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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 STEVE W. CHENNAULT,
12 CDCR #D-93021,

Plaintiff,

14 vs.

16 MORRIS, et al.,

18 Defendants.

Civil 13cv0854 BTM (KSC)
No.

ORDER:

**(1) DENYING MOTIONS FOR
APPOINTMENT OF COUNSEL;
AND**

**(2) GRANTING IN PART AND
DENYING IN PLAIN
PLAINTIFF'S MOTION TO
AMEND COMPLAINT**

(ECF Nos. 55, 57, 59)

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22 **I. Procedural History**

23 Plaintiff, an inmate currently housed at the California Medical Facility, is
24 proceeding pro se in this action filed pursuant to 42 U.S.C. § 1983. Following various
25 motions, the only remaining claims are against Defendant Morris.

26 On June 9, 2014, the Court denied Plaintiff's motion for appointment of counsel.
27 (ECF No. 39.) Plaintiff later filed a motion for reconsideration of the Court's ruling on
28 this motion which was also denied on September 16, 2014. (ECF No. 53). Just two

1 weeks later, Plaintiff filed two more motions to appoint counsel, a declaration of
2 indigency and a motion to amend the Complaint. (ECF Nos. 55, 57, 59.)

3 **II. Motions to Appoint Counsel**

4 In these motions, Plaintiff claims that he is indigent and “appointed counsel would
5 know how to brief petitioner’s issues to the court.” (Pl.’s Mot., ECF No. 55, at 2.) First,
6 the Court has already found that Plaintiff is indigent when the Court granted Plaintiff *in*
7 *forma pauperis* (“IFP”) status. (ECF No. 3.)

8 Second, as the Court has informed Plaintiff previously, the Constitution provides
9 no right to appointment of counsel in a civil case unless an indigent litigant may lose his
10 physical liberty if he loses the litigation. *Lassiter v. Dept. of Social Services*, 452 U.S.
11 18, 25 (1981). Under 28 U.S.C. § 1915(e)(1), district courts are granted discretion to
12 appoint counsel for indigent persons. This discretion may be exercised only under
13 “exceptional circumstances.” *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).
14 “A finding of exceptional circumstances requires an evaluation of both the ‘likelihood
15 of success on the merits and the ability of the plaintiff to articulate his claims pro se in
16 light of the complexity of the legal issues involved.’ Neither of these issues is dispositive
17 and both must be viewed together before reaching a decision.” *Id.* (quoting *Wilborn v.*
18 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

19 Here, this matter involves a limited number of claims against one Defendant.
20 Plaintiff was able to adequately state a claim that permitted the Court to order the action
21 to proceed against this Defendant. If Plaintiff should ultimately not prevail in this civil
22 action, there is no foreseeable risk at this time that he would lose his physical liberty.
23 Thus, the Court finds there are no “exceptional circumstances” in this matter that would
24 require the Court to appoint counsel at this stage of the proceedings.

25 Therefore, the Court denies Plaintiff’s motions to appoint counsel and informs
26 Plaintiff that the Court will entertain renewed motions only upon a significant change in
27 the posture of this case.

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1 **III. Motion to Amend**

2 Plaintiff has also filed a motion seeking to amend the amount of compensatory and
3 punitive damages he is seeking, to amend his request for injunctive relief and add an
4 amount for attorney fees. The Court will grant Plaintiff's request to change the amount
5 of monetary damages and to amend his request for injunctive relief but denies his request
6 for attorney fees. Plaintiff is representing himself and is not entitled to attorney fees.
7 Should Plaintiff retain counsel at some future point, the Court will reconsider this
8 decision.

9 **IV. Conclusion and Order**

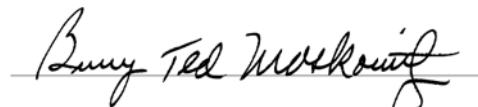
10 Based on the foregoing, the Court hereby:

11 (1) DENIES, without prejudice, Plaintiff's Motions to Appoint Counsel (ECF
12 Nos. 55, 57); and

13 (2) GRANTS, in part, and DENIES, in part, Plaintiff's Motion to Amend
14 Complaint. The prayer for injunctive relief, compensatory and punitive damages found
15 in Plaintiff's Complaint (ECF No. 1) is stricken and replaced with the new prayer set
16 forth in Plaintiff's Motion to Amend (ECF No. 59). The Court strikes Plaintiff's prayer
17 for relief to the extent that he requests attorneys fees.
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19 **IT IS SO ORDERED.**

20 DATED: October 14, 2014

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22 BARRY TED MOSKOWITZ, Chief Judge
23 United States District Court
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