

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,
Plaintiff,
v.
CYNTHIA BASHANT, an individual;
JOEL WOHLFEIL, an individual; LARRY
GERACI, an individual; REBECCA
BERRY, an individual; GINA AUSTIN,
an individual; MICHAEL WEINSTEIN,
an individual; JESSICA MCELFRISH, an
individual; and DAVID DEMIAN, an
individual,
Defendants.

Case No.: 18-CV-325 TWR (DEB)

**ORDER DENYING PLAINTIFF'S EX
PARTE MOTION FOR
APPOINTMENT OF COUNSEL**

(ECF Nos. 36, 38)

Plaintiff Darryl Cotton, proceeding pro se, has filed an Ex Parte Motion for Appointment of Counsel, which is currently before the Court. ("Motion," ECF Nos. 36, 38.) Defendant Michael Weinstein opposes. (ECF No. 39.) For the reasons set forth below, the Court **DENIES** Plaintiff's motion.

LEGAL STANDARD

"Generally, a person has no right to counsel in civil actions." *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). But under 28 U.S.C. § 1915(e)(1), a court may

1 “appoint counsel for indigent civil litigants” based on a showing of “exceptional
 2 circumstances.” *Id.* (citing *Agyeman v. Corrs. Corp. of Am.*, 390 F.3d 1101, 1103 (9th
 3 Cir.2004), *cert. denied sub nom. Gerber v. Agyeman*, 545 U.S. 1128, 125 S.Ct. 2941, 162
 4 L.Ed.2d 867 (2005)). In determining whether exceptional circumstances exist, the court
 5 considers (1) the “likelihood of success on the merits” and (2) “the ability of the
 6 petitioner to articulate his claims *pro se* in light of the complexity of the legal issues
 7 involved.” *Id.* (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir.1983)). “Neither
 8 of these considerations is dispositive and instead must be viewed together.” *Id.*
 9 (citing *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir.1986)).

10 ANALYSIS

11 Here, exceptional circumstances do not exist, and Plaintiff is therefore not entitled
 12 to a court-appointed attorney. First, at this early stage in the proceedings, the Court
 13 cannot determine whether Plaintiff’s case has a likelihood of success on the merits. *See*
 14 *Ayala v. Romero*, No. 318CV02463CABRBM, 2019 WL 2177261, at *2 (S.D. Cal. May
 15 20, 2019) (finding that the court cannot determine the plaintiff’s likelihood of success on
 16 the merits given that “litigation is only in the pleading stages.”). Second, the legal issues
 17 are not complex, and Plaintiff has adequately shown that he can articulate his claims and
 18 grievances, as reflected by the First Amended Complaint. *See Gravesbey v. Byrd-Hunt*,
 19 No. 319CV00372CABRBM, 2019 WL 2550656, at *2 (S.D. Cal. June 20, 2019) (finding
 20 that plaintiff’s Section 1983 claim alleging constitutional violations are not complicated
 21 enough to warrant court-appointed counsel, and noting that federal courts “rarely” find a
 22 case “to be so complex that it is appropriate to appoint counsel for a civil litigant who
 23 faces no loss of liberty in the controversy at hand.”). Whether Plaintiff would fare better
 24 with counsel is not relevant since “whether a litigant would have fared better with
 25 counsel is not the test for appointment of counsel.” *Barron v. Madden*, No. 18CV1287-
 26 GPC (NLS), 2019 WL 329493, at *2 (S.D. Cal. Jan. 25, 2019). Lastly, although Plaintiff
 27 claims financial difficulties (Motion at 26), that alone does not warrant court-appointed
 28 counsel. *See Smith v. Midland Credit Mgmt., Inc.*, No. 18CV2322 JAH (AGS), 2019 WL

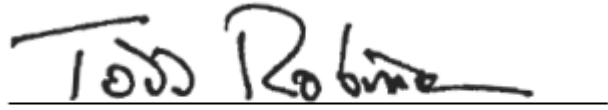
1 1923094, at *3 (S.D. Cal. Apr. 30, 2019) (denying the plaintiff's motion for court-
2 appointed counsel "even assuming Plaintiff's limited financial resources").

3 **CONCLUSION**

4 Not much has changed since Judge Bashant originally denied Plaintiff's motion for
5 court-appointed counsel. (*See* ECF No. 14.) And Plaintiff has not shown here that
6 exceptional circumstances exist. For the reasons stated above, the Court **DENIES**
7 Plaintiff's Ex Parte Motion for Appointment of Counsel **WITHOUT PREJUDICE**.

8 **IT IS SO ORDERED.**

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10 Dated: March 11, 2021

11 
12 Honorable Todd W. Robinson
13 United States District Court
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