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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DAVY KELVIN POUGH

Plaintiff,

vs.

ALMAGER, V.M.; et al.,

Defendants.

CASE NO. 08cv1498 JM(RBB)

ORDER DENYING SECOND
MOTION FOR APPOINTMENT OF
COUNSEL


On or about April 8, 2009 Plaintiff filed a second Motion for Appointment of Counsel (“Motion”) to assist him in prosecuting his civil rights action brought pursuant to 42 U.S.C. §1983. On February 3, 2009 the court denied Plaintiff’s first request for appointment of counsel on the ground that such appointment was not warranted by the interests of justice. Plaintiff now renews his motion for appointment of counsel, arguing that he is taking antidepressant medication and therefore appointment of counsel is warranted. The court denies Plaintiff’s motion for appointment of counsel.

The Constitution provides no right to appointment of counsel in a civil case. See Lassiter v. Dept. of Social Services, 452 U.S. 18, 25 (1981). Under 28 U.S.C. § 1915(e)(1), however, district courts are granted discretion to appoint counsel for indigent persons under “exceptional circumstances.” Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). “A finding of exceptional circumstances requires an evaluation of both the ‘likelihood of success on the merits and the ability of the plaintiff to articulate [his or her] claims pro se in light of the complexity of the legal issues involved.’ Neither of these issues is dispositive and both must be viewed together before reaching a decision.” Id. (quoting Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)).

1 Here, upon review of the documents submitted by Plaintiff, including the Third Amended
2 Complaint, it appears that Plaintiff has a sufficient grasp of his case, the legal issues involved, and is
3 able to adequately articulate the basis of his complaint. The complaint adequately sets forth a factual
4 basis for his claims. Further, the documents filed by Plaintiff are articulate, coherent, and demonstrate
5 a fundamental understanding of the issues. The fact that Plaintiff is taking antidepressant medications
6 does not alter this court's determinations. Plaintiff fails to establish that his mental condition is such
7 that he is incapable or even severely handicapped in prosecuting this action in propria persona. Under
8 these circumstances, the Court denies Plaintiff's second request for appointment of counsel because
9 it is not warranted by the interests of justice. LaMere v. Risley, 827 F.2d 622, 626 (9th Cir. 1987).

10 **IT IS SO ORDERED.**

11 DATED: May 4, 2009

12 
13 Hon. Jeffrey T. Miller
United States District Judge

14 cc: All Parties

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