

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

GARRISON S. JOHNSON,

1:10-cv-01918-LJO-DLB (PC)

Plaintiff,

ORDER DENYING APPLICATION TO
PROCEED IN FORMA PAUPERIS (ECF No.
38)

v.

MATTHEW CATE, et al,

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL
(ECF No. 37)

Defendants.

_____ /

On October 17, 2012, Plaintiff filed an application to proceed in forma pauperis. Plaintiff's application is denied. Plaintiff is subject to the three strikes provision of 28 U.S.C. § 1915(g). Plaintiff was required to pay the filing fee in full before proceeding in this action.

On October 17, 2012, plaintiff filed a motion seeking the appointment of counsel. Plaintiff is not proceeding in forma pauperis in this action. Plaintiff has paid the filing fee. 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.

Again, Plaintiff is not proceeding in forma pauperis in this action and is thus not eligible for appointment of counsel under § 1915(e)(1). Even if Plaintiff was eligible, Plaintiff has not

1 demonstrated that exceptional circumstances exist which merit appointment of counsel. Plaintiff
2 has demonstrated an adequate ability to present his claims in this action, and has not
3 demonstrated the likelihood of success on the merits in this action.

4 For the foregoing reasons, plaintiff's motion for the appointment of counsel and to
5 proceed in forma pauperis are HEREBY DENIED.

6 IT IS SO ORDERED.

7 **Dated: December 19, 2012**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE