



1 second degree burns on his right arm, neck and back, a broken left shoulder, left eye  
2 damage, two stab wounds, and a fractured disc. Plaintiff was hospitalized for ten days at  
3 U.C. San Diego Medical Center. He claims to suffer continuing mental and physical  
4 trauma as a result of the assault.

5 In addition to the above alleged violation of his Eighth Amendment rights, Plaintiff  
6 alleges that other defendants violated his First Amendment right to access to the courts by  
7 frustrating his attempts to complete the prison's grievance process. He filed suit on March  
8 13, 2015. Since then, the Court denied a motion to dismiss and a summary judgment  
9 motion filed by Defendants, and Plaintiff has filed a pending motion to strike Defendants'  
10 Answer. The Court also issued a scheduling order regulating discovery.

## 11 **II. APPLICABLE LAW**

12 "There is no constitutional right to appointed counsel in a § 1983 action." *Rand v.*  
13 *Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (partially overruled en banc on other  
14 grounds). Thus, federal courts do not have the authority "to make coercive appointments  
15 of counsel." *Mallard v. U.S. Dist. Ct.*, 490 U.S. 296, 310 (1989); *see also United States v.*  
16 *\$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995).

17 Districts courts do have discretion, however, pursuant to 28 U.S.C. section  
18 1915(e)(1), to request that an attorney represent indigent civil litigants upon a showing of  
19 exceptional circumstances. *See Agyeman v. Corrections Corp. of America*, 390 F.3d 1101,  
20 1103 (9th Cir. 2004). "A finding of the exceptional circumstances of the plaintiff seeking  
21 assistance requires at least an evaluation of the likelihood of the plaintiff's success on the  
22 merits and an evaluation of the plaintiff's ability to articulate his claims 'in light of the  
23 complexity of the legal issues involved.'" *Agyeman*, 390 F.3d at 1103 (quoting *Wilborn v.*  
24 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)); *see also Terrell v. Brewer*, 935 F.2d  
25 1015, 1017 (9th Cir. 1991).

26 The Court agrees that any pro se litigant "would be better served with the assistance  
27 of counsel." *Rand*, 113 F.3d at 1525; citing *Wilborn*, 789 F.2d at 1331. However, so long  
28 as a pro se litigant, like Plaintiff in this case, is able to "articulate his claims against the

1 relative complexity of the matter,” the exceptional circumstances which might require the  
2 appointment of counsel do not exist. *Rand*, 113 F.3d at 1525 (finding no abuse of discretion  
3 under 28 U.S.C. § 1915(e) when district court denied appointment of counsel despite fact  
4 that pro se prisoner “may well have fared better-particularly in the realms of discovery and  
5 the securing of expert testimony”).

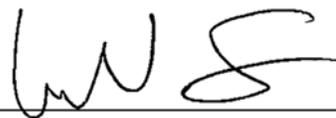
### 6 **III. DISCUSSION**

7 Plaintiff contends he needs counsel appointed here because he is unable to afford  
8 counsel, the issues in this case are complex, and he needs the assistance of expert witnesses.  
9 The Court is not persuaded at this time. First, Plaintiff’s indigence is not a factor the Court  
10 considers persuasive given that all or nearly all prisoners are indigent, and parties in civil  
11 cases are not automatically entitled to appointed counsel despite their indigence. Second,  
12 this case is not complex, as it does not present novel questions or theories of law, and this  
13 area of law itself is not complex. The law in this areas is quite settled. Moreover, Plaintiff’s  
14 factual allegations are also non-complex and are in line with similar claims routinely  
15 litigated before this Court by *pro se* prisoners. Thus, Plaintiff will not need the assistance  
16 of an attorney to research and argue some arcane or unclear legal theory at this time.  
17 Finally, although Plaintiff generally states he lacks access to expert witnesses, he does not  
18 identify what type of expert he needs or explain why such testimony is needed in this case.

19 Plaintiff’s request for appointment of counsel is **DENIED** without prejudice *at this*  
20 *time*. However, given the potentially compelling nature of Plaintiff’s allegations, the Court  
21 will reconsider appointment of counsel in the future if it appears this case will proceed to  
22 trial. The Court will do so *sua sponte* or upon Plaintiff’s re-application for appointment of  
23 counsel.

24 **IT IS SO ORDERED.**

25 Dated: January 17, 2017

26 

27 Hon. William V. Gallo  
28 United States Magistrate Judge