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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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10 11 ANTHONY D. WAFER,

1:07-cv-00865-AWI-BAM (PC)

12 Plaintiff,

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

13 v.

14 W. SUESBERRY, et al.,

(ECF No. 15)

15 Defendants.

16
17 Plaintiff Anthony D. Wager (“Plaintiff”) is a state prisoner proceeding pro se and in forma
pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against
18 Defendant Suesberry for failure to provide medication in violation of the Eighth Amendment to
19 the United States Constitution.20
21 On September 23, 2014, Defendant Suesberry filed a motion for judgment on the
22 pleadings pursuant to Federal Rule of Civil Procedure 12(c). (ECF No. 109.) On February 13,
23 2015, the Court ordered Plaintiff to file an opposition or statement of non-opposition to the
24 motion within twenty-one days. (ECF No. 112) On March 13, 2015, the Court granted Plaintiff’s
25 request for a thirty-day extension of time to file his opposition due to the temporary closure of
26 the law library at California State Prison-Los Angeles County. (ECF No. 114.)27
28 On March 27, 2015, Plaintiff filed the instant motion for the appointment of counsel.
(ECF No. 115.) Defendants opposed the motion on March 30, 2015. (ECF No. 116.) The Court

1 finds an optional reply unnecessary and the motion is deemed submitted. Local Rule 230(l).

2 As Plaintiff was informed by order dated August 11, 2014, he does not have a
3 constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525
4 (9th Cir. 1997), and the court cannot require an attorney to represent plaintiff pursuant to 28
5 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa,
6 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in certain exceptional circumstances
7 the court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand,
8 113 F.3d at 1525.

9 Without a reasonable method of securing and compensating counsel, the Court will seek
10 volunteer counsel only in the most serious and exceptional cases. In determining whether
11 “exceptional circumstances exist, the district court must evaluate both the likelihood of success on
12 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
13 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

14 Here, the Court does not find the required exceptional circumstances. Even if it is
15 assumed that Plaintiff lacks legal training and the issues in this case require significant research,
16 his case is not exceptional. This Court is faced with similar cases almost daily from prisoners
17 with no legal training alleging deliberate indifference to serious medical needs. Insofar as
18 Plaintiff argues that this case presents exceptional circumstances based upon the temporary
19 closure of the law library, appointment of counsel is not the appropriate means to address this
20 issue. Rather, if Plaintiff requires additional time to conduct research or meet relevant court
21 deadlines, then he should request an extension of time. Further, at this early stage in the
22 proceedings, the Court cannot make a determination that Plaintiff is likely to succeed on the
23 merits, and based on a review of the record in this case, the Court does not find that Plaintiff
24 cannot adequately articulate his claims. Id. Accordingly, Plaintiff’s motion for the appointment
25 of counsel is HEREBY DENIED without prejudice.
IT IS SO ORDERED.

26 Dated: April 2, 2015

27 /s/ Barbara A. McAuliffe
28 UNITED STATES MAGISTRATE JUDGE