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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

AVERY HYPOLITE,	)	Case No.: 1:14-cv-01199-SAB (PC)
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF’S MOTION
	)	FOR APPOINTMENT OF COUNSEL
v.	)	
	)	[ECF No. 13]
R. ZAMORA, et al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

Plaintiff Avery Hypolite is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On February 13, 2015, Plaintiff filed a motion for the appointment of counsel. Plaintiff previously requested and this Court denied a request for the appointment of counsel. (ECF No. 5.) In the present motion, Plaintiff seeks appointment of counsel because he is unable to afford counsel, his imprisonment will greatly limit his ability to litigate the issues, and a trial in this case will likely involve conflicting testimony and cross-examination of witnesses.

There is no constitutional right to appointed counsel in this action, Rand v. Rowland, 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). Mallard v. United States 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). Rand, 113 F.3d at 1525.

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

6 In the present case, the Court does find that neither the interests of justice nor exceptional  
7 circumstances warrant appointment of counsel at this time. LaMere v. Risley, 827 F.2d 622, 626 (9th  
8 Cir. 1987); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). Plaintiff is proceeding on a claim  
9 of excessive force and the legal issues present in this action are not complex, and Plaintiff has  
10 thoroughly set forth his allegations in the complaint.

11 While a pro se litigant may be better served with the assistance of counsel, so long as a pro se  
12 litigant, such as Plaintiff in this instance, is able to “articulate his claims against the relative  
13 complexity of the matter,” the “exceptional circumstances” which might require the appointment of  
14 counsel do not exist. Rand v. Rowland, 113 F.3d at 1525 (finding no abuse of discretion under 28  
15 U.S.C. § 1915(e) when district court denied appointment of counsel despite fact that pro se prisoner  
16 “may well have fared better-particularly in the realm of discovery and the securing of expert  
17 testimony.”) Plaintiff’s assertions regarding presenting evidence and cross-examining witnesses at a  
18 future trial does not present an exceptional circumstance warranting appointment of counsel, as this  
19 case is in the service stage and has not yet survived summary judgment. Accordingly, Plaintiff motion  
20 for appointment of counsel is DENIED, without prejudice.

21  
22 IT IS SO ORDERED.

23 Dated: February 19, 2015

  
UNITED STATES MAGISTRATE JUDGE