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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 MARCUS D. BRICENO,
11 Plaintiff,
12 v.
13 BLAKE WILLIAMS, San Diego Police
14 Officer, et al.,
15 Defendants.

Case No.: 16cv1665-JAH-MDD

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL
WITHOUT PREJUDICE
[ECF NO. 26]**

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17 Plaintiff Marcus Briceno again seeks appointment of counsel, but this time attached
18 several medical records which indicate that he suffers from back and leg pain and has a
19 recommendation for additional surgery pending. Briceno argues that these records make it
20 clear that he is in too much pain to successfully litigate his excessive force case, and
21 therefore requests that the Court appoint him counsel.

22 “Generally, a person has no right to counsel in civil actions,” *Palmer v. Valdez*, 560
23 F.3d 965, 970 (9th Cir. 2009), and, even under 28 U.S.C. § 1915(e)(1) (the statutory grant
24 of authority to recruit counsel in civil cases), the Court cannot force counsel to represent
25 an indigent civil litigant. *See Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 490 U.S.
26 296, 310 (1989) (holding that § 1915 “does not authorize the federal courts to make
27 coercive appointments of counsel”). But, “a court may under ‘exceptional circumstances’
28 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1).” *Palmer*,

1 560 F.3d at 970 (citation omitted). “When determining whether exceptional circumstances
2 exist, a court must consider the likelihood of success on the merits as well as the ability of
3 the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues
4 involved.” *Id.* (citation and quotation marks omitted).

5 Briceno has not shown exceptional circumstances. The likelihood of success on the
6 merits does not appear to be high—the complaint and pending motion to dismiss suggest
7 that his claim is likely untimely unless Briceno can suggest a basis for some form of tolling.
8 Moreover, Briceno’s excessive force claim is, like most excessive force claims, not
9 particularly complex. *See Price v. Kamer*, 993 F. Supp. 1295, 1298 (C.D. Cal. 1997) (“With
10 rare exceptions, excessive force cases are simple, rather than complex cases. Excessive
11 force cases almost always involve very few events which happened over a very short time
12 span. There tend to be relatively few witnesses, and the dispositive disputes almost always
13 involve the credibility of witnesses.” (emphasis omitted)). Finally, although the Court does
14 not discredit or seek to minimize the pain Briceno is suffering, nothing in the attached
15 records suggest his condition is so severe as to prevent him from responding to the pending
16 motion to dismiss.

17 Although the Court denies the request for recruited counsel at this time, it does so
18 without prejudice. Should Briceno prevail over the pending motion to dismiss, the calculus
19 may change and justify Briceno seeking counsel again at that time.

20 Dated: May 15, 2018

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23 Hon. Mitchell D. Dembin
24 United States Magistrate Judge
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