

1 **I. Legal Standard**

2 As Plaintiff was previously informed, he does not have a constitutional right to appointed
3 counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), reversed in part on
4 other grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998), and the court cannot require an attorney to
5 represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for
6 the Southern District of Iowa, 490 U.S. 296, 298, 109 S. Ct. 1814, 1816 (1989). However, in
7 certain exceptional circumstances the court may request the voluntary assistance of counsel
8 pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

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

14 **II. Discussion**

15 The Court has considered Plaintiff’s renewed motion for the appointment of counsel, but
16 again does not find the required exceptional circumstances. Even if it is assumed that Plaintiff is
17 not well versed in the law and that he has made serious allegations which, if proved, would entitle
18 him to relief, his case is not exceptional. As previously indicated, this Court is faced with similar
19 cases involving claims of excessive force and failure to intervene filed by prisoners proceeding in
20 forma pauperis almost daily. These prisoners also must conduct legal research and prosecute
21 claims without the assistance of counsel. There is no indication that Plaintiff is unable to conduct
22 legal research to assist him in this matter or that he is unable to articulate his claims.

23 Furthermore, at this stage in the proceedings, the Court cannot make a determination that
24 Plaintiff is likely to succeed on the merits. Although the Court has determined Plaintiff has stated
25 claims which may proceed in litigation, it has not determined that those claims have a likelihood
26 of being ultimately successful.

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For the foregoing reasons, Plaintiff's second motion for the appointment of counsel (ECF No. 41) is HEREBY DENIED without prejudice.

IT IS SO ORDERED.

Dated: April 20, 2017

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE