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6	UNITED STATES DISTRICT COURT	
7	EASTERN DISTRICT OF CALIFORNIA	
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9	REGINALD RAY YORK,	Case No.: 1:15-cv-01828-DAD-BAM (PC)
10	Plaintiff,	ORDER DENYING PLAINTIFF'S MOTION FOR A COURT ORDER REQUIRING DEFENDANTS TO HOLD A SETTLEMENT CONFERENCE WITH PLAINTIFF AND FOR
11	V.	
12	G. GARCIA, et al.,	APPOINTMENT OF COUNSEL
13	Defendants.	(ECF No. 90)
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15	Plaintiff Reginald Ray York is a state prisoner proceeding pro se in this civil rights action	
16	pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's claims against Defendant	
17	Garcia for excessive force and against Defendant Neighbors for failure to intervene/protect	
18	Plaintiff from the use of force. (ECF No. 81.)	
19	On November 8, 2019, Magistrate Judge Stanley A. Boone conducted a settlement	
20	conference in this case at California State Prison, Corcoran. This case did not settle at that time.	
21	Currently before the Court is Plaintiff's motion for "a court order for the Defendants' and	
22	prison representative to hold a settlement conference hearing with the Plaintiff to negotiate a	
23	settlement based upon the claims in this case and appointment of an attorney[,]" filed on	
24	December 2, 2019. (ECF No. 90.) In his motion, Plaintiff argues that the Court should order	
25	Defendants and a prison representative to hold a settlement conference with the Plaintiff in order	
26	to negotiate a settlement based upon the claims of this case that is fair and reasonable and within	
27	CDCR's insurance policy limits because the settlement offers at the prior settlement conference	
28	were not properly based upon the value of this case. Further, Plaintiff contends that the Court	
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should appoint counsel to represent him because he cannot afford to hire a lawyer, his
 imprisonment greatly limits his ability to litigate this case, a lawyer would be helpful during the
 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.

Second, with regards to Plaintiff's request for appointment of counsel, Plaintiff does not
have a constitutional right to appointed counsel in this action, <u>Rand v. Rowland</u>, 113 F.3d 1520,
1525 (9th Cir. 1997), and the court cannot require any attorney to represent Plaintiff pursuant to
28 U.S.C. § 1915(e)(1), <u>Mallard v. United States District Court for the Southern District of Iowa</u>,
490 U.S. 296, 298 (1989). Nevertheless, in certain exceptional circumstances, the court may
request the voluntary assistance of counsel pursuant to § 1915(e)(1). <u>Rand</u>, 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 circumstances is on Plaintiff. Id. 26

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

lack of legal education, limited law library access, and lack of funds to hire counsel, do not alone
 establish the exceptional circumstances that would warrant appointment of counsel. Specifically,
 Plaintiff's apprehension with pursuing this case on his own, while understandable, is not
 sufficient grounds for appointing counsel. <u>See Wilborn v. Escalderon</u>, 789 F.2d 1328, 1331 (9th
 Cir. 1986) ("Most actions require development of further facts during litigation and a pro se
 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.

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

23 IT IS SO ORDERED.

Dated: **December 4, 2019** 

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Is/ Barbara A. McAulille

UNITED STATES MAGISTRATE JUDGE