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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROCKY MEL CONTRERAS,)	1:09cv0087 OWW DLB
)	
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S
)	REQUEST FOR COUNSEL
v.)	(Document 3)
)	
ERNIE MORENO, et al.,)	
)	
)	
Defendants.)	

Plaintiff Rocky Mel Contreras (“Plaintiff”) is proceeding pro se and in forma pauperis in this action. On January 14, 2008, concurrent with his complaint, Plaintiff filed a request for counsel.

A district court has the discretion to appoint counsel to represent a person unable to afford representation under 28 U.S.C. § 1915(e)(1). However, the court may only do so under “exceptional circumstances.” Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.1991). Exceptional circumstances do not exist in this action.

Plaintiff also cites 42 U.S.C. § 2000e-5(f)(1) in support of his request. While that section gives the Court discretion to appoint counsel in Title VII employment discrimination actions, the Court must examine certain factors in making its determination. Ivey v. Board of Regents of

1 Univ. Alaska, 673 F.2d 266, 269. One of the factors is whether Plaintiff's claim is meritorious.¹

2 As discussed in the order dismissing Plaintiff's complaint with leave to amend, issued by
3 separate order, it is unclear whether Plaintiff can state a claim for which relief can be granted.

4 The Court, therefore, is unable to determine whether Plaintiff's claim has merit and cannot grant
5 counsel under section 2000e-5(f)(1).

6 Accordingly, Plaintiff's request for appointment of counsel under both 28 U.S.C.
7 § 1915(e)(1) and section 2000e-5(f)(1) is DENIED.

8
9 IT IS SO ORDERED.

10 **Dated: January 20, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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¹ The other two factors are (1) the Plaintiff's financial resources; and (2) the efforts made by the Plaintiff to secure counsel on his own. Ivey, 673 F.2d at 269.