

1 counsel, finding, “[t]o date, plaintiff has been able to present his claims in an adequate
2 manner and there are no exceptional circumstances warranting appointment of counsel at this
3 time.” (Id. at 15.)

4 On October 17, 2008, plaintiff filed the instant motion for reconsideration of the
5 Court’s order denying appointment of counsel. Specifically, plaintiff states he is in need of
6 counsel to assist him in this matter because he is “a pre-trial detainee with diminished mental
7 capacity due to severe mental health disorders which include paranoid schizophrenia and
8 bipolar.” (Request for Reconsideration at 1:24-28.) Plaintiff also states he is relying on
9 jailhouse lawyers to assist him with the prosecution of this action, but is concerned that they
10 will not adequately represent his interests. (Id. at 2:27-3:10.) Plaintiff further states that, on
11 August 18, 2008, he was granted leave to represent himself in his criminal proceedings. (Id.
12 at 4:7-9.)

13 As was previously explained to plaintiff, there is no constitutional right to counsel in a
14 civil case such as this. See Lassiter v. Dep’t of Social Services, 452 U.S. 18, 25 (1981).
15 Rather, the decision to request counsel to represent an indigent litigant under 28 U.S.C.
16 § 1915 is within “the sound discretion of the trial court and is granted only in exceptional
17 circumstances.” Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984). A finding of
18 “exceptional circumstances” requires an evaluation of (1) the likelihood of the plaintiff’s
19 success on the merits, and (2) the plaintiff’s ability to articulate his claims pro se in light of
20 the complexity of the legal issues involved. See Agyeman v. Corrections Corp. of America,
21 390 F.3d 1101, 1103 (9th Cir. 2004).

22 Here, as noted, the Court has found that plaintiff’s allegations, when liberally
23 construed, state two cognizable claims, specifically, for the use of excessive force by Deputy
24 Thibodeaux and Deputy Maderos. Until such time as those defendants respond to plaintiff’s
25 allegations, however, the Court cannot evaluate the likelihood of plaintiff’s success on the
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1 merits of said claims.¹ Further, until such time as plaintiff files a second amended complaint,
2 the Court cannot determine the likelihood of plaintiff’s success on the merits with respect to
3 any other claim.

4 Additionally, although plaintiff asserts he is suffering from diminished mental
5 capacity, to date he has been more than able to articulate his claims adequately in light of the
6 complexity of the legal issues involved. Indeed, because the allegations in plaintiff’s FAC
7 were sufficiently detailed and well-pleaded, the Court’s review of such resulted in a
8 seventeen- page order addressing twenty claims for relief. The instant motion for
9 reconsideration likewise is intelligible and well-articulated, as is the request for clarification
10 attached thereto.² While it is conceivable that plaintiff’s ability to litigate this action could be
11 adversely affected by his diminished mental capacity, at this point in the proceedings there is
12 no evidence of any such effect. The Court further notes plaintiff’s statement that
13 approximately three and one-half months ago he was granted leave to proceed in propria
14 persona in his criminal action, a further indication that plaintiff’s mental capacity is not so
15 severely diminished that he is unable to prosecute this action on his own behalf.

16 Accordingly, plaintiff’s motion for reconsideration of the Court’s order denying
17 appointment of counsel is hereby DENIED. Should the circumstances of the case materially
18 change, the Court may reconsider plaintiff’s request for appointment of counsel sua sponte.

19 Plaintiff also seeks “clarification” of the Court’s October 6, 2008 order. Specifically,
20 plaintiff states that in the body of the order the Court indicated it would dismiss claim
21 number 7, “Destruction of Personal Property,” with “leave to amend” (see Order filed Oct. 6,
22 2008, at 13-14), but in the conclusion of the order the Court dismissed such claim “with
23 prejudice” (see id. at 16). Plaintiff is correct. Accordingly, the Court hereby CLARIFIES

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25 ¹As explained in the Court’s previous order, the excessive force claims will not be
26 ordered served until the deadline for plaintiff to file a second amended complaint has passed
or plaintiff has informed the Court that he does not intend to file a second amended
complaint.

27 ²The Court also takes judicial notice that on August 12, 2008, plaintiff filed another
28 civil rights action alleging ongoing constitutional violations at the SRCJ. See Wilkins v.
Ahern, et al., No. C 08-3850 MMC (PR).

