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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 DEVONTE HARRIS,

12 Plaintiff,

13 vs.

14 HUMBERTO GERMAN, et al.,

15 Defendants.  
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**1:15-cv-01462-DAD-GSA-PC**

**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL  
(ECF No. 106.)**

19 On October 29, 2020, Plaintiff filed a motion seeking the appointment of counsel.  
20 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland,  
21 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require an attorney to represent  
22 Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the  
23 Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional  
24 circumstances the Court may request the voluntary assistance of counsel pursuant to section  
25 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

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

3 In the present case, Plaintiff seeks counsel to assist him with trial preparations. He argues  
4 that he will need help selecting a jury, defending against qualified immunity, admitting  
5 documents into evidence, and issuing trial subpoenas. This does not make Plaintiff’s case  
6 exceptional. At this stage of the proceedings, the court cannot find that Plaintiff is likely to  
7 succeed on the merits. While the court has found that “Plaintiff states cognizable claims against  
8 defendants Holguin, German, and Bunitzki for use of excessive force in violation of the Eighth  
9 Amendment, and against defendant Holguin for retaliation in violation of the First Amendment,”  
10 these findings are not a determination that Plaintiff is likely to succeed on the merits. (ECF No.  
11 21 at 14:21-24.) The legal issues in this case --whether defendants used excessive force against  
12 plaintiff and retaliated against him -- are not complex. Moreover, based on a review of the record  
13 in this case, the court finds that plaintiff can adequately articulate his claims. Thus, the court  
14 does not find the required exceptional circumstances, and Plaintiff’s motion shall be denied  
15 without prejudice to renewal of the motion at a later stage of the proceedings.

16 Accordingly, for the foregoing reasons, Plaintiff’s motion for the appointment of counsel  
17 is **HEREBY DENIED**, without prejudice.

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19 **IT IS SO ORDERED.**

20 Dated: **November 19, 2020**

**/s/ Gary S. Austin**  
21 UNITED STATES MAGISTRATE JUDGE  
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