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

THOMAS A. MOORE,
BOP #03998-298,

Plaintiff,

vs.

ROBERT E. McFADDEN, et al.,

Defendants.

Civil No. 09cv0771 JAH (CAB)

**ORDER DENYING PLAINTIFF’S
EX PARTE MOTION FOR
APPOINTMENT OF COUNSEL
PURSUANT TO
28 U.S.C. § 1915(e)(1)**

[Doc. No. 11]

Plaintiff, Thomas A. Moore, an inmate currently incarcerated at the Federal Correctional Institution located in Butner, North Carolina and proceeding pro se, has filed a civil rights action pursuant to *Bivens v. Six Unknown Named Fed. Narcotics Agents*, 403 U.S. 388 (1971). Plaintiff requests appointment of counsel because “the issues involved in this case are complex, and will require significant research and investigation.” (Pl.’s Mot. at 1.) “[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).

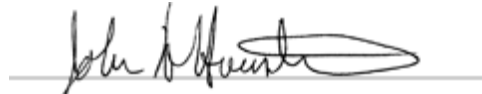
“Title 28 U.S.C. § 1915(e)(1) permits the district court, in its discretion, to ‘request an attorney to represent any person unable to afford counsel.’” *Solis v. County of Los Angeles*, 514 F.3d 946, 958 (9th Cir. 2008) (quoting 28 U.S.C. § 1915(e)(1)). Such discretion may be

1 exercised upon a showing of exceptional circumstances. *See Terrell v. Brewer*, 935 F.2d 1015,
2 1017 (9th Cir. 1991); *Burns v. County of King*, 883 F.2d 819, 823 (9th Cir. 1989). “To show
3 exceptional circumstances the litigant must demonstrate the likelihood of success and complexity
4 of the legal issues involved.” *Burns*, 883 F.2d at 823 (citation omitted). Neither the likelihood
5 of success nor the complexity of the case are dispositive; both must be considered. *Terrell*, 935
6 F.2d at 1017.

7 Here, it appears that at this stage of the proceedings, Plaintiff has a sufficient grasp of his
8 case, the legal issues involved, and is able to adequately articulate the factual basis of his claims.
9 Under these circumstances, the Court DENIES Plaintiff’s Motion for Appointment of Counsel
10 [Doc. No. 11] without prejudice at this time.

11 **IT IS SO ORDERED.**

12 DATED: August 7, 2009

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14 JOHN A. HOUSTON
15 United States District Judge
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