

1 should appoint counsel to represent him because he cannot afford to hire a lawyer, his
2 imprisonment greatly limits his ability to litigate this case, a lawyer would be helpful during the
3 trial process, and Plaintiff was diagnosed with anti-social personality disorder in 1994.

4 First, with regards to Plaintiff's request to have this Court set another settlement
5 conference and require Defendants and a prison representative to negotiate a settlement with
6 Plaintiff, Plaintiff does not have either a constitutional right or a right under California law to
7 settle his case for an amount that he considers to be fair and reasonable. Additionally, Defendants
8 are not bound by any authority cited by Plaintiff to settle this case because Defendants are not
9 insurers and are not otherwise required to settle with Plaintiff. Therefore, the Court denies
10 Plaintiff's request to set a second settlement conference in this case. However, Plaintiff is not
11 precluded from negotiating directly with defense counsel. What is fair and reasonable for
12 settlement purposes is the subject of the parties' settlement negotiations.

13 Second, with regards to Plaintiff's request for appointment of counsel, Plaintiff does not
14 have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520,
15 1525 (9th Cir. 1997), and the court cannot require any attorney to represent Plaintiff pursuant to
16 28 U.S.C. § 1915(e)(1), Mallard v. United States District Court for the Southern District of Iowa,
17 490 U.S. 296, 298 (1989). Nevertheless, in certain exceptional circumstances, the court may
18 request the voluntary assistance of counsel pursuant to § 1915(e)(1). Rand, 113 F.3d at 1525.

19 Without a reasonable method of securing and compensating counsel, the Court will seek
20 volunteer counsel only in the most serious and exceptional cases. In determining whether
21 "exceptional circumstances exist, the district court must evaluate both the likelihood of success
22 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
23 complexity of the legal issues involved." Id. (internal quotation marks and citations omitted).
24 "Neither of these considerations is dispositive and instead must be viewed together." Palmer v.
25 Valdez, 560 F.3d 965, 970 (9th Cir. 2009). The burden of demonstrating exceptional
26 circumstances is on Plaintiff. Id.

27 The Court has considered Plaintiff's request for appointed counsel, but does not find the
28 required exceptional circumstances. Initially, circumstances common to most prisoners, such as

1 lack of legal education, limited law library access, and lack of funds to hire counsel, do not alone
2 establish the exceptional circumstances that would warrant appointment of counsel. Specifically,
3 Plaintiff's apprehension with pursuing this case on his own, while understandable, is not
4 sufficient grounds for appointing counsel. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th
5 Cir. 1986) ("Most actions require development of further facts during litigation and a pro se
6 litigant will seldom be in a position to investigate easily the facts necessary to support the case.").

7 Further, with respect to Plaintiff's claim that his diagnosed mental illness makes this case
8 too complex for him to litigate at this stage of the proceedings, a plaintiff that shows an ability to
9 reasonably articulate his claims is not entitled to appointment of counsel, regardless of whether
10 the plaintiff has mental health problems. See Warren v. Harrison, 244 F. App'x 831, 832 (9th
11 Cir. 2007) (holding that an inmate plaintiff with mental health problems was not entitled to
12 appointment of counsel because the plaintiff demonstrated an ability to articulate his claims *pro*
13 *se*); Miller v. McDaniel, 124 F. App'x 488, 490 (9th Cir. 2005) (holding that an inmate plaintiff
14 with mental health problems was not entitled to appointment of counsel because the plaintiff
15 demonstrated an ability to articulate his claims *pro se*). Here, while Plaintiff has alleged that this
16 case is too complex for him to litigate, the Court finds that Plaintiff's claims do not present novel
17 or complex issues of substantive law and that Plaintiff has demonstrated that he is able to clearly
18 articulate his claims and prosecute this action. Therefore, Plaintiff's request for the appointment
19 of counsel is denied, without prejudice.

20 Accordingly, Plaintiff's motion for a court order requiring Defendants to hold a settlement
21 conference with Plaintiff and for appointment of counsel, (ECF No. 90), is HEREBY DENIED.

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23 IT IS SO ORDERED.

24 Dated: December 4, 2019

25 /s/ Barbara A. McAuliffe
26 UNITED STATES MAGISTRATE JUDGE