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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 John William UPSHAW,

12 Plaintiff,

13 v.

14 Dr. John CHAU,

15 Defendant.  
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Case No.: 22-cv-00183-JO-BGS

**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL  
[ECF No. 5]**

19 Plaintiff, a state prisoner proceeding *pro se*, filed this action under 42 U.S.C. § 1983.  
20 (ECF No. 1.) Plaintiff filed a letter in which he requested the appointment of counsel.  
21 (ECF No. 5.) For the reasons set forth below, the request is **DENIED**.

22 **I. BACKGROUND**

23 Plaintiff's Complaint asserted claims under the Eighth Amendment and Fourteenth  
24 Amendment against Dr. Chau and Warden Pollard. (ECF No. 1.) Complaint alleged that  
25 he was injured when he fell off the upper bunk and severely injured his left hip. (*Id.* at 3.)  
26 The Triage Center allegedly told the Plaintiff that he was fine and made him walk back to  
27 his housing unit. (*Id.*) Plaintiff alleged that he complained every week from March 2020  
28 until September 2020 of severe pain and discomfort and sought medical attention. (*Id.*)

1 Plaintiff also alleged that despite being in clear distress, “the doctor kept denying anything  
2 was wrong and he kept insisting that [the Plaintiff] was ‘chasing narcotics.’” (*Id.*) Plaintiff  
3 claimed that it was not until he begged on his knees that Dr. Chau ordered an expedited  
4 M.R.I., which Plaintiff alleged showed an injury. (*Id.*) Plaintiff indicated that Dr. Chau  
5 saw him in extreme pain, but still denied pain relieving medication adequate to handle his  
6 pain and denied medical treatment that would have diagnosed and treated his injury. (*Id.*  
7 at 4.) Plaintiff alleged that Dr. Chau repeatedly downplayed and discounted his pain and  
8 injury and it caused him months of suffering. (*Id.*) Plaintiff also alleged that Dr. Chau  
9 discriminated against him due to his past history with addiction. (*Id.* at 5.)

10 The Order granting Plaintiff’s Motion to Proceed IFP and screening the Complaint  
11 dismissed Plaintiff’s Fourteenth Amendment claim against Dr. Chau and Plaintiff’s Eighth  
12 Amendment claim against Warden Pollard, but found the Eighth Amendment claim as to  
13 Dr. Chau sufficiently pled to survive *sua sponte* pre-answer screening. (ECF No. 4.) The  
14 Court gave the Plaintiff 45 days to either notify the Court that he will proceed only under  
15 his Eighth Amendment claim against Dr. Chau or file a First Amended Complaint  
16 correcting the deficiencies. (*Id.* at 11–12.)

17 On March 17, 2022, Plaintiff filed a letter informing the Court that he was planning  
18 on only pursuing his Eighth Amendment claim as to Dr. Chau and dropping his allegation  
19 against Warden Pollard. (ECF No. 5.) Further, Plaintiff requested that the Court appoint  
20 him an attorney because he is lost as to how to proceed with his case and really needs help.  
21 (*Id.*)

## 22 **II. DISCUSSION**

23 Plaintiff has filed a letter in which he requested the appointment of counsel. (ECF  
24 No. 5.) Plaintiff requested that the Court “appoint [him] an attorney because [he is] lost as  
25 how to do this and [he] really need[s] help[.]” (*Id.* at 1.) Plaintiff did not provide any other  
26 reasons for why he needs counsel appointed.

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1           **A. Legal Standard**

2           “[T]here is no constitutional right to appointed counsel for § 1983 claims[.]”  
3 *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see also Palmer v. Valdez*, 560  
4 F.3d 965, 970 (9th Cir. 2009) (“Generally, a person has no right to counsel in civil  
5 actions.”). “However, a court may under ‘exceptional circumstances’ appoint counsel for  
6 indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1).” *Palmer*, 560 F.3d at 760 (citing  
7 *Agyeman v. Corrs. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004)). “When  
8 determining whether ‘exceptional circumstances’ exist, a court must consider ‘the  
9 likelihood of success on the merits as well as the ability of the petitioner to articulate his  
10 claims pro se in light of the complexity of the legal issues involved.” *Id.* (quoting *Weygandt*  
11 *v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)); *see also Cano v Taylor*, 739 F.3d 1214, 1218  
12 (9th Cir. 2014). “Neither of these considerations is dispositive and instead must be viewed  
13 together.” *Palmer*, 560 F.3d at 760.

14           **B. Analysis**

15           Plaintiff has not shown exceptional circumstances warranting appointment of  
16 counsel. Plaintiff has demonstrated his ability to present both factual and legal arguments  
17 to the Court and appears to have a basic understanding of the legal process. For example,  
18 Plaintiff’s Eighth Amendment claim against Dr. Chau was found to contain allegations  
19 sufficient to survive the *sua sponte* screening required by 28 U.S.C. §§1915(e)(2) and  
20 1915A(b). (*See* ECF No. 4.)

21           Additionally, it does not appear that the legal issues involved are so complex that  
22 counsel is warranted at this stage of the proceedings. *See Wilbron v. Escalderon*, 789 F.2d  
23 1328, 1331 (noting that, “[i]f all that was required to establish successfully the complexity  
24 of the relevant issues was a demonstration of the need for development of further facts,  
25 practically all cases would involve complex legal issues.”). The challenges Plaintiff  
26 identifies are not unique to Plaintiff and could arguably be asserted by almost every  
27 prisoner. And, although the Court recognizes physical and mental health concerns might  
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1 under some circumstances warrant appointment of counsel, here, it is not at all clear that  
2 any of Plaintiff's asserted health concerns would impact his ability to pursue his case.

3 As to his likelihood of success on the merits, as noted above, Plaintiff had some  
4 success at the pleading stage of this case, being allowed to proceed on his Eighth  
5 Amendment claim as to Dr. Chau. However, when his likelihood of success is considered  
6 in conjunction with his ability to articulate his claims and the complexity of the issues  
7 involved, he has not shown exceptional circumstances justifying appointment of counsel  
8 at this time.

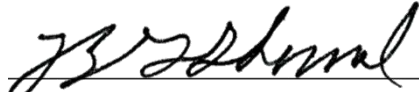
9 Accordingly, the Court **DENIES** Plaintiff's request for appointment of counsel.  
10 (ECF No. 5.)

11 **III. CONCLUSION**

12 Plaintiff's request for the appointment of counsel (ECF No. 5) is **DENIED**.

13 **IT IS SO ORDERED.**

14 Dated: May 5, 2022

15   
16 Hon. Bernard G. Skomal  
17 United States Magistrate Judge  
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