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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 CHEWETO AHMED BERRY,

7 Plaintiff,

8 v.

9 TIMOTHY M. THRASHER, MIKE
10 OBENLAND, ROBERT SMITH, MARK
11 HUNLEY, KATRINA HENRY, JAN
12 DOE NURSE, DAN MCBRIDE,

13 Defendants.

No. C13-5065 RBL/KLS

ORDER DENYING MOTION FOR
COUNSEL

14 Before the Court is Plaintiff's motion for the appointment of counsel. ECF No. 6.

15 Having carefully considered Plaintiff's request and balance of the record, the Court finds that
16 the motion should be denied.

17 **DISCUSSION**

18 No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v.*
19 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S.*
20 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is
21 discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may
22 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28
23 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*
24 *grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional
25 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]
26 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal

ORDER - 1

1 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting
2 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he
3 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to
4 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d
5 1101, 1103 (9th Cir. 2004).

6 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
7 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the
8 issues involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of
9 further facts during litigation. But, if all that was required to establish the complexity of the
10 relevant issues was a demonstration of the need for development of further facts, then
11 practically all cases would involve complex legal issues. *Id.*

12 Plaintiff states that he is unable to afford counsel, that the issues involved in this case are
13 complex, he has limited access to legal materials, and that he has no knowledge of the law and
14 is “functionally illiterate.” ECF No. 6, p. 1.

15 Plaintiff has demonstrated an ability to articulate his claims *pro se* in a clear fashion
16 understandable to this Court. Based on Plaintiff’s allegations, the Court notes that this is not a
17 complex case involving complex facts or law. In addition, Plaintiff presents no evidence to
18 show that he is likely to succeed on the merits of his case. While Plaintiff may not have vast
19 resources or legal training, he meets the threshold for a *pro se* litigant. Concerns regarding
20 investigation, access to legal resources or examination of witnesses are not exceptional factors,
21 but are the type of difficulties encountered by many *pro se* litigants. Plaintiff has failed in his
22 burden to demonstrate an inability to present his claims to this Court without counsel.
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1 Accordingly, it is **ORDERED**:

2 (1) Plaintiff's motion for counsel (ECF No. 6) is **DENIED**.

3 (2) The Clerk shall send a copy of this Order to Plaintiff.
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5 **DATED** this 13th day of February, 2013.
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8 Karen L. Strombom
9 United States Magistrate Judge
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