2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA 9 10 11 JESSE ADAME, Case No.: 1:14-cv-01596-SAB (PC) 12 Plaintiff, ORDER DENYING PLAINTIFF'S SECOND MOTION FOR APPOINTMENT OF COUNSEL. 13 v. WITHOUT PREJUDICE 14 F. MARISCAL, et al., [ECF No. 23] 15 Defendants. 16 Plaintiff Jesse Adame is appearing pro se and in forma pauperis in this civil rights action 17 18 pursuant to 42 U.S.C. § 1983. Now pending before the Court is Plaintiff's second motion for appointment of counsel, filed 19 20 July 30, 2015. 21 As Plaintiff was previously advised, he does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot 22 23 require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States 24 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 25 section 1915(e)(1). Rand, 113 F.3d at 1525. 26 27 Without a reasonable method of securing and compensating counsel, the court will seek 28 volunteer counsel only in the most serious and exceptional cases. In determining whether

1

"exceptional circumstances exist, the district court must evaluate both the likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues involved." <u>Id.</u> (internal quotation marks and citations omitted).

In the present case, the Court does not find the required exceptional circumstances. Even if it assumed that Plaintiff is not well versed in the law and that he has made serious allegations which, if proved, would entitle him to relief, his case is not exceptional. Plaintiff alleges an Eighth Amendment claim for excessive force against Defendants Mariscal and Vallejo. The legal issues present in this action are not complex, and Plaintiff has thoroughly set forth his allegations in the complaint. At this early stage in the proceedings, the Court cannot make a determination that Plaintiff is likely to succeed on the merits, and based on a review of the record in this case, the Court does not find that Plaintiff cannot adequately articulate his claims. <u>Id.</u>

For the foregoing reasons, Plaintiff's second motion for the appointment of counsel is HEREBY DENIED, without prejudice.

IT IS SO ORDERED.

Dated: **August 3, 2015**

UNITED STATES MAGISTRATE JUDGE

1. 15