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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 AVERY HYPOLITE, ) Case No.: 1:14-cv-01199-LJO-SAB (PC)  
12 Plaintiff, )  
13 v. ) ORDER DENYING PLAINTIFF’S THIRD  
14 R. ZAMORA, et al., ) MOTION FOR APPOINTMENT OF COUNSEL  
15 Defendants. ) [ECF No. 26]  
16 )

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

19 On November 6, 2015, Plaintiff filed a third motion for the appointment of counsel. (ECF No.  
20 26.)

21 There is no constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d  
22 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent plaintiff pursuant to  
23 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490  
24 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the  
25 voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

26 Without a reasonable method of securing and compensating counsel, the court will seek  
27 volunteer counsel only in the most serious and exceptional cases. In determining whether  
28 “exceptional circumstances exist, the district court must evaluate both the likelihood of success on the

1 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the  
2 legal issues involved.” Id. (internal quotation marks and citations omitted).

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

8 While a pro se litigant may be better served with the assistance of counsel, so long as a pro se  
9 litigant, such as Plaintiff in this instance, is able to “articulate his claims against the relative  
10 complexity of the matter,” the “exceptional circumstances” which might require the appointment of  
11 counsel do not exist. Rand v. Rowland, 113 F.3d at 1525 (finding no abuse of discretion under 28  
12 U.S.C. § 1915(e) when district court denied appointment of counsel despite fact that pro se prisoner  
13 “may well have fared better-particularly in the realm of discovery and the securing of expert  
14 testimony.”) Circumstances common to most prisoners, such as lack of legal education and limited  
15 law library access, do not establish exceptional circumstances that would warrant a request for  
16 voluntary assistance of counsel. Accordingly, Plaintiff third motion for appointment of counsel is  
17 DENIED, without prejudice.

18  
19 IT IS SO ORDERED.

20 Dated: November 10, 2015

  
UNITED STATES MAGISTRATE JUDGE