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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM CECIL THORNTON,	)	Civil No. 10cv01583 BTM (RBB)
	)	
Plaintiff,	)	<b>ORDER DENYING PLAINTIFF'S</b>
	)	<b>SECOND REQUEST FOR APPOINTMENT</b>
v.	)	<b>OF COUNSEL OR, ALTERNATIVELY,</b>
	)	<b>MOTION FOR RECONSIDERATION</b>
	)	<b>[ECF NO. 28]</b>
	)	
ARNOLD SCHWARZENEGGER, Governor	)	
of California; MATTHEW CATE,	)	
Secretary of Corrections; JOHN	)	
DOE LEWIS, Parole Unit	)	
Supervisor; MARK JOSEPH, Parole	)	
Agent; CHRISTINE CAVALIN,	)	
Parole Agent; JOHN DOE #1,	)	
Parole Agent,	)	
	)	
Defendants.	)	
	)	

Plaintiff William Cecil Thornton, a state prisoner proceeding pro se and in forma pauperis, filed a Complaint on July 28, 2010, pursuant to 42 U.S.C. § 1983 [ECF Nos. 1, 5]. In count one, Thornton alleges that his constitutional rights to due process, freedom of association, and to be free from cruel and unusual punishment were violated when he was not allowed to live with his wife in their home after being released on parole. (Compl. 3, ECF No. 1.) In count two, Plaintiff argues that his rights to be free

1 from cruel and unusual punishment, to due process, and his  
2 "interest of liberty" were violated when Plaintiff was assigned to  
3 a sex offender parole unit in California based on his out-of-state  
4 criminal record. (Id. at 4.) Finally, in count three, Thornton  
5 alleges his right to equal protection of the laws was violated  
6 because he was discriminated against. (Id. at 4-5.) Specifically,  
7 he complains that he was "banished" from moving back in with his  
8 wife in their home because he was "told it was not in[]compliance  
9 with Proposition 83 or California Penal Code § 3003.5." (Id. at 5  
10 (citation omitted).) But another sex offender assigned to the same  
11 parole unit started an intimate relationship with Thornton's wife  
12 and was permitted to move into the same home with her, even though  
13 Plaintiff was prohibited from doing so. (Id.)

14 On November 12, 2010, Plaintiff filed his second request for  
15 court-appointed counsel. (Pl.'s Second Req. Appointment Counsel 1-  
16 2, ECF No. 28.) His first request for appointed counsel was filed  
17 on August 25, 2010. (Mot. Appointment Counsel 1-3, ECF No. 7.)  
18 The Court, on October 4, 2010, denied Plaintiff's motion [ECF No.  
19 16]. Thornton's second request for appointed counsel should have  
20 been brought as a motion for reconsideration of the Court's order  
21 denying Plaintiff appointed counsel. See S.D. Cal. Civ. L.R.  
22 7.1(i)(1).

### 23 I. DISCUSSION

24 28 U.S.C. § 1915(e)(1) provides, "The court may request an  
25 attorney to represent any person unable to afford counsel." 28  
26 U.S.C.A. § 1915(e)(1) (West 2010). But "it is well-established  
27 that there is generally no constitutional right to counsel in  
28 civil cases." United States v. Sardone, 94 F.3d 1233, 1236 (9th  
Cir. 1996) (citing Hedges v. Resolution Trust Corp., 32 F.3d 1360,

1 1363 (9th Cir. 1994)). There is also no constitutional right to a  
2 court-appointed attorney in § 1983 claims. Rand v. Rowland, 113  
3 F.3d 1520, 1525 (9th Cir. 1997) (citing Storseth v. Spellman, 654  
4 F.2d 1349, 1353 (9th Cir. 1981)); accord Campbell v. Burt, 141 F.3d  
5 927, 931 (9th Cir. 1998). Federal courts do not have the authority  
6 "to make coercive appointments of counsel." Mallard v. United  
7 States Dist. Ct., 490 U.S. 296, 310 (1989) (discussing § 1915(d));  
8 see also United States v. \$292,888.04 in U.S. Currency, 54 F.3d  
9 564, 569 (9th Cir. 1995).

10 Nevertheless, district courts have discretion, pursuant to 28  
11 U.S.C. § 1915(e)(1), to request attorney representation for  
12 indigent civil litigants upon a showing of exceptional  
13 circumstances. See Agyeman v. Corrs. Corp. of Am., 390 F.3d 1101,  
14 1103 (9th Cir. 2004) (citing Franklin v. Murphy, 745 F.2d 1221,  
15 1236 (9th Cir. 1984)); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th  
16 Cir. 1991); Burns v. County of King, 883 F.2d 819, 824 (9th Cir.  
17 1989) ("Appointment of counsel in civil matters in the Ninth  
18 Circuit is restricted to 'exceptional circumstances'" (quotation  
19 omitted). "A finding of the exceptional circumstances of the  
20 plaintiff seeking assistance requires at least an evaluation of the  
21 likelihood of the plaintiff's success on the merits and an  
22 evaluation of the plaintiff's ability to articulate his claims 'in  
23 light of the complexity of the legal issues involved.'" Agyeman,  
24 390 F.3d at 1103 (quoting Wilborn v. Escalderon, 789 F.2d 1328,  
25 1331 (9th Cir. 1986)). "Neither of these factors is dispositive  
26 and both must be viewed together before reaching a decision.'" Terrell,  
27 935 F.2d at 1017 (quoting Wilborn, 789 F.2d at 1331).

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1 **A. Plaintiff's First Motion for Appointment of Counsel**

2 On August 25, 2010, Thornton filed a Motion for Appointment of  
3 Counsel [ECF No. 7]. In support of his request, Plaintiff asserted  
4 the following: (1) He is unable to afford an attorney; (2) his  
5 imprisonment limits his ability to litigate; (3) the issues in this  
6 case are complex and require significant research; (4) Thornton has  
7 limited law library access and knowledge of the law; and (5) a  
8 trial will likely involve conflicting testimony and legal issues.  
9 (Mot. Appointment Counsel 2-3, ECF No. 7.) On October 4, 2010,  
10 this Court issued an Order Denying Plaintiff's Motion for  
11 Appointment of Counsel [ECF No. 16]. The Court stated that  
12 Thornton "failed to demonstrate either a likelihood of success on  
13 the merits or an inability to represent himself (beyond the  
14 ordinary burdens encountered by prisoners representing themselves  
15 pro se) . . . ." (Order Den. Pl.'s Mot. Appointment Counsel 10,  
16 ECF No. 16.)

17 On November 1, 2010, Thornton filed a notice of appeal of the  
18 denial of his request for appointment of counsel [ECF No. 25]. The  
19 notice of appeal was received by the Clerk of Court for the Ninth  
20 Circuit and was assigned docket number 10-56733 [ECF No. 26]. The  
21 Ninth Circuit issued a Time Schedule Order that same day [ECF No.  
22 27]. On November 12, 2010, while his appeal was pending, Plaintiff  
23 filed his Second Request for Appointment of Counsel with the  
24 district court [ECF No. 28].

25 Then, on December 9, 2010, Thornton filed with this Court an  
26 Ex Parte Application to Stay Proceedings Until Ninth Circuit Ruling  
27 on Denial of Appointment of Counsel [ECF No. 40]. On December 10,  
28 2010, the Ninth Circuit dismissed the appeal for lack of

1 jurisdiction, stating that a denial of appointment of counsel in  
2 civil cases is not appealable. Thornton v. Schwarzenegger, No. 10-  
3 56733 (9th Cir. Dec. 10, 2010) (order) (citing 28 U.S.C. § 1291  
4 (West 2010); Wilborn, 789 F.2d 1328) [ECF No. 41]. That same day,  
5 this Court issued an Order denying as moot Plaintiff's request to  
6 stay the proceedings. (Mins., Dec. 10, 2010, ECF No. 42.)

7 **B. Plaintiff's Second Motion for Appointment of Counsel**

8 In support of his second request for court-appointed counsel,  
9 filed on November 12, 2010, Plaintiff asserts the following: (1)  
10 He is unable to afford an attorney; (2) his imprisonment limits his  
11 ability to litigate; (3) the issues in this case are complex and  
12 require significant research; (4) Thornton has restricted ability  
13 to make photocopies and access legal material in the law library,  
14 and he has limited knowledge of the law; (5) Plaintiff has  
15 attempted but failed to secure counsel; and (6) a trial will likely  
16 involve conflicting testimony and legal issues. (Pl.'s Second Req.  
17 Appointment Counsel 1-2, ECF No. 28.) Thornton lists the names of  
18 attorneys and agencies he contacted in an attempt to obtain  
19 counsel, and he attaches to his Motion two replies he received in  
20 response. (Id. at 2.)

21 Liberally construing Thornton's pleading, as required by  
22 Estelle v. Gamble, 429 U.S. 97, 106 (1976), the Court finds that  
23 the motion Plaintiff filed on November 12, 2010, is more properly  
24 construed as a Motion for Reconsideration of the Court's October 4,  
25 2010 Order Denying Plaintiff's Motion for Appointment of Counsel  
26 [ECF No. 16]. Motions or applications for reconsideration of prior  
27 orders are brought pursuant to Civil Local Rule 7.1(i). S.D. Cal.  
28 Civ. L.R. 7.1(i). In an application for reconsideration, a party

1 seeking the same relief as that previously denied must set forth  
2 "(1) when and to what judge the [prior] application was made, (2)  
3 what ruling or decision or order was made thereon, and (3) what new  
4 or different facts and circumstances are claimed to exist which did  
5 not exist, or were not shown, upon such prior application." Id. at  
6 7.1(i)(1). Further, any motion for reconsideration must be filed  
7 within twenty-eight days after the prior order was entered. Id. at  
8 7.1(i)(2).

9 Here, Thornton seeks the same relief (court-appointed counsel)  
10 as that previously denied. (Mot. Appointment Counsel 2-3, ECF No.  
11 7; Order Den. Pl.'s Mot. Appointment Counsel 10, ECF No. 16; Pl.'s  
12 Second Req. Appointment Counsel 1-2, ECF No. 28.) Plaintiff has  
13 not complied with the first two requirements of Civil Local Rule  
14 7.1(i)(1), and his Motion may be denied on this basis. S.D. Cal.  
15 Civ. L.R. 7.1(i)(1) (requiring that the movant state when the prior  
16 application was made and what the ruling was), S.D. Cal. Civ. L.R.  
17 41.1(b) (stating that a litigant's failure to follow a district  
18 court's local rules is a proper ground for dismissal). Moreover,  
19 Plaintiff did not file his second request for counsel until  
20 November 12, 2010, which is more than twenty-eight days after the  
21 October 4, 2010 Order. See id. at 7.1(i)(2), 41.1(b). Even if the  
22 Court ignores the defects in Plaintiff's request, he has not  
23 demonstrated that the Court's prior order should be different.

24 Thornton does not expressly state what "new or different facts  
25 and circumstances" exist now that did not exist when he filed his  
26 first Motion for Appointment of Counsel. (See Pl.'s Second Req.  
27 Appointment Counsel 1-3, ECF No. 28.) Nor does he express how such  
28 facts would change the Court's decision that there are no

1 exceptional circumstances that warrant appointing an attorney to  
2 represent him. (See id.); S.D. Cal. Civ. L.R. 7.1(i)(1). In fact,  
3 Thornton makes essentially the same arguments in his second request  
4 for court-appointed counsel as he did in the first request.  
5 (Compare Mot. Appointment Counsel 2-3, ECF No. 7 (arguing he cannot  
6 afford counsel, his imprisonment hinders his ability to litigate,  
7 the issues are complex, his access to legal material is limited,  
8 and a trial would involve conflicting testimony), with Pl.'s Second  
9 Req. Appointment Counsel 1-2, ECF No. 28 (stating he cannot afford  
10 an attorney, his imprisonment limits his ability to litigate, the  
11 issues are complex, his access to legal material and to  
12 photocopying is restricted, he has tried to secure counsel, and a  
13 trial would involve conflicting testimony).)

14       The only different fact and circumstance Plaintiff alleges is  
15 that he has "attempted to contact different attorneys to represent  
16 him in this matter and has only received repl[ie]s which stated  
17 they could not help him." (Pl.'s Second Req. Appointment Counsel  
18 2, ECF No. 28). To that end, Thornton lists twelve individuals or  
19 entities that he contacted, and he includes the two responses he  
20 received. (Id. at 2, 5-8.) The law firm Rosen, Bien, and Galvan,  
21 LLP, explained in its letter to Plaintiff that the lawyers could  
22 not assist him because they were not taking new cases brought by  
23 prisoners. (Id. at 6.) Similarly, Federal Defenders of San Diego,  
24 Inc. wrote to Thornton that its office does not represent prisoners  
25 on civil complaints. (Id. at 8.)

26       Courts have required that plaintiffs demonstrate they are  
27 indigent and that they have made a reasonably diligent effort to  
28 secure counsel before they are eligible for an appointed attorney.

1 Bailey v. Lawford, 835 F. Supp. 550, 552 (S.D. Cal. Oct. 25, 1993);  
2 see also Verble v. United States, No. 07cv0472 BEN (BLM), 2008 U.S.  
3 Dist. LEXIS 107867, at \*5 (S.D. Cal. May 22, 2008). But even after  
4 a plaintiff satisfies the two initial requirements of indigence and  
5 a diligent attempt to obtain counsel, "he is entitled to  
6 appointment of counsel only if he can [also] show exceptional  
7 circumstances." Bailey, 835 F. Supp. at 552 (citing Wilborn, 789  
8 F.2d at 1331).

9 Thornton has satisfied the threshold requirements by showing  
10 that he is indigent and has made a reasonably diligent effort to  
11 secure counsel. (Pl.'s Second Req. Appointment Counsel 1-2, ECF  
12 No. 28); see Bailey, 835 F. Supp. at 552. The Court must therefore  
13 determine whether Plaintiff can show exceptional circumstances  
14 justifying court-appointed counsel by examining the likelihood of  
15 Thornton succeeding on the merits and his ability to proceed  
16 without counsel. Agyeman, 390 F.3d at 1103; Wilborn, 789 F.2d at  
17 1331; Bailey, 835 F. Supp. at 552. As discussed below, Thornton's  
18 attempt to secure counsel does not change the conclusion that his  
19 case does not involve exceptional circumstances.

20 **1. Likelihood of Plaintiff's Success on the Merits**

21 To receive court-appointed counsel, Thornton must present a  
22 nonfrivolous claim that is likely to succeed on the merits.  
23 Wilborn, 789 F.2d at 1331. Plaintiff alleges in the Complaint that  
24 his constitutional rights to due process, freedom of association,  
25 equal protection of the laws, and to be free from cruel and unusual  
26 punishment were violated. (Compl. 3-5, ECF No. 1.) These  
27 allegations arise from events that occurred while Plaintiff was  
28



1 incarcerated at R.J. Donovan State Prison ("Donovan") and after he  
2 was released on parole.<sup>1</sup> (Id.)

3 In count one, Thornton asserts he had been incarcerated for a  
4 parole violation and was released on November 10, 2007. (Id. at  
5 3.) "[B]efore my release[] I was served with papers on 9-17-07  
6 that stated I would not be allowed to live at my home with my wife  
7 because of provisions of Proposition 83, that was applied to me  
8 because of [a] 1987 Tennessee case." (Id.) Plaintiff claims this  
9 rises to the level of a constitutional violation of his rights to  
10 due process, freedom of association, and to be free from cruel and  
11 unusual punishment. (Id.)

12 In count two, Plaintiff contends that on November 21, 2007, he  
13 was "assigned to a GPS unit of parole and given very overbroad  
14 conditions of parole" as a result of his out-of-state criminal  
15 record. (Id. at 4.) "I was assigned to a sex offender unit of  
16 parole [and] to an Agent Christine Cavalin." (Id.) Thornton  
17 argues that this constitutes a violation of his rights to be free  
18 from cruel and unusual punishment and to due process. (Id.)

19 Additionally, in count three, Plaintiff maintains that in  
20 November 2007, he was not allowed to reside with his wife in their  
21 home because he was "told it was not in compliance with Proposition  
22 83 or California Penal Code § 3003.5." (Id. at 5.) But in 2008,  
23 another sex offender in Thornton's parole unit, Richard Lilly,  
24 moved into Plaintiff's residence. (Id.) "[Lilly] started an  
25 [intimate] relationship with my wife and was allowed to move into  
26 the very home I was told was out of compliance to me as a sex  
27

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28 <sup>1</sup> Currently, Thornton is incarcerated at the California  
Correctional Institution at Tehachapi, California. (Id. at 1.)

1 offender." (Id.) Plaintiff asserts that he is being discriminated  
2 against, in violation of his right to equal protection of the laws.  
3 (Id.)

4 Inmates may not be deprived of "life, liberty, or property  
5 without due process of law." Wolff v. McDonnell, 418 U.S. 539, 556  
6 (1974). An individual may allege a procedural due process  
7 violation by arguing that the defendants failed to employ fair  
8 procedures before depriving him of a protected liberty interest.  
9 See Zinermon v. Burch, 494 U.S. 113, 127 (1990); Kentucky Dep't of  
10 Corrs. v. Thompson, 490 U.S. 454, 460 (1989); Hewitt v. Helms, 459  
11 U.S. 460, 466 (1983); Walker v. Sumner, 14 F.3d 1415, 1419 (9th  
12 Cir. 1994) (discussing liberty interest arising out of disciplinary  
13 proceedings). A protected liberty interest may arise under the Due  
14 Process Clause and the laws of the states. Kentucky Dep't of  
15 Corrs., 490 U.S. at 460; Hewitt, 459 U.S. at 466. But the liberty  
16 interest protected by state law is generally limited to freedom  
17 from restraint that "imposes atypical and significant hardship on  
18 the inmate in relation to the ordinary incidents of prison life."  
19 Sandin v. Connor, 515 U.S. 472, 483-84 (1995).

20 As for a prisoner's right to freedom of association, "[a]  
21 prison inmate retains those First Amendment rights that are not  
22 inconsistent with his status as a prisoner or with the legitimate  
23 penological objectives of the corrections system.'" Johnson v.  
24 California, 543 U.S. 499, 510 (2005) (quoting Pell v. Procunier,  
25 417 U.S. 817, 822 (1974)). The associational rights of prisoners  
26 are, by necessity, restricted and "may be curtailed whenever the  
27 institution's officials, in the exercise of their informed  
28 discretion, reasonably conclude that such associations . . .

1 possess the likelihood of disruption to prison order or stability,  
2 or otherwise interfere with the legitimate penological objectives  
3 of the prison environment." Jones v. N.C. Prisoners' Labor Union,  
4 Inc., 433 U.S. 119, 132 (1977); Rizzo v. Dawson, 778 F.2d 527, 532  
5 (9th Cir. 1985).

6 Although an inmate has the right to be free from cruel and  
7 unusual punishment, "the treatment a prisoner receives and the  
8 conditions under which he is confined are subject to scrutiny under  
9 the Eighth Amendment." Helling v. McKinney, 509 U.S. 25, 31  
10 (1993). The Eighth Amendment "requires that inmates be furnished  
11 with the basic human needs, one of which is 'reasonable safety.'" Id.  
12 at 33 (quoting DeShaney v. Winnebago County Dep't of Soc.  
13 Servs., 489 U.S. 189, 200 (1989)). "To violate the Cruel and  
14 Unusual Punishment Clause, a prison official must have a  
15 'sufficiently culpable state of mind.'" Farmer v. Brennan, 511  
16 U.S. 825, 834 (1994) (quoting Wilson v. Seiter, 501 U.S. 294, 297  
17 (1991)).

18 Moreover, "[i]nmates are protected under the Equal Protection  
19 Clause against invidious discrimination." Johnson v. Van Boening,  
20 No. C07-5426RBL-KLS, 2008 U.S. Dist. LEXIS 80776, at \*13 (W.D.  
21 Wash. Sept. 3, 2008) (citing Wolff, 418 U.S. at 556; Lee v.  
22 Washington, 390 U.S. 333, 334 (1968)). To state an equal  
23 protection claim, "a plaintiff must show that the defendants acted  
24 with an intent or purpose to discriminate against the plaintiff  
25 based upon membership in a protected class." Barren v. Harrington,  
26 152 F.3d 1193, 1194 (9th Cir. 1998). Protected classes include  
27 race, religion, national origin, and poverty. Damiano v. Florida  
28 Parole & Probation Comm'n, 785 F.2d 929, 932-33 (11th Cir. 1986).

1 Further, the Fourteenth Amendment is not violated by unintentional  
2 conduct that may have a disparate impact. Washington v. Davis, 426  
3 U.S. 229, 239 (1976).

4 Although Thornton's allegations may be sufficient to state a  
5 claim for relief, it is still too early for the Court to determine  
6 Plaintiff's likelihood of success on the merits. Without  
7 additional factual information, the Court cannot conclude whether  
8 Thornton is likely to ultimately succeed. See Bailey, 835 F. Supp.  
9 at 552.

## 10 **2. Plaintiff's Ability To Proceed Without Counsel**

11 To be entitled to appointed counsel, Thornton must also  
12 demonstrate that he is unable to effectively litigate the case pro  
13 se in light of the complexity of the issues involved. Wilborn, 789  
14 F.2d at 1331. Plaintiff makes several arguments to support his  
15 request for attorney representation. First, he repeats his  
16 assertion that he cannot afford counsel by referring to his request  
17 to proceed in forma pauperis. (Pl.'s Second Req. Appointment  
18 Counsel 1, ECF No. 28.) Even though he was granted in forma  
19 pauperis status [ECF No. 5], his argument is not persuasive because  
20 indigence alone does not entitle a plaintiff to appointed counsel.

21 Next, Thornton realleges that his imprisonment will limit his  
22 ability to litigate. (Id.) Although he asserts that his access to  
23 legal materials is limited, Plaintiff has not demonstrated that he  
24 is being denied "reasonable" access. See Lindquist v. Idaho State  
25 Bd. of Corrs., 776 F.2d 851, 858 (9th Cir. 1985). "[T]he  
26 Constitution does not guarantee a prisoner unlimited access to a  
27 law library. Prison officials of necessity must regulate the time,  
28 manner, and place in which library facilities are used." Id.

1 (citation omitted). Thornton has not shown that he does not have  
2 reasonable access to a law library or other means of conducting  
3 legal research, or that he is subjected to burdens beyond those  
4 ordinarily experienced by plaintiffs who represent themselves.

5 The Plaintiff again maintains that the issues in the case are  
6 complex and will require significant research and investigation.  
7 (Pl.'s Second Req. Appointment Counsel 1-2, ECF No. 28.) But  
8 Thornton has not alleged that he lacks reasonable access to the law  
9 library or other means of performing legal research. See  
10 Lindquist, 776 F.2d at 858. Nor has he shown that his limitations  
11 are greater than those typically encountered by pro se plaintiffs.

12 Further, Thornton contends that his ability to access legal  
13 materials and make photocopies is restricted and that he has  
14 limited knowledge of the law. (Pl.'s Second Req. Appointment  
15 Counsel 2, ECF No. 28.) Plaintiff's Complaint adequately alleges  
16 the basis for his claims. Additionally, Thornton was able to file  
17 motions for leave to proceed in forma pauperis, for appointment of  
18 counsel, for an extension of time to respond, for ex parte  
19 communication with the Court, and to stay the proceedings [ECF Nos.  
20 2, 7, 28, 29, 38, 40]. Also, Plaintiff has appealed this Court's  
21 denial of his Motion for Appointment of Counsel [ECF Nos. 16, 25-  
22 27], the denial of his Ex Parte Motion for Production [ECF Nos. 21.  
23 30], and the denial of his ex parte request for unlimited pro se  
24 privileges in law the library [ECF Nos. 22, 31]. These filings  
25 suggest Thornton can adequately navigate the legal process. See  
26 Plummer v. Grimes, 87 F.3d 1032, 1033 (8th Cir. 1996) (finding the  
27 district court did not abuse its discretion in denying plaintiff  
28 counsel, in part because plaintiff adequately filed a complaint and

1 other pretrial materials). "[A]ny pro se litigant certainly would  
2 be better served with the assistance of counsel." Rand, 113 F.3d  
3 at 1525; see also Wilborn, 789 F.2d at 1331 ("[A] pro se litigant  
4 will seldom be in a position to investigate easily the facts  
5 necessary to support the case.") But a plaintiff is only entitled  
6 to appointed counsel if he can show "that because of the complexity  
7 of the claims he [is] unable to articulate his positions." Rand,  
8 113 F.3d at 1525. Thornton has not shown anything in the record  
9 that makes this case "exceptional" or the issues in it particularly  
10 complex.

11 In his second request for counsel, Plaintiff asserts that he  
12 has attempted but failed to secure counsel. (Pl.'s Second Req.  
13 Appointment Counsel 3, 6, 8, ECF No. 28.) Thornton did not make  
14 this allegation in his first request. (See Mot. Appointment  
15 Counsel 2-3, ECF No. 10.) Plaintiff has made a reasonably diligent  
16 effort to obtain counsel. (See Pl.'s Second Req. Appointment  
17 Counsel 3, 6, 8, ECF No. 28.) But as previously noted, this alone  
18 does not establish exceptional circumstances. See Bailey, 835 F.  
19 Supp. at 552 (stating that if a plaintiff demonstrates indigence  
20 and a diligent effort to obtain counsel, he must still show  
21 exceptional circumstances); Agyeman, 390 F.3d at 1103 (noting that  
22 counsel is appointed only in exceptional circumstances).

23 Finally, Thornton again complains that an attorney would help  
24 him present evidence and cross-examine witnesses at trial due to  
25 the likelihood of conflicting testimony. (Pl.'s Second Req.  
26 Appointment Counsel 2, ECF No. 28.) Factual disputes and  
27 anticipated cross-examination of witnesses do not indicate the  
28 presence of complex legal issues warranting a finding of

1 exceptional circumstances. See Rand, 113 F.3d at 1525 (holding  
2 that while the appellant might have fared better with counsel  
3 during discovery and in securing expert testimony, this is not the  
4 test).

5 Accordingly, the "exceptional circumstances" required for  
6 appointment of counsel pursuant to 28 U.S.C. § 1915(e)(1) are  
7 absent. (See also Order Den. Mot. Appointment Counsel 9-10, ECF  
8 No. 16.) Plaintiff has again failed to show a likelihood of  
9 success or an inability to represent himself. (See id.)  
10 Thornton's new allegation that he attempted to secure counsel is  
11 helpful to the Court's analysis, but it does not change the result  
12 because there are no exceptional circumstances. (See Order Den.  
13 Mot. Appointment Counsel 9-10, ECF No. 16); S.D. Cal. Civ. L.R.  
14 7.1(i)(1). Accordingly, Plaintiffs Second Request for Appointment  
15 of Counsel, or Motion for Reconsideration, is **DENIED**.

16 **IT IS SO ORDERED.**

17 DATE: January 11, 2011

18   
19 Ruben B. Brooks  
20 United States Magistrate Judge

21 cc: Judge Moskowitz  
22 All Parties of Record  
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