

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KORY T. O'BRIEN,
Plaintiff,
v.
LISA GULARTE, et al.,
Defendant.

Case No.: 18-cv-980-BAS-MDD

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

[Doc. No. 71]

Plaintiff, proceeding *pro se* and *in forma pauperis* (“IFP”) with a seconded amended civil rights Complaint [Doc. No. 40] filed pursuant to 42 U.S.C. § 1983, and currently incarcerated at Valley State Prison, has submitted a motion in which he requests that the Court appoint counsel for him pursuant to 28 U.S.C. § 1915(e)(1) [Doc. No. 71].

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

1 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995).

2 Districts courts have discretion, however, pursuant to 28 U.S.C. §
3 1915(e)(1), to “request” that an attorney represent indigent civil litigants
4 upon a showing of exceptional circumstances. *See Terrell v. Brewer*, 935 F.2d
5 1015, 1017 (9th Cir. 1991); *Burns v. County of King*, 883 F.2d 819, 823 (9th
6 Cir. 1989). “A finding of exceptional circumstances requires an evaluation of
7 both the ‘likelihood of success on the merits and the ability of the plaintiff to
8 articulate his claims *pro se* in light of the complexity of the legal issues
9 involved.’ Neither of these issues is dispositive and both must be viewed
10 together before reaching a decision.” *Id.* (quoting *Wilborn v. Escalderon*, 789
11 F.2d 1328, 1331 (9th Cir. 1986)).

12 Here, it is apparent that Plaintiff has a sufficient grasp of his case, the
13 legal issues involved, and is able to adequately articulate the basis of his
14 claims. In fact, Plaintiff’s *pro se* pleading has survived the initial screening
15 provisions of 28 U.S.C. §§ 1915(e)(2) and 1915A(b). The Court’s docket
16 reflects Plaintiff’s active ability to articulate the claims of his case.

17 Accordingly, under the circumstances of this case, the Court finds that
18 Plaintiff has failed to plead facts sufficient to show the “exceptional
19 circumstances” required for appointment of counsel pursuant to 28 U.S.C. §
20 1915(e)(1) and therefore **DENIES** without prejudice Plaintiff’s Motion for
21 Appointment of Counsel pursuant to 28 U.S.C. § 1915(e)(1) [Doc. No. 71].

22 **IT IS SO ORDERED.**

23 Dated: March 4, 2020

24 

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