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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

MANUEL GARCIA,

Plaintiff

v.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, et al.,

Defendants

Case No. 2:17-cv-02504-APG-BNW

ORDER

Presently before the Court is pro se plaintiff Manuel Garcia's second¹ motion for appointment of counsel (ECF No. 85), filed on March 26, 2020. Mr. Garcia requested a hearing. Defendants did not file a response. The Court held a hearing on June 16, 2020, where all parties were present.

I. Background

Nevada state-prison inmate Mr. Garcia sues the Las Vegas Metropolitan Police Department, Sheriff Joseph Lombardo, Officer Brandon Prisbrey, and Dr. Susanne Roozendaal under 42 U.S.C. § 1983, alleging indifference to a serious medical need and municipal liability. Mr. Garcia now requests a court-appointed attorney, arguing that he has a tenth-grade education and no legal training, limited access to the prison's law library due to his segregation status, limited ability to complete investigations and discovery due to his incarcerated status, and has

¹ Mr. Garcia first filed a motion for appointment of counsel on October 12, 2017. ECF No. 9. The Court denied his motion. ECF No. 25.

1 unsuccessfully attempted to retain counsel.² ECF No. 85 at 5-6, 8. He also argues that he does not
2 have his prior counsel’s discovery-related records and documents, if any exist. Id. at 4. Finally, he
3 argues that his case is complex because it involves multiple state entities, involves conflicting
4 testimony, and requires expert testimony. Id. at 5, 7.

5 Defendants did not file a response.

6 **II. Discussion**

7 Civil litigants do not have a Sixth Amendment right to appointed counsel. *Storseth v.*
8 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). In very limited circumstances, federal courts are
9 empowered to request an attorney to represent an indigent civil litigant. For example, courts have
10 discretion, under 28 U.S.C. § 1915(e)(1), to “request” that an attorney represent indigent civil
11 litigants upon a showing of “exceptional circumstances.” *Agyeman v. Corrections Corp. of Am.*,
12 390 F.3d 1101, 1103 (9th Cir. 2004). The circumstances in which a court will make such a
13 request, however, are exceedingly rare and require a finding of extraordinary circumstances.
14 *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986); *Wilborn v.*
15 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

16 To determine whether the “exceptional circumstances” necessary for appointment of
17 counsel are present, the court evaluates (1) the likelihood of plaintiff’s success on the merits and
18 (2) the plaintiff’s ability to articulate his claim pro se “in light of the complexity of the legal
19 issues involved.” *Agyeman*, 390 F.3d at 1103 (quoting *Wilborn*, 789 F.2d at 1331). Neither of
20 these factors is dispositive and both must be viewed together. *Wilborn*, 789 F.2d at 1331. It is
21 within the court’s discretion whether to request that an attorney represent an indigent civil litigant
22 under 28 U.S.C. § 1915(e)(1). *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009).

24 ² Mr. Garcia was a pro se plaintiff until Dan M. Winder filed a notice of appearance as
25 Plaintiff’s counsel on June 5, 2019. ECF No. 53. About nine months later, Mr. Winder moved to
26 withdraw as counsel, citing irreconcilable differences. ECF No. 78. The Court granted Mr.
27 Winder’s motion to withdraw as Plaintiff’s counsel, but also required that the parties meet and
28 confer before Mr. Winder’s withdrawal about how the case should move forward. ECF No. 80.
After Mr. Winder withdrew, Mr. Garcia, “through a friend,” phoned three attorneys requesting
representation for Plaintiff. ECF No. 85 at 8. It appears that all three turned him down. Id.

1 Here, given that several of the claims that Mr. Garcia plead in his first amended complaint
2 survived the Court’s screening process, he has some likelihood of success on the merits. ECF No.
3 43 at 6-9.

4 The question of whether Mr. Garcia has been able to articulate his claims pro se “in light
5 of the complexity of the legal issues involved” is less straightforward. Yet the reasons Mr. Garcia
6 raises in his motion for appointment of counsel do not support appointing counsel. The Court will
7 address each of the cited reasons in turn.

8 First, Mr. Garcia argues that he has a tenth-grade education and no legal training. ECF No.
9 85 at 6. However, this level of schooling does not establish whether he can articulate his claims
10 pro se. This is because there are different ability levels for students who have achieved the same
11 years of schooling, and Mr. Garcia has not shown how his tenth-grade education has prevented
12 him from articulating his claims pro se. In fact, prior to retaining counsel, he successfully
13 navigated the pleadings stage, which demonstrated his ability to articulate his claims without an
14 attorney. His pro se filings have also been comprehensible and literate. Further, at the hearing,
15 Mr. Garcia represented that he speaks, reads, and writes fluent English, and he has completed “a
16 lot” of research for this case.³ He also stated that he relies on other inmates who may know more
17 than he does, but he reviews all filings before signing and submitting them to the Court.

18 Second, Mr. Garcia argues that he has limited access to the prison’s law library due to his
19 segregation status. *Id.* Additionally, at the hearing, Mr. Garcia stated that he is unable to

21 ³ The Court held a hearing on this motion, in part, because it was concerned by
22 representations in the record that Mr. Garcia had language barriers and was not involved in the
23 drafting of his filings. Trent Henrickson, an inmate who prepared Mr. Garcia’s “Motion for
24 Enlargement of Time to Respond to Defendants’ Motion for Summary Judgement,” stated,
25 “Plaintiff[’]s complaint was drafted on his behalf by another inmate, as is this motion. Due to
26 that, he has language barriers, and is acutely ignorant in regard to the processes involved in this
27 action. Plaintiff is relying heavily on assistance by inmates – further delaying the process[.]” ECF
28 No. 94. Because Mr. Garcia filed two amended complaints, it was unclear to the Court whether
another inmate wrote each of these amended complaints as well. It was further unclear to the
Court what Mr. Henrickson meant when he stated that Plaintiff had “language barriers.”
Accordingly, the Court held a hearing to answer these and other questions it had relating to Mr.
Garcia’s ability to articulate his claims pro se in light of the complexity of the legal issues
involved.

1 personally access the prison's law library, including LexisNexis, due to COVID-19 restrictions.
2 He stated that he has not been told when the law library would re-open, but that he would be
3 released from prison on July 12, 2020. The Court is deeply troubled by the suggestion that
4 Plaintiff may potentially be denied access to the law library because of his segregated status.
5 Prisoners have rights of access to the courts. *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974). And
6 these rights include "access to a reasonably adequate law library for preparation of legal actions."
7 *Id.* at 578-79. These rights relating to access are not, however, the same as being unable to
8 articulate claims pro se in light of the legal complexities involved in the case. And, as noted
9 below, the Court is extending Mr. Garcia's time to respond to the motions for summary judgment
10 until after he is released to ensure that he can have access to the legal materials he needs.

11 Third, Mr. Garcia argues that he has a limited ability to complete investigations and
12 discovery due to his incarcerated status. ECF No. 85 at 5. Because this may be the reality for all
13 incarcerated persons, it does not rise to the standard of "exceptional circumstances."

14 Fourth, Mr. Garcia argues that he has unsuccessfully attempted to retain counsel. *Id.* at 8.
15 An inability to retain counsel does not rise to the standard of "exceptional circumstances."

16 Fifth, Mr. Garcia argues that he does not have his prior counsel's discovery-related
17 records and documents, if any exist. *Id.* at 4. Mr. Garcia stated at the hearing that he had not
18 reached out to his former attorney to obtain these records and documents. The Court advised Mr.
19 Garcia that he may write a letter to his former counsel to ask for a copy of his file. Accordingly,
20 at this time, the Court does not find this to be an exceptional circumstance justifying appointment
21 of counsel. However, as the Court noted at the hearing, if Mr. Garcia is unable to obtain his file
22 from his former counsel after requesting it and believes that it would be appropriate to file
23 another motion for appointment of counsel, he may do so.

24 Finally, Mr. Garcia argues that his case is complex because it involves multiple state
25 entities, involves conflicting testimony, and requires expert testimony. *Id.* at 5, 7. Any pro se
26 litigant "would be better served with the assistance of counsel." *Rand v. Rowland*, 113 F.3d 1520,
27 1525 (9th Cir. 1997) (citing *Wilborn*, 789 F.2d at 1331). Nonetheless, so long as a pro se litigant
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1 can “articulate his claims against the relative complexity of the matter,” the “exceptional
2 circumstances” which might require the appointment of counsel do not exist. Id. As noted above,
3 because Mr. Garcia successfully navigated the pleadings stage and his pro se filings, including the
4 filing of this motion, he has demonstrated his ability to articulate his claims without an attorney.

5 Accordingly, the Court cannot find that Mr. Garcia demonstrated the exceptional
6 circumstances required for the appointment of an attorney and will, therefore, deny his motion
7 with leave to refile should he have additional, specific information for the Court to consider.

8 **IT IS THEREFORE ORDERED** that plaintiff Manuel Garcia’s motion for appointment
9 of counsel (ECF No. 85) is **DENIED without prejudice**. The Court also reminds Mr. Garcia that
10 he must comply with all deadlines currently set in his case even if he refiles his motion for
11 appointment of counsel.

12 **IT IS FURTHER ORDERED** that plaintiff Manuel Garcia’s response to defendants Las
13 Vegas Metropolitan Police Department, Joseph Lombardo, and Brandon Prisbrey’s motion for
14 summary judgment is extended to August 15, 2020.

15 **IT IS FURTHER ORDERED** that plaintiff Manuel Garcia’s response to defendant
16 Susanne Roozendaal’s motion for summary judgment is extended to August 15, 2020.

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18 DATED: June 18, 2020.

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BRENDA WEKSLER
21 UNITED STATES MAGISTRATE JUDGE
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