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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD ABERCROMBIE,
Plaintiff,
v.
DR. KAUT, et al.,
Defendant(s).

1:11-cv-00048 GSA (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(Document# 26)

On March 24, 2014, plaintiff filed a 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 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 of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the 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 stage in the proceedings, the court cannot make a determination that plaintiff is likely to succeed
3 on the merits. Plaintiff's sole defendant has not been served and, to date, has not been located
4 after two attempts at service. While Plaintiff asserts that it is difficult for him to read, write and
5 understand material regarding his case, based on the record in this case, the court does not find
6 that plaintiff cannot adequately articulate his claims and respond to court orders. Further, the
7 legal issue in this case – whether defendant failed to provide Plaintiff with adequate medical
8 treatment – does not appear complex, and this court is faced with similar cases almost daily.
9 Therefore, plaintiff's motion shall be denied without prejudice to renewal of the motion at a later
10 stage of the proceedings.

11 For the foregoing reasons, plaintiff's motion for the appointment of counsel is **HEREBY**
12 **DENIED**, without prejudice.

13 **IT IS SO ORDERED.**

14 Dated: **March 27, 2014**

/s/ Gary S. Austin
15 **UNITED STATES MAGISTRATE JUDGE**