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

AVERY HYPOLITE,)	Case No.: 1:14-cv-01199-LJO-SAB (PC)
)	
Plaintiff,)	
)	ORDER DENYING PLAINTIFF’S FIFTH
v.)	MOTION FOR APPOINTMENT OF COUNSEL
)	
R. ZAMORA,)	[ECF No. 39]
)	
Defendant.)	
)	
)	
)	

Plaintiff Avery Hypolite is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff consented to United States magistrate judge jurisdiction on August 22, 2014. (ECF No. 7.)

Currently before the Court is Plaintiff’s fifth motion for the appointment of counsel, filed June 17, 2016.

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

20
21 IT IS SO ORDERED.

22 Dated: June 21, 2016



UNITED STATES MAGISTRATE JUDGE