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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 WILLIE PAUL VIGIL, JR.,

12 Plaintiff,

13 v.

14 WARDEN JAMES A. YATES, et al.,

15 Defendants.
16

1:10-cv-01977 LJO GSA (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(Document# 28)

17 On November 6, 2014, plaintiff filed a motion seeking the appointment of counsel.
18 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland,
19 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an attorney to represent
20 plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the
21 Southern District of Iowa, 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in certain
22 exceptional circumstances the court may request the voluntary assistance of counsel pursuant to
23 section 1915(e)(1). Rand, 113 F.3d at 1525.

24 Without a reasonable method of securing and compensating counsel, the court will seek
25 volunteer counsel only in the most serious and exceptional cases. In determining whether
26 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
27 of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the
28 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 early stage in the proceedings, the court cannot make a determination that plaintiff is likely to
3 succeed on the merits. Plaintiff's third amended complaint, filed on October 1, 2014, awaits
4 screening by the court. (Doc. 27.) Until the third amended complaint is screened and the court
5 finds that Plaintiff states cognizable claims, service of process shall not be initiated upon the
6 defendants. Moreover, based on a review of the record in this case, the court does not find that
7 plaintiff cannot adequately articulate his claims. Plaintiff argues that he cannot afford counsel,
8 the issues in his case are complex, he has limited education and a spelling disability, he suffers
9 from pain due to disabilities, he has attempted to obtain counsel without success, he has limited
10 knowledge of the law, and his resources are limited because he is incarcerated. While these
11 conditions make litigation challenging, they do not amount to exceptional circumstances under
12 the law. Plaintiff asserts that the third amended complaint concerns claims for excessive force
13 and inadequate medical care. The court is faced with similar cases daily. Therefore, Plaintiff's
14 motion shall be denied without prejudice to renewal of the motion at a later stage of the
15 proceedings.

16 For the foregoing reasons, plaintiff's motion for the appointment of counsel is HEREBY
17 DENIED, without prejudice.

18 IT IS SO ORDERED.

19 Dated: November 6, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE