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4 **UNITED STATES DISTRICT COURT**

5 EASTERN DISTRICT OF CALIFORNIA

6 GLEN MARTINEZ-CASTRO,

7 Plaintiff,

8 v.

9 C/O ELIAS, et al.,

10 Defendants.

Case No. 1:14-cv-01326-BAM-PC

ORDER DENYING PLAINTIFF’S SECOND  
MOTION FOR APPOINTMENT OF  
COUNSEL

(ECF NO. 28)

11  
12 Plaintiff Martinez-Castro is a state prisoner appearing pro se and in forma pauperis in this  
13 civil rights action pursuant to 42 U.S.C. § 1983.

14 On September 18, 2015, Plaintiff filed a motion for the appointment of counsel. (ECF  
15 No. 28.) Plaintiff previously sought the appointment of counsel, which was denied on August  
16 28, 2014.

17 Plaintiff is advised that there is no constitutional right to appointed counsel in this action,  
18 Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require any  
19 attorney to represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States  
20 District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain  
21 exceptional circumstances the court may request the voluntary assistance of counsel pursuant to  
22 section 195(e)(1). Rand, 113 F.3d at 1525.

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

1 In the present case, the Court has considered Plaintiff's moving papers, but does not find  
2 the required exceptional circumstances. LaMere v. Risley, 827 F.2d 622, 626 (9<sup>th</sup> Cir. 1987);  
3 Terrell v. Brewer, 935 F.2d 1015, 1017 (9<sup>th</sup> Cir. 1991). Plaintiff is proceeding on a claims of  
4 excessive force and failure deliberate indifference to serious medical needs. The Court finds that  
5 the legal issues present in this action are not complex, and Plaintiff has thoroughly set forth his  
6 arguments in the second amended complaint filed in this action. Plaintiff argues that due to his  
7 incarceration, his ability to litigate is restricted. Plaintiff argues that the issues are complex. In  
8 forma pauperis status alone does not alone entitle Plaintiff to appointed counsel. That it is  
9 difficult for Plaintiff to litigate due to his incarceration does not constitute exceptional  
10 circumstances. As noted, the legal issues in this case are not complex.

11 While a pro se litigant may be better served with the assistance of counsel, so long as a  
12 pro se litigant, such as Plaintiff in this instance, is able to "articulate his claims against the  
13 relative complexity of the matter," the "exceptional circumstances" which might require the  
14 appointment of counsel do not exist. Rand, 113 F.3d at 1525 (finding no abuse of discretion  
15 under 28 U.S.C. §1915(e) when district court denied appointment of counsel despite fact that pro  
16 se prisoner "may well have fared better – particularly in the realm of discovery and the securing  
17 of expert testimony.")

18 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for the appointment of  
19 counsel is DENIED.  
20 IT IS SO ORDERED.

21 Dated: October 29, 2015

/s/ Barbara A. McAuliffe  
22 UNITED STATES MAGISTRATE JUDGE  
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