

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MARK SHANE THOMPSON,)	Case No.: 1:18-cv-00125-NONE-SAB (PC)
Plaintiff,)	ORDER DENYING PLAINTIFF’S SECOND MOTION FOR APPOINTMENT OF COUNSEL, WITHOUT PREJUDICE, AND GRANTING EXTENSION OF TIME TO RESPOND TO OUTSTANDING DISCOVERY REQUESTS (ECF No. 71)
v.)	
A. GOMEZ, et al.,)	
Defendants.)	
)	

Plaintiff Mark Shane Thompson is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s second motion for appointment of counsel, filed October 7, 2020.

Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 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). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525. Without a reasonable method of securing and compensating counsel, the court will seek volunteer counsel only in the most serious and exceptional cases. In determining whether “exceptional circumstances exist, the district court must evaluate both the likelihood of success on the

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

3 In the present case, the Court does not find the required exceptional circumstances. Plaintiff is
4 proceeding on a claim of excessive force and the legal issues present in this action are not complex,
5 and Plaintiff has thoroughly set forth his allegations in the complaint. Even if it assumed that Plaintiff
6 is not well versed in the law and that he has made serious allegations which, if proved, would entitle
7 him to relief, his case is not exceptional. The Court is faced with similar cases almost daily. While
8 the Court recognizes that Plaintiff is at a disadvantage due to his pro se status and his incarceration,
9 the test is not whether Plaintiff would benefit from the appointment of counsel. See Wilborn v.
10 Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most actions require development of further facts
11 during litigation and a pro se litigant will seldom be in a position to investigate easily the facts
12 necessary to support the case.”) The test is whether exception circumstances exist and here, they do
13 not. While a pro se litigant may be better served with the assistance of counsel, so long as a pro se
14 litigant, such as Plaintiff in this instance, is able to “articulate his claims against the relative
15 complexity of the matter,” the “exceptional circumstances” which might require the appointment of
16 counsel do not exist. Rand v. Rowland, 113 F.3d at 1525 (finding no abuse of discretion under 28
17 U.S.C. § 1915(e) when district court denied appointment of counsel despite fact that pro se prisoner
18 “may well have fared better-particularly in the realm of discovery and the securing of expert
19 testimony.”) Accordingly, Plaintiff’s second motion for the appointment of counsel shall be denied,
20 without prejudice. On the basis of good cause, the Court will grant Plaintiff thirty days from the date
21 of service of this order to respond to the discovery requests as directed in the Court’s September 23,
22 2020 order.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Accordingly, it is HEREBY ORDERED that:

1. Plaintiff's second motion for appointment of counsel is denied, without prejudice; and
2. Plaintiff is granted thirty (30) days from the date of service of this order to respond to the discovery requests as directed in the Court's September 23, 2020 order.

IT IS SO ORDERED.

Dated: October 13, 2020


UNITED STATES MAGISTRATE JUDGE