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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 JOHN HENRY YABLONSKY,
10 Plaintiff,
11 vs.
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13 CALIFORNIA DEPARTMENT OF
14 CORRECTIONS AND
15 REHABILITATION, et al.
16 Defendants.

Case No.: 18cv1122-CAB-AGS

**ORDER DENYING WITHOUT
PREJUDICE MOTION FOR
APPOINTMENT OF COUNSEL [Doc.
No. 56]**

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18 On August 24, 2020, Plaintiff filed a motion requesting appointment of counsel.
19 [Doc. No. 56.] Plaintiff asks the Court to appoint counsel for him because he is
20 incarcerated, the issues in the case are complex, and he has limited access to a law library
21 due to Covid 19 restrictions. [Doc. No. 56.]

22 However, there is no constitutional right to counsel in a civil case. *Lassiter v. Dept.*
23 *of Social Servs*, 452 U.S. 18, 25 (1981); *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir.
24 2009). And while 28 U.S.C. § 1915(e)(1) grants the district court limited discretion to
25 “request” that an attorney represent an indigent civil litigant, *Agyeman v. Corr. Corp. of*
26 *America*, 390 F.3d 1101, 1103 (9th Cir. 2004), this discretion is exercised only in
27 “exceptional circumstances.” *Id.*; see also *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th
28 Cir. 1991). A finding of exceptional circumstances requires the Court “to consider

1 whether there is a ‘likelihood of success on the merits’ and whether ‘the prisoner is
2 unable to articulate his claims in light of the complexity of the legal issues involved.’”
3 *Harrington v. Scribner*, 785 F.3d 1299, 1309 (9th Cir. 2015) (quoting *Palmer*, 560 F.3d
4 at 970).

5 The Court denies Plaintiff’s request without prejudice at this time because nothing
6 in either his First Amended Complaint (“FAC”) or his motion requesting appointment of
7 counsel suggests he is incapable of articulating the factual basis for his claims. *Id.* In fact,
8 Plaintiff has articulated many coherent arguments when filing motions and responses to
9 motions. See e.g. Doc. Nos. 21, 23, 29, 35, 38, 46, 51.]

10 At the same time, Plaintiff’s FAC (as amended by court order), by itself, does not
11 yet demonstrate a “likelihood” of success on the merits. *Id.* Therefore, the Court finds no
12 “exceptional circumstances” exist to justify the appointment of counsel at this time. See,
13 e.g., *Cano v. Taylor*, 739 F.3d 1214, 1218 (9th Cir. 2014) (affirming denial of counsel
14 where prisoner was able to articulate his inadequate medical care claims in light of the
15 complexity of the issues involved, but found unlikely to succeed on the merits).

16 Should Plaintiff require an extension of time to file a particular pleading due to
17 Covid 19 restrictions, he knows how to file such a motion requesting that specific
18 extension. See e.g. Doc. No. 19.

19 CONCLUSION

20 For the reasons set forth above, the motion requesting appointment of counsel is
21 **DENIED WITHOUT PREJUDICE. IT IS SO ORDERED.**

22 Dated: August 27, 2020



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24 Hon. Cathy Ann Bencivengo
25 United States District Judge
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