

1 exceptional circumstances. . . . A finding of exceptional circumstances requires an
2 evaluation of both “the likelihood of success on the merits [and] the ability of the
3 petitioner to articulate his claims pro se in light of the complexity of the legal issues
4 involved.” Weygandt v. Look, 718 F.2d 952, 954 (9th Cir.1983), *quoted in* Kuster [v.
Block], 773 F.2d [1985] at 1049. Neither of these factors is dispositive and both must be
viewed together before reaching a decision on request of counsel under section 1915(d).3

5 In Wilborn the circuit court found that while plaintiff had demonstrated a likelihood of success on
6 the merits the issues were not complex and, as in most cases, although discovery will undoubtedly
7 be needed to flesh out the facts to be presented at trial, “[m]ost actions require development of
8 further facts during litigation and a pro se litigant will seldom be in a position to investigate easily
9 the facts necessary to support the case. If all that was required to establish successfully the
10 complexity of the relevant issues was a demonstration of the need for development of further
11 facts, practically all cases would involve complex legal issues.”

12 In his motion plaintiff relies on his assertion that he is handicapped by his “mental
13 disability,” and has in the past “made mistake after mistake due to my memory impairment”
14 which will also likely handicap him in his ability to make oral arguments. The court has,
15 however, held hearings in court in which plaintiff has managed quite well to express himself and
16 to make clear what happened to him and why he believes it entitles him to relief. At this point the
17 court cannot, therefore, find the second ground for a determination of exceptional circumstances
18 required by Wilborn for appointment of counsel. See also Villery v. Beard, 2017 WL 2068459 *8
19 (E.D.Cal. 2017).

20 *CONCLUSION*

21 In conclusion, it is further noted that the focus of the case has been narrowed
22 considerably, so the complexity is not great, and plaintiff has demonstrated the ability to reason
23 and articulate sufficient to present his case. In light of these factors IT IS HEREBY ORDERED
24 that: Plaintiff’s Motion to Appoint Counsel is DENIED.

25 **IT IS SO ORDERED.**

26 Dated: September 12, 2017

27 /s/ Gregory G. Hollows
28 UNITED STATES MAGISTRATE JUDGE