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4 **UNITED STATES DISTRICT COURT**

5 EASTERN DISTRICT OF CALIFORNIA

6 TRACY L. STEWART,

7 Plaintiff,

8 v.

9 K. HOLLAND, et al.,

10 Defendants.

Case No. 1:14-cv-00322-AWI-BAM-PC

ORDER DENYING PLAINTIFF’S SECOND
MOTION FOR APPOINTMENT OF
COUNSEL

(ECF NO. 18)

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

14 On November 23, 2015, Plaintiff filed a motion for the appointment of counsel. (ECF
15 No. 18.) Plaintiff has previously sought the appointment of counsel, which was denied on
16 October 20, 2014. (ECF No. 10.)

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 multiple
4 claims including excessive force and deliberate indifference to serious medical needs. Plaintiff's
5 motion consists of a restatement of the claims set forth in the complaint. Plaintiff argues that
6 there is a likelihood that he will succeed on the merits, and that the factual and legal issues in this
7 case are complex. The Court finds that these factual and legal issues in this case are not
8 complex.

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

17
18 IT IS SO ORDERED.

19 Dated: December 2, 2015

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE