaintiff James W. Millner is appearing pro se and in forma pauperis in this civil rights action</li> <li>18</li> <li>pursuant to 42 U.S.C. § 1983.</li> <li>19</li> <li>On September 10, 2014, Plaintiff filed a third motion for the appointment of counsel.</li> <li>Plaintiff previously filed two motions for the appointment of counsel which were both denied</li> <li>on June 13, 2014, and June 27, 2014, respectively.</li> <li>As Plaintiff was previously advised, Plaintiff does not have a constitutional right to appointed</li> <li>counsel in this action, <u>Rand v. Rowland</u>, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot</li> <li>require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). <u>Mallard v. United States</u></li> <li><u>District Court for the Southern District of Iowa</u>, 490 U.S. 296, 298 (1989). However, in certain</li> <li>exceptional circumstances the court may request the voluntary assistance of counsel pursuant to</li> <li>section 1915(e)(1). <u>Rand</u>, 113 F.3d at 1525.</li> </ul>  | 14 | MARTIN BITER, et al.,                              | ) [ECF No. 31]                              |
| <ul> <li>Plaintiff James W. Millner is appearing pro se and in forma pauperis in this civil rights action</li> <li>pursuant to 42 U.S.C. § 1983.</li> <li>On September 10, 2014, Plaintiff filed a third motion for the appointment of counsel.</li> <li>Plaintiff previously filed two motions for the appointment of counsel which were both denied</li> <li>on June 13, 2014, and June 27, 2014, respectively.</li> <li>As Plaintiff was previously advised, Plaintiff does not have a constitutional right to appointed</li> <li>counsel in this action, <u>Rand v. Rowland</u>, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot</li> <li>require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). <u>Mallard v. United States</u></li> <li><u>District Court for the Southern District of Iowa</u>, 490 U.S. 296, 298 (1989). However, in certain</li> <li>exceptional circumstances the court may request the voluntary assistance of counsel pursuant to</li> <li>section 1915(e)(1). <u>Rand</u>, 113 F.3d at 1525.</li> </ul>  | 15 | Defendants.  | )   |
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| <ul> <li>25 District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain</li> <li>26 exceptional circumstances the court may request the voluntary assistance of counsel pursuant to</li> <li>27 section 1915(e)(1). <u>Rand</u>, 113 F.3d at 1525.</li> <li>28</li> </ul>  |    |  |   |
| <ul> <li>26 exceptional circumstances the court may request the voluntary assistance of counsel pursuant to</li> <li>27 section 1915(e)(1). <u>Rand</u>, 113 F.3d at 1525.</li> <li>28</li> </ul>  |    |  |   |
| 27     section 1915(e)(1). Rand, 113 F.3d at 1525.       28  |    |  |   |
| 28   |    |  |   |
|  |    | Section 1715(c)(1). <u>Nunu</u> , 1151.54 at 1525. |   |
|  | 20 |  | 1   |

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

In the present case, the Court does not find the required exceptional circumstances. Although Plaintiff contends he is disabled, Plaintiff has not provided substantial evidence to demonstrate that he in incapable of understanding and responding to court orders. Indeed, Plaintiff filed a third amended complaint in response to the Court's July 31, 2014, order dismissing the first amended complaint, with leave to amend.

Moreover, even if it assumed that plaintiff is not well versed in the law and that he has made serious allegations which, if proved, would entitle him to relief, his 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 complaint. However, at this early stage in the proceedings, the court cannot make a determination that Plaintiff is likely to succeed on the merits, and based on a review of the record in this case, the court does not find that plaintiff cannot adequately articulate his claims. <u>Id.</u>

For the foregoing reasons, Plaintiff's motion for the appointment of counsel is HEREBY DENIED.

IT IS SO ORDERED.

Dated: September 15, 2014

A.B.

UNITED STATES MAGISTRATE JUDGE

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