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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LEANDRO LEONEL GONZALEZ,
Plaintiff,
v.
CORRECTIONAL OFFICER
DEGUZMAN, et al.,
Defendants.

Case No.: 17-cv-00241-GPC-BGS
**ORDER DENYING MOTION TO
APPOINT COUNSEL [ECF NO. 62]**

Plaintiff, a state prisoner proceeding *pro se*, filed this action under 42 U.S.C. § 1983. (ECF No. 1) Before the Court is Plaintiff’s Notice of Motion for Appointment of Counsel (ECF No. 62) For the reasons set forth below, the Motion is **DENIED**.

There is no constitutional right to counsel in a civil case. *Lassiter v. Dep’t of Social Servs.*, 452 U.S. 18, 25 (1981); *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Further, there is no constitutional right to a court-appointed attorney in section 1983 claims. *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (citing *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981)). Moreover, United States district courts lack the authority to require counsel to represent indigent prisoners in § 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989).

1 While a district court has limited discretion under 28 U.S.C. § 1915(e)(1) to “request”
2 that an attorney represent an indigent civil litigant, *Agyeman v. Corr. Corp. of America*,
3 390 F. 3d 1101, 1103 (9th Cir. 2004), it may exercise that discretion only under
4 “exceptional circumstances.” *Id.*; *see also Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.
5 1991). Determining whether such “exceptional circumstances” exist requires
6 consideration of both (1) a plaintiff’s “likelihood of success on the merits” and (2) whether
7 he “is unable to articulate his claims in light of the complexity of the issues involved.”
8 *Harrington v. Scribner*, 785 F.3d 1299, 1309 (9th Cir. 2015); *see Wilborn v. Escalderon*,
9 789 F.2d 1328, 1331 (9th Cir. 1986). “Neither of these considerations is dispositive and
10 instead must be viewed together.” *Palmer*, 560 F.3d at 970.

11 Plaintiff claims that he cannot afford a lawyer, having been granted leave to
12 proceed In Forma Pauperis (ECF. No. 4), his imprisonment greatly limits his ability to
13 litigate this case, which he asserts is complex and involves “substantial investigation and
14 discovery,” and that an attorney would help him with discovery and other pretrial
15 proceedings as well as “apply the law properly in briefs and before the Court.” Plaintiff
16 further asserts that “expert testimony is important in this case,” the trial would likely
17 involve conflicting testimony and an attorney would assist him with the presentation of
18 evidence and the cross-examination of opposing witnesses. (ECF No. 62 at 1-2, 5-6)

19 The circumstances cited by Plaintiff are typical of almost every *pro se* prisoner
20 civil rights plaintiff and alone are insufficient to demonstrate the “exceptional
21 circumstance” required to justify appointment of counsel. *See Jones v. Kuppinger*, 2:13-
22 CV-0451 WBS AC, 2015 WL 5522290, at *3-4 (E.D. Cal. Sept. 17, 2015)
23 (“Circumstances common to most prisoners, such as a deficient general education, lack of
24 knowledge of the law, mental illness and disability, do not in themselves establish
25 exceptional circumstances warranting appointment of voluntary civil counsel.”); *Garcia*
26 *v. C.D.C.R.*, No. 12CV1084 IEG KSC, 2013 WL 485756, at *2 (S.D. Cal. Feb. 6, 2013);
27 *Marquez v. United States*, No. 318CV00434CABNLS, 2018 WL 3388098, at *3 (S.D.
28 Cal. July 12, 2018). “Thus, so long as a *pro se* litigant, is able to ‘articulate his claims’ in

1 light of the relative complexity of the matter, the ‘exceptional circumstances’ which
2 might *require* the appointment of counsel do not exist.” *Garcia v. C.D.C.R.*, *Id* at *1
3 (internal citations omitted).

4 In this case, the Plaintiff contends that his Eighth Amendment rights were violated
5 while he was incarcerated at Richard J. Donovan Correctional Facility when Defendant
6 Correctional Officer DeGuzman allegedly closed the door on his right hand
7 “malicious[ly] and sadistic[ally],” causing injury. (ECF No. 34 at 21-23). Contrary to
8 Plaintiff’s claim, the issues raised by his Second Amended Complaint are not particularly
9 complex. Based on his filings, Plaintiff has demonstrated that he is fully capable of
10 understanding the facts and the law involved in this case and sufficiently articulating
11 them to the Court.

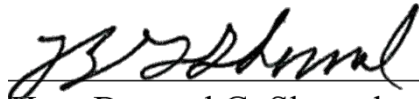
12 This is evidenced by the typewritten, lengthy and thorough memorandum which
13 accompanied the complaint and included legal citations (ECF No. 1), Plaintiff’s filing of
14 a discovery request (ECF No. 9), his request for the entry of a default judgment against
15 Correctional Officer Rodrin (ECF No. 11), and a motion seeking leave to file an amended
16 complaint (ECF No. 14), which was granted (ECF No. 15), among other filings. *See*
17 *West v. Dizon*, No. 2:12-CV-1293 DAD P, 2014 WL 114659, at *4 (E.D. Cal. Jan. 9,
18 2014). When a *pro se* plaintiff shows he understands basic litigation procedure and is
19 able to articulate his claims, he does not demonstrate exceptional circumstances to
20 warrant appointing counsel. *See Palmer*, 560 F.3d at 970.

21 Further, while Plaintiff’s First Cause of Action against Defendant DeGuzman
22 survived a motion to dismiss (ECF 49), the other claims were dismissed and it is too early
23 to determine whether Plaintiff’s remaining cause of action will survive a motion for
24 summary judgment. Thus, this factor does not support Plaintiff’s request for appointed
25 counsel. *See Garcia v. Smith*, No. 10-cv1187-AJB (RBB), 2012 WL 2499003, at *3 (S.D.
26 Cal. June 27, 2012) (denying motion for appointment of counsel when it was too early to
27 determine whether any of plaintiff’s claims would survive a motion for summary
28 judgment).

1 Finally, the Court acknowledges that any *pro se* litigant “would be better served with
2 the assistance of counsel.” *Rand*, 113 F.3d at 1525. However, viewing the two exceptional
3 circumstances factors together, Plaintiff has not shown a likelihood of success on the merits
4 of his case or that he cannot articulate his claims *pro se*. For the foregoing reasons, the
5 Court does not find the “exceptional circumstances” required for appointment of counsel.
6 Accordingly, Plaintiff’s request for appointment of counsel is **DENIED without**
7 **prejudice.**

8 **IT IS SO ORDERED.**

9 Dated: April 4, 2019

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11 Hon. Bernard G. Skomal
12 United States Magistrate Judge
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