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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAQUES FEARENCE,
Plaintiff,
v.
L.L. SCHULTEIS, et al,
Defendant.

1:08-cv-00615-LJO-GSA (PC)
ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL
(Document# 58)

On October 7, 2013, 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, 109 S.Ct. 1814, 1816 (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, the court does not find the required exceptional circumstances. At this
2 stage in the proceedings, the court cannot make a determination that plaintiff is likely to succeed
3 on the merits. The case is presently in the discovery phase, and plaintiff has requested to amend
4 the complaint to identify one of the defendants who has not been served with process. Based on
5 the record in this case, the court does not find that plaintiff cannot adequately articulate his
6 claims. Further, the legal issues in this case – whether defendants used excessive force, conspired
7 to use excessive force, and failed to protect plaintiff – are not complex, and this court is faced
8 with similar cases almost daily. Therefore, plaintiff’s motion shall be denied without prejudice to
9 renewal of the motion at a later stage of the proceedings.

10 For the foregoing reasons, plaintiff’s motion for the appointment of counsel is HEREBY
11 DENIED, without prejudice.

12 IT IS SO ORDERED.

13 Dated: October 10, 2013

/s/ Gary S. Austin
14 UNITED STATES MAGISTRATE JUDGE