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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LOUIS BRANCH,

 Plaintiff,

 v.

D. UMPHENOUR,

 Defendant.

Case No. 1:08-cv-01655-SAB (PC)

ORDER DENYING PLAINTIFF’S MOTION
FOR APPOINTMENT OF COUNSEL,
WITHOUT PREJUDICE

(ECF No. 380)

Plaintiff Louis Branch is proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s motion for appointment of counsel, filed October 13, 2022.

There is no constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require any 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

1 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
2 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

3 In the present case, the Court does not find the required exceptional circumstances.
4 Plaintiff seeks appointment of counsel due to various medical conditions and modified
5 programming at the prison. While the Court is sympathetic to Plaintiff’s medical conditions,
6 there is no showing that his case is exceptional or that he is unable to litigate this action on his
7 own behalf. Indeed, to date, Plaintiff has succeeded in filing an appeal and a fourth amended
8 complaint in which he stated a cognizable retaliation claim against Defendant Umphenour.
9 Further, the Court is faced with similar cases almost daily and lacks counsel to accept these
10 cases. While the Court recognizes that Plaintiff is at a disadvantage due to his pro se status and
11 his incarceration, the test is not whether Plaintiff would benefit from the appointment of counsel.
12 See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most actions require
13 development of further facts during litigation and a pro se litigant will seldom be in a position to
14 investigate easily the facts necessary to support the case.”) The test is whether exception
15 circumstances exist and here, they do not. In addition, circumstances common to most prisoners,
16 such as lack of legal education and limited law library access, do not establish exceptional
17 circumstances that would warrant a request for voluntary assistance of counsel. Accordingly,
18 Plaintiff’s motion for the appointment of counsel is denied, without prejudice.

19 IT IS SO ORDERED.

20 Dated: October 14, 2022

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23 UNITED STATES MAGISTRATE JUDGE
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