

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 SOUTHERN DISTRICT OF CALIFORNIA
7

8 DAVID WILSON,

9 Plaintiff,

10 v.

11 CORPORAL GARDINER, et al.,

12 Defendant.

Case No.: 17cv469-JLS-MDD

**ORDER DENYING PLAINTIFF'S
MOTION FOR APPOINTMENT OF
COUNSEL PURSUANT TO 28
U.S.C. § 1915(e)(1)**

[ECF No. 10]

13
14 Plaintiff, proceeding *pro se* and *in forma pauperis* with a civil rights
15 Complaint (ECF No. 1) filed pursuant to 42 U.S.C. § 1983, and currently
16 incarcerated at the California Medical Facility, has submitted a motion in
17 which he requests that the Court appoint counsel for him pursuant to 28
18 U.S.C. § 1915(e)(1). (ECF No. 10).

19 “[T]here is no absolute right to counsel in civil proceedings.” *Hedges v.*
20 *Resolution Tr. Corp.*, 32 F.3d 1360, 1363 (9th Cir. 1994) (citation omitted).
21 Thus, federal courts do not have the authority “to make coercive
22 appointments of counsel.” *Mallard v. United States District Court*, 490 U.S.
23 296, 310 (1989); see also *United States v. \$292,888.04 in U.S. Currency*, 54
24 F.3d 564, 569 (9th Cir. 1995).

25 District courts have discretion, however, pursuant to 28 U.S.C. §
26 1915(e)(1), to “request” that an attorney represent indigent civil litigants
27 upon a showing of exceptional circumstances. See *Terrell v. Brewer*, 935 F.2d

1 1015, 1017 (9th Cir. 1991); *Burns v. County of King*, 883 F.2d 819, 823 (9th
2 Cir. 1989). “A finding of exceptional circumstances requires an evaluation of
3 both the ‘likelihood of success on the merits and the ability of the plaintiff to
4 articulate his claims pro se in light of the complexity of the legal issues
5 involved.’ Neither of these issues is dispositive and both must be viewed
6 together before reaching a decision.” Id. (quoting *Wilborn v. Escalderon*, 789
7 F.2d 1328, 1331 (9th Cir. 1986)).

8 Here, Plaintiff supports his Motion by stating that his imprisonment
9 will limit his ability to pursue his claims, that he is enrolled in an outpatient
10 mental health program, has limited access to the law library. (ECF No. 10 at
11 1). However, it appears that Plaintiff has a sufficient grasp of his case, the
12 legal issues involved, and is able to adequately articulate the basis of his
13 claims. In fact, Plaintiff’s pro se pleading has survived the initial screening
14 provisions of 28 U.S.C. §§ 1915(e)(2) and 1915A(b), Plaintiff has effected
15 service on all defendants, and Plaintiff was able to file a motion requesting
16 an extension of time to file an opposition to Defendant’s Motion to Dismiss.
17 (ECF No. 12).

18 Accordingly, under the circumstances of this case, the Court finds that
19 Plaintiff has failed to plead facts sufficient to show the “exceptional
20 circumstances” required for appointment of counsel pursuant to 28 U.S.C. §
21 1915(e)(1) and therefore **DENIES** without prejudice Plaintiff’s Motion for
22 Appointment of Counsel.

23 **IT IS SO ORDERED**

24 Dated: September 14, 2017



25 Hon. Mitchell D. Dembin
26 United States Magistrate Judge
27