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Jesus Lopez MUNGUIA, ) Civil No. 07cv1016 J (AJB)  
)  
Plaintiff, )  
)  
v. ) **ORDER DENYING MOTION FOR**  
) **APPOINTMENT OF COUNSEL**  
) [Doc. No. 65]  
)  
J. FRIAS, et al., )  
)  
Defendants. )  
)

***Discussion***

“[T]here is no absolute right to counsel in civil proceedings.” *Hedges v. Resolution Trust Corp.* (*In re Hedges*), 32 F.3d 1360, 1363 (9th Cir. 1994) (citation omitted). Thus, federal courts do not have the authority “to make coercive appointments of counsel.” *Mallard v. United States District Court for Southern District of Iowa*, 490 U.S. 296, 310 (1989); *see also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995). Districts courts have discretion, however, pursuant to 28

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1 U.S.C. § 1915(e)(1), to “request” that an attorney represent indigent civil litigants upon a showing of  
2 exceptional circumstances. *See Mallard*, 490 U.S. at 300-301 (U.S. 1989); *Terrell v. Brewer*, 935 F.2d  
3 1015, 1017 (9th Cir. 1991); *Burns v. County of King*, 883 F.2d 819, 823 (9th Cir. 1989). “A finding of  
4 exceptional circumstances requires an evaluation of both the ‘likelihood of success on the merits and the  
5 ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues  
6 involved.’ Neither of these issues is dispositive and both must be viewed together before reaching a  
7 decision.” *Id.* (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

8 Plaintiff argues that he is entitled to an appointment of counsel on the grounds that (1) Plaintiff is  
9 unable to afford counsel; (2) Plaintiff’s ability to litigate is greatly limited by his imprisonment; (3)  
10 Plaintiff’s case involves complex issues; (4) counsel would better enable Plaintiff to present evidence  
11 and cross examine witnesses; and (5) Plaintiff has made repeated fruitless attempts to retain an attorney.

12 As to the Plaintiff’s first ground for appointment of counsel, the Court accepts that Plaintiff, who  
13 is proceeding *in forma pauperis*, is unable to afford an attorney. However, the Plaintiff’s ability to  
14 afford counsel is a threshold question. In order to be eligible for a judicial request for counsel under 28  
15 U.S.C. § 1915(e)(1), a plaintiff must demonstrate both indigence *and* the existence of exceptional  
16 circumstances, *see Terrell*, 935 F.2d at 1017, and the Plaintiff has failed to show the latter.

17 With regard to the Plaintiff’s second ground, the Plaintiff has adequately litigated his claims  
18 before this court despite his continued imprisonment. Specifically, Plaintiff claims his limited access to  
19 the prison law library has impaired his ability to litigate his claims. However, despite this limited  
20 access, Plaintiff has shown himself capable of articulating with sufficient clarity his claims and  
21 arguments and supporting those with statutory and case law. “[T]he Constitution requires that certain  
22 minimum standards be met; it does not require the maximum or even optimal level of access.” *Wood v.*  
23 *Housewright*, 900 F.2d 1332, 1335 (9th Cir. 1990) (quoting *Sands v. Lewis*, 886 F.2d 1166, 1169 (9th  
24 Cir. 1989)) (holding that prisoner in administrative segregation’s access to law books, though limited,  
25 was constitutionally adequate).

26 As a third ground for requiring an appointment of counsel, Plaintiff argues that his case involves  
27 complex issues. However, Plaintiff has failed to demonstrate that his claims involve either factual or  
28 legal issues of sufficient complexity to warrant a request for counsel. *See Terrell*, 935 F.2d at 1017.

1 Plaintiff has demonstrated his ability to adequately and articulately litigate his claims without the  
2 assistance of judicially appointed counsel. *See La Mere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987)  
3 (concluding that petitioner had a good understanding of the issues involved and denying motion for  
4 appointment of counsel).

5 In Plaintiff's fourth ground, he argues that counsel would "better enable" him to present evidence  
6 and cross examine witnesses. When determining whether to request counsel on behalf of an indigent  
7 plaintiff, the relevant consideration is not one of convenience. *See Knaubert v. Goldsmith*, 791 F.2d  
8 722, 729 (9th Cir. 1986) ("the additional assistance provided by attorneys, while significant, is not  
9 compelling") (italics omitted). Rather, the court must determine whether exceptional circumstances  
10 exist so as to necessitate an appointment of counsel. Although Plaintiff has demonstrated the possibility  
11 of success on the merits, this factor alone is not dispositive of whether the Court should request counsel  
12 for Plaintiff. *See Terrell*, 935 F.2d at 1017. The Court must also consider whether Plaintiff has the  
13 ability "to articulate his claims *pro se* in light of the complexity of the legal issues involved," *Id.*  
14 Plaintiff has demonstrated that he has the ability to set forth the factual and legal bases for his claims in  
15 a straightforward and intelligent manner with sufficient clarity to allow them to be addressed on their  
16 merits. The Plaintiff's legal claims, and the factual basis for those claims in this case, are not so  
17 complex as to require the appointment of counsel. *See Hedges*, 32 F.3d at 1363. Accordingly, the Court  
18 finds no "exceptional circumstances" to warrant a judicial request for counsel pursuant to 28 U.S.C. §  
19 1915(e)(1).

20 Finally, the Plaintiff's failure to locate an attorney on his own is not a proper factor for the Court  
21 to consider in determining whether to request counsel. If exceptional circumstances exist, then the  
22 Court may assume the responsibility of requesting counsel for a plaintiff. 28 U.S.C. § 1915(e)(1);  
23 *Mallard*, 490 U.S. at 300-301. However, if the Court concludes that no exceptional circumstances exist  
24 so as to warrant a request for counsel, then Plaintiff is not unduly prejudiced by failing to retain an  
25 attorney on his own. *See Knaubert*, 791 F.2d at 728-729.

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1 *Conclusion*

2 Based upon the foregoing, the Court finds the Plaintiff has failed to demonstrate that exceptional  
3 circumstances exist so as to justify a judicial request for counsel pursuant to 28 U.S.C. § 1915(e)(1).  
4 Accordingly, the Plaintiff's motion for appointment of counsel is hereby DENIED.

5 IT IS SO ORDERED.

6  
7 DATED: August 12, 2009

8   
9 Hon. Anthony J. Battaglia  
10 U.S. Magistrate Judge  
11 United States District Court  
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