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9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA  
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12 ISAIAH J. PETILLO,

13 Plaintiff,

14 vs.

15 GALLIGER, et al.,

16 Defendants.  
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**1:18-cv-00217-NONE-GSA-PC**

**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL  
(ECF No. 59.)**

19 On December 6, 2021, 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, the court does not find the required exceptional circumstances.  
4 Defendants have filed a motion for summary judgment to dismiss this case based on Plaintiff’s  
5 failure to exhaust administrative remedies, which makes it unlikely that Plaintiff will succeed on  
6 the merits. Plaintiff’s claims for excessive force, failure to protect, and retaliation are not  
7 complex, and a review of the record in this case shows that Plaintiff is responsive, adequately  
8 communicates, and is able to articulate his claims.

9 Accordingly, for the foregoing reasons, Plaintiff’s motion for the appointment of counsel  
10 is HEREBY DENIED, without prejudice.

11 IT IS SO ORDERED.

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13 Dated: December 10, 2021

/s/ Gary S. Austin  
14 UNITED STATES MAGISTRATE JUDGE