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IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

RALPH KELLY HAWTHORNE, JR., 1:07-cv-01101-LJO-DLB (PC)

Plaintiff,

ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL

v.

KATHY MENDOZA-POWER, et al, (#121)

Defendants.

\_\_\_\_\_ /

On September 21, 2012, plaintiff filed a motion seeking the appointment of counsel. Plaintiff does not have a constitutional right to appointed counsel in this action, *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). *Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). *Rand*, 113 F.3d at 1525.

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

1 In the present case, Plaintiff is not proceeding in forma pauperis. Even if Plaintiff were,  
2 the Court cannot make a determination of the likelihood of success on the merits.

3 For the foregoing reasons, plaintiff's motion for the appointment of counsel is HEREBY  
4 DENIED, without prejudice.

5 IT IS SO ORDERED.

6 **Dated: December 12, 2012**

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE

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