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

HOANG MINH TRAN,
CDCR # AA-5994

Plaintiff,

vs.

WILLIAM GORE; SHARLA EVERT;
DAVID M. GILL; SIMON HERNANDEZ;
CARL BREWER; GEORGE DOWNS;
JEFFREY DUNTRA; DANIEL CRUZ;
CHRISTINE FIERRO; MELISSA GARCIA;
STEPHEN WINSON; OMAR ORTEGA,

Defendants.

Civil 10cv1323 BTM (WMC)
No.

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL
WITHOUT PREJUDICE**

Plaintiff, a state inmate currently incarcerated at California Men’s Colony in San Luis Obispo, California, and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff’s second Motion for Appointment of Counsel [Doc. No. 8].

I. MOTION FOR APPOINTMENT OF COUNSEL [Doc. No. 8]

Plaintiff requests the appointment of counsel to assist him in prosecuting this civil action. The Constitution provides no right to appointment of counsel in a civil case, however, unless an indigent litigant may lose his physical liberty if he loses the litigation. *Lassiter v. Dept. of Social Services*, 452 U.S. 18, 25 (1981). Nonetheless, under 28 U.S.C. § 1915(e)(1), district courts are

1 granted discretion to appoint counsel for indigent persons. This discretion may be exercised
2 only under “exceptional circumstances.” *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).
3 “A finding of exceptional circumstances requires an evaluation of both the ‘likelihood of success
4 on the merits and the ability of the plaintiff to articulate his claims pro se in light of the
5 complexity of the legal issues involved.’ Neither of these issues is dispositive and both must be
6 viewed together before reaching a decision.” *Id.* (quoting *Wilborn v. Escalderon*, 789 F.2d
7 1328, 1331 (9th Cir. 1986)).

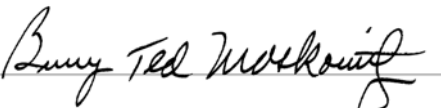
8 The Court denies Plaintiff’s request without prejudice, as neither the interests of justice
9 nor exceptional circumstances warrant appointment of counsel at this time. *LaMere v. Risley*,
10 827 F.2d 622, 626 (9th Cir. 1987); *Terrell*, 935 F.2d at 1017.

11 **II. CONCLUSION AND ORDER**

12 Good cause appearing, **IT IS HEREBY ORDERED:**

13 Plaintiff’s Motion for Appointment of Counsel [Doc. No. 8] is **DENIED** without
14 prejudice.

15 DATED: November 12, 2010

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18 Honorable Barry Ted Moskowitz
United States District Judge

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