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7 **UNITED STATES DISTRICT COURT**

8 EASTERN DISTRICT OF CALIFORNIA  
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10 LAVELL FRIERSON,

Case No. 1:14-cv-00553-LJO-SKO (PC)

11 Plaintiff,

ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL

12 v.

(Doc. 17)

13 U. OJEDA,

14 Defendant.  
15 \_\_\_\_\_/

16 Plaintiff Lavell Frierson, a state prisoner proceeding pro se and in forma pauperis, filed  
17 this civil rights action pursuant to 42 U.S.C. § 1983 on April 18, 2014. On July 31, 2015, Plaintiff  
18 filed a motion seeking the appointment of counsel.

19 Plaintiff does not have a constitutional right to the appointment of counsel in this action.  
20 *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009); *Storseth v. Spellman*, 654 F.2d 1349, 1353  
21 (9th Cir. 1981). The Court may request the voluntary assistance of counsel pursuant to 28 U.S.C.  
22 § 1915(e)(1), but it will do so only if exceptional circumstances exist. *Palmer*, 560 F.3d at 970;  
23 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). In making this determination, the  
24 Court must evaluate the likelihood of success on the merits and the ability of Plaintiff to articulate  
25 his claims *pro se* in light of the complexity of the legal issues involved. *Palmer*, 560 F.3d at 970  
26 (citation and quotation marks omitted); *Wilborn*, 789 F.2d at 1331. Neither consideration is  
27 dispositive and they must be viewed together. *Palmer*, 560 F.3d at 970 (citation and quotation  
28 marks omitted); *Wilborn* 789 F.2d at 1331.

1 In the present case, the Court does not find the required exceptional circumstances. Even  
2 if it is assumed that Plaintiff is not well versed in the law and that he has made serious allegations  
3 which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with  
4 similar cases almost daily. Further, at this early stage in the proceedings, the Court cannot make a  
5 determination that Plaintiff is likely to succeed on the merits, and based on a review of the record  
6 in this case, the Court does not find that Plaintiff cannot adequately articulate his claims. *Palmer*,  
7 560 F.3d at 970. While the Court recognizes that Plaintiff is at a disadvantage due to his pro se  
8 status and his incarceration, the test is not whether Plaintiff would benefit from the appointment of  
9 counsel. *See Wilborn*, 789 F.2d at 1331 (“Most actions require development of further facts  
10 during litigation and a pro se litigant will seldom be in a position to investigate easily the facts  
11 necessary to support the case.”) The test is whether exceptional circumstances exist and here, they  
12 do not.

13 For the foregoing reasons, Plaintiff’s motion for the appointment of counsel is HEREBY  
14 DENIED, without prejudice.

15  
16 IT IS SO ORDERED.

17 Dated: October 2, 2015

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE