

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 JUSTIN THOMAS MILLER,  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiff,  
  
vs.  
  
JOHN LAMONTAGNE, Factory  
Superintendent; RICHARD O  
BUTCHER, Medical Doctor; JOSE E  
OTERO, Medical Doctor; and DAVID G  
SMITH, Medical Doctor,  
  
Defendants.

CASE NO. 10-CV-702-WQH  
(BGS)

**ORDER:**  
**(1) DENYING PLAINTIFF'S**  
**MOTION TO APPOINT**  
**COUNSEL**  
**&**  
**(2) EXTENDING TIME FOR**  
**SERVICE BY 60 DAYS**

On July 7, 2010, Plaintiff Justin Thomas Miller, a prisoner proceeding *pro se* in this civil rights action filed pursuant to 42 U.S.C. §1983, filed a motion to appoint counsel. (Doc. No. 17.) This is Plaintiff's second request to appoint counsel. (*See* Doc. No. 3.) On May 10, 2010, the Court denied Plaintiff's first request. (Doc. No. 7.) For the reasons set forth below, the Court DENIES WITHOUT PREJUDICE Plaintiff's current motion for appointment of counsel.

Plaintiff requests appointment of counsel because he is incarcerated and is unable to provide the U.S. Marshals Service with the home addresses of the Defendants. (Doc. No. 17.) After attempting to serve all four Defendants at the address for Richard J. Donovan Correctional Facility, summons were returned unexecuted, as the litigation coordinator for

1 Richard J. Donovan Correctional Facility indicated that none of the Defendants were employed  
2 at the facility. (*See* Doc. Nos. 9-12.) On July 2, 2010, summons were returned executed as  
3 to Defendants Richard O. Butcher and Jose E. Otero. (Doc. Nos. 15-16.) Two of the four  
4 named Defendants in this case have therefore been served with the complaint.

5 “There is no constitutional right to appointed counsel in a § 1983 action.” *Rand v.*  
6 *Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (*citing* *Storseth v. Spellman*, 654 F.2d 1349,  
7 1353 (9th Cir. 1981)); *see also* *Hedges v. Resolution Trust Corp. (In re Hedges)*, 32 F.3d 1360,  
8 1363 (9th Cir. 1994) (“[T]here is no absolute right to counsel in civil proceedings.”) (citation  
9 omitted). Thus, federal courts do not have the authority “to make coercive appointments of  
10 counsel.” *Mallard v. United States District Court*, 490 U.S. 296, 310 (1989); *see also* *United*  
11 *States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995).

12 Districts courts have discretion, however, pursuant to 28 U.S.C. § 1915(e)(1), to  
13 “request” that an attorney represent indigent civil litigants upon a showing of “exceptional  
14 circumstances.” *See* *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir.  
15 2004); *Rand*, 113 F.3d at 1525. “A finding of the exceptional circumstances of the plaintiff  
16 seeking assistance requires at least an evaluation of the likelihood of the plaintiff’s success on  
17 the merits and an evaluation of the plaintiff’s ability to articulate his claims ‘in light of the  
18 complexity of the legal issues involved.’” *Agyeman*, 390 F.3d at 1103 (*quoting* *Wilborn v.*  
19 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)); *see also* *Terrell v. Brewer*, 935 F.2d 1015,  
20 1017 (9th Cir. 1991).

21 The Court denies Plaintiff’s request without prejudice, as neither the interests of justice  
22 nor exceptional circumstances warrant appointment of counsel at this time. *LaMere v. Risley*,  
23 827 F.2d 622, 626 (9th Cir. 1987); *Terrell*, 935 F.2d at 1017. The Court previously denied  
24 Plaintiff’s request and nothing has substantially changed in this case since that time to change  
25 the Court’s analysis. Plaintiff has thus far been able to articulate his claims, as the Court  
26 found that Plaintiff’s complaint contains allegations sufficient to survive the sua sponte  
27 screening required by 28 U.S.C. §§1915(e)(2) and 1915A(b). (*See* Doc. No. 7 at 4.)  
28 Additionally, Plaintiff has been able to serve two of the four named defendants with a

1 summons and complaint after the initial summons to these defendants were returned  
2 unexecuted. It is Plaintiff's responsibility to identify and locate defendants. The Court finds  
3 that Plaintiff's difficulty in locating and serving defendants *pro se* is not based on the  
4 complexity of the legal issues involved but rather on the general difficulty of litigating *pro se*.  
5 *See Wilborn v. Escalderon*, 789 F.3d 1328, 1331 (9th Cir. 1986) (noting that, "If all that was  
6 required to establish successfully the complexity of the relevant issues was a demonstration  
7 of the need for development of further facts, practically all cases would involve complex legal  
8 issues.").

9 In light of Plaintiff's difficulties in serving defendants, the Court, pursuant to Fed. R.  
10 Civ. Pro. 4(m), will extend the time for service of the summons and complaint. Plaintiff's  
11 complaint was filed on April 1, 2010. (Doc. No. 1.) Therefore, the 120 days for service under  
12 Rule 4(m) expired on July 30, 2010. Plaintiff shall have an additional sixty (60) days from the  
13 date of this order to attempt to successfully serve Defendants Lamontagne and Smith.

14 **IT IS SO ORDERED.**

15 DATED: August 2, 2010

16   
17 **BERNARD G. SKOMAL**  
18 United States Magistrate Judge  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28