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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

9 DELBERT J. SMITH,

10 Plaintiff,

11 v.

12 C. HERNANDEZ, et al.,

13 Defendants.

Case No.: 1:16-cv-01267-DAD-SAB (PC)

ORDER DENYING PLAINTIFF’S MOTION  
FOR APPOINTMENT OF LOCAL CO-  
COUNSEL

(ECF No. 78)

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15 Plaintiff Delbert J. Smith is appearing pro se and in forma pauperis in this civil rights  
16 action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate  
17 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

18 Currently before the Court is Plaintiff’s motion seeking appointment of co-counsel  
19 pursuant to Local Rule 182(h). (ECF No. 78.) Local Rule 182(h) provides that the Court has the  
20 discretion to require an attorney to act as co-counsel with the authority to act as attorney of  
21 record for all purposes. Plaintiff’s request is in reality a request for appointment of counsel as he  
22 is proceeding pro se in this action.

23 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.  
24 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to  
25 represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1), Mallard v. United States District Court for  
26 the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional  
27 circumstances the court may request the voluntary assistance of counsel pursuant to section  
28 1915(e)(1). Rand, 113 F.3d at 1525.

1 Without a reasonable method of securing and compensating counsel, the court will seek  
2 volunteer counsel only in the most serious and exceptional cases. In determining whether  
3 “exceptional circumstances exist, the district court must evaluate both the likelihood of success  
4 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the  
5 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

6 Plaintiff asserts that he has mental health issues and a hand injury that cause him  
7 difficulty in proceeding without assistance in this action. Here, the record reflects that Plaintiff  
8 is able to adequately articulate his claims. The Court has screened his complaint and found that  
9 he has stated claims against Defendants Hernandez, Cramer, and Zuniga for excessive force in  
10 violation of the Eighth Amendment. The claims proceeding in this action are not complex.  
11 Further, Plaintiff’s motion for appointment of counsel clear and articulate.

12 Although the Court found Plaintiff has stated some claims, at this early stage in the  
13 litigation, the Court is unable to find any likelihood of success on the merits. Thus, in the present  
14 case, the Court does not find the required exceptional circumstances to attempt the search for  
15 voluntary counsel to appoint here.

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

18 IT IS SO ORDERED.

19 Dated: October 1, 2018

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22 UNITED STATES MAGISTRATE JUDGE  
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