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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ANTHONY JOHNSON,  
Plaintiff,  
v.  
L. GONZALEZ, et al.,  
Defendant(s).

1:09-cv-01264-AWI-BAM (PC)

ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL  
(ECF No. 112)

Plaintiff Anthony Johnson (“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 on Plaintiff’s complaint, filed on July 21, 2009, against Defendants L. Gonzales and A. Murrieta for excessive force in violation of the Eighth Amendment.

On August 22, 2014, Plaintiff filed the instant 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

1 volunteer counsel only in the most serious and exceptional cases. In determining whether  
2 “exceptional circumstances exist, the district court must evaluate both the likelihood of success on  
3 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the  
4 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

5 Plaintiff asserts that he requires the appointment of counsel because he is highly  
6 medicated on pain medications, including Oxcarbazepine and Gabapentin, and he suffers from a  
7 condition called H-pylori/Gastritis, which causes constant stomach pain. Plaintiff also asserts that  
8 he requires the appointment of counsel because the issues are complex, he has very little legal  
9 experience and he relies on the assistance of other prisoners. (ECF No. 112.)

10 The Court has considered Plaintiff’s moving papers, declaration and exhibits, but does not  
11 find the required exceptional circumstances. Even if it is assumed that Plaintiff is not well versed  
12 in the law and that he has made serious allegations which, if proved, would entitle him to relief,  
13 his case is not exceptional. This Court is faced with similar cases alleging excessive force almost  
14 daily from indigent prisoners with little or no legal experience. Further, at this stage in the  
15 proceedings, the Court cannot make a determination that Plaintiff is likely to succeed on the  
16 merits, and based on a review of the record in this case, the Court does not find that Plaintiff’s  
17 condition prevents him from adequately articulating his claims. Id.

18 For the foregoing reasons, Plaintiff’s motion for the appointment of counsel is HEREBY  
19 DENIED without prejudice.

20 IT IS SO ORDERED.

21  
22 Dated: August 25, 2014

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE