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8   **UNITED STATES DISTRICT COURT**

9   EASTERN DISTRICT OF CALIFORNIA

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11   THURMAN GAINES,   Case No. 1:15-cv-00587-LJO-SAB (PC)

12   Plaintiff,   ORDER DENYING PLAINTIFF'S FOURTH
                                               MOTION FOR APPOINTMENT OF
13   v.   COUNSEL OR GUARDIAN AD LITEM

14   DR. HOROWITZ,   (ECF No. 74)

15   Defendant.

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17   Plaintiff Thurman Gaines is a state prisoner proceeding *pro se* and *in forma pauperis* in this

18   civil rights action pursuant to 42 U.S.C. § 1983.

19   Currently before the Court is Plaintiff's fourth motion for appointment of counsel or

20   guardian ad litem, filed on April 11, 2019. (ECF No. 74.) In support of his request, Plaintiff asserts

21   that, while he has received inmate assistance with all previous and the current filings, he will be

22   unable to receive any inmate assistance in the future. Given that he has a mental health disorder

23   and is mentally disabled, Plaintiff argues that he is unable to articulate his claims clearly in light of

24   the complexity of the legal issues involved in this case. Finally, Plaintiff asserts that, when it comes

25   to the likelihood of success of the merits, his claims must be taken as true in the light most favorable

26   to him, at this point in the proceedings.

27   However, first, Plaintiff does not have a constitutional right to appointed counsel in this

28   action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any

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1 attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1), Mallard v. United States District

2 Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). Nevertheless, in certain

3 exceptional circumstances, the Court may request the voluntary assistance of counsel pursuant to

4 section 1915(e)(1). Rand, 113 F.3d at 1525. Without a reasonable method of securing and

5 compensating counsel, the court will seek volunteer counsel only in the most serious and

6 exceptional cases. In determining whether "exceptional circumstances exist, the district court must

7 evaluate both the likelihood of success on the merits [and] the ability of the [plaintiff] to articulate

8 his claims pro se in light of the complexity of the legal issues involved." Id. (internal quotation

9 marks and citations omitted). "Neither of these considerations is dispositive and instead must be

10 viewed together." Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009).

11 Initially, while the Court has screened Plaintiff's second amended complaint and

12 determined that Plaintiff has alleged a cognizable claim for deliberate indifferent to serious medical

13 need against Defendant Dr. Horowitz, Plaintiff has failed to provide the Court with any evidence

14 establishing that there is a strong likelihood that Plaintiff will succeed on the merits of his deliberate

15 indifference claim. Further, the record reflects that Plaintiff can adequately articulate his claim and

16 the issues raised in this case are not particularly complex. Therefore, the Court fails to find the

17 exceptional circumstances necessary to justify granting a request for voluntary assistance of

18 counsel.

19 Second, Plaintiff requests the appointment of a guardian ad litem pursuant to Federal Rule

20 of Civil Procedure 17(c)(2). Rule 17(c)(2) provides, in relevant part, that: "The court must appoint

21 a guardian ad litem – or issue another appropriate order – to protect a minor or incompetent person

22 who is unrepresented in an action." However, Plaintiff's mental health diagnosis and/or his mental

23 disability do not establish that Plaintiff is incompetent. Since Plaintiff has not demonstrated that

24 he is incompetent, the Court denies Plaintiff's request for appointment of a guardian ad litem.

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1   Accordingly, Plaintiff's fourth motion for appointment of counsel or guardian ad litem,

2   (ECF No. 74), is HEREBY DENIED, without prejudice.

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5   IT IS SO ORDERED.

6   Dated: **April 15, 2019**   _____
                                                                    UNITED STATES MAGISTRATE JUDGE
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