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28UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIAANTHONY WAYNE JOHNSON, JR.,  
Plaintiff,  
v.  
M. GAINS *et al.*,  
Defendants.

Civil No. 09cv1312-LAB (POR)

**ORDER DENYING PLAINTIFF'S  
MOTION TO INTERVENE AND  
PLAINTIFF'S REQUEST FOR  
APPOINTMENT OF COUNSEL****(Doc. No. 29.)**

Plaintiff, currently incarcerated at Salinas Valley State Prison, is proceeding *pro se* and *in forma pauperis* with a civil rights Complaint filed pursuant to 42 U.S.C. § 1983. On April 19, 2010, Plaintiff filed a “Motion of Intervention and Request for Appointment of Counsel.” [Doc. 29.] Plaintiff argues that the U.S. Treasury Department must intervene in this case, because “due to the large sum of money that he seeks, monitoring of Defendants’ finances is necessary so that Defendants will not try to hide their assets.” *Id.* at 1. In addition, Plaintiff requests the appointment of counsel. *Id.* For the reasons set forth below, the Court **DENIES** Plaintiff’s motion as to both (1) intervention and (2) appointment of counsel.

**I. INTERVENTION**

Federal Rule of Civil Procedure 24 provides, in relevant part, that:

On timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.

1 Fed. R. Civ. P. 24(a)(2). Thus, a motion to intervene must be brought by the party “claim[ing] an  
2 interest relating to the property or transaction.” Id. Accordingly, even if the U.S. Treasury  
3 Department has such an interest, the Treasury Department must bring its own motion, and  
4 affirmatively claim this interest in the action, in order to intervene as a matter of right. Id.  
5 However, in this case, the Treasury Department does not seek to intervene. Rather, Plaintiff seeks to  
6 compel intervention by filing a motion on behalf of the Treasury Department. As Rule 24 does not  
7 empower a court to compel the intervention of a party who has not requested to intervene in the  
8 action, Plaintiff’s Motion to Intervene is hereby **DENIED**.

## 9 **II. APPOINTMENT OF COUNSEL**

10 Generally, “there is no absolute right to counsel in civil proceedings.” Hedges v. Resolution  
11 Trust Corp. (In re Hedges), 32 F.3d 1360, 1363 (9th Cir. 1994) (citation omitted). Thus, federal  
12 courts do not have the authority “to make coercive appointments of counsel.” Mallard v. United  
13 States District Court, 490 U.S. 296, 310 (1989); see also United States v. \$292,888.04 in U.S.  
14 Currency, 54 F.3d 564, 569 (9th Cir. 1995).

15 Districts courts have discretion, however, pursuant to 28 U.S.C. § 1915(e)(1), to “request”  
16 that an attorney represent indigent civil litigants upon a showing of exceptional circumstances. See  
17 Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Burns v. County of King, 883 F.2d 819, 823  
18 (9th Cir. 1989). “A finding of exceptional circumstances requires an evaluation of both the  
19 ‘likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in  
20 light of the complexity of the legal issues involved.’ Neither of these issues is dispositive and both  
21 must be viewed together before reaching a decision.” Id. (quoting Wilborn v. Escalderon, 789 F.2d  
22 1328, 1331 (9th Cir. 1986)).

23 Plaintiff requests the appointment of counsel because “he is very likely to succeed on the  
24 merits” [Doc. 29 at 1], but fails to demonstrate the requisite exceptional circumstances under Terrell  
25 v. Brewer. 935 F.2d at 1017. Specifically, upon a review of the pleadings, the Court finds that  
26 Plaintiff has adequately prosecuted his lawsuit. The Third Amended Complaint survived the initial  
27 screening provisions of 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and Plaintiff served the Complaint  
28 on all named Defendants. Furthermore, Plaintiff filed an Opposition to Defendants’ Motion to

1 Dismiss in advance of the deadline, addressing each of Defendants' arguments under clearly  
2 delineated headings. [Doc. 42.] At present, without further court order, no further briefing is  
3 required of Plaintiff. In light of the foregoing, the Court **DENIES** without prejudice Plaintiff's  
4 Motion for Appointment of Counsel.

5 **IT IS SO ORDERED.**

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7 DATED: August 25, 2010

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10 LOUISA S PORTER  
11 United States Magistrate Judge

12 cc The Honorable Larry A. Burns  
13 All parties

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