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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHARLES ULMSCHNEIDER,)	1:11-cv-1767 AWI GSA
)	
)	
Plaintiff,)	
)	
v.)	ORDER DENYING PLAINTIFF’S
)	REQUEST FOR COUNSEL
LOS BANOS UNIFIED SCHOOL)	
DISTRICT; LOS BANOS TEACHERS’)	
ASSOCIATION; DAN MARTIN; DUKE)	(Doc. 13)
MARSHALL; DR. CHARLES MARTIN;)	
CHERYL MOODY; ANTHONY)	
PARREIRA; JAMES ORR; SHANNA)	
SPIVA; STEVE TIETJEN; AARON)	
BARCELLOS; COLLEEN MENEFE)	
DENNIS AREIAS; DAN GOIN; ANDREE)	
SOARES; CAROLE WYNNE, RANDY)	
NOCITO, DOES 1 through 50,)	

On November 26, 2012, Plaintiff filed a motion requesting court appointed legal counsel and or assistance to obtain a lawyer. (Doc. 13). Upon a review of the request, the Court DENIES Plaintiff’s motion.

Title 28 of the United States Code section 1915(e)(1) provides: “The court may request an attorney to represent any person unable to afford counsel.” Nevertheless, “it is well-established that there is generally no constitutional right to counsel in civil cases.” *United States v. Sardone*, 94 F.3d 1233, 1236 (9th Cir. 1996) (citing *Hedges v. Resolution Trust Corp. (In re Hedges)*, 32 F.3d 1360, 1363 (9th Cir. 1994)). There is also no constitutional right to appointed counsel to pursue a Title 42 of the United States Code section 1983 claim. *Rand v.*

1 *Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (citing *Storseth v. Spellman*, 654 F.2d 1349, 1353
2 (9th Cir. 1981)); accord *Campbell v. Burt*, 141 F.3d 927, 931 (9th Cir. 1998). Federal courts do
3 not have the authority “to make coercive appointments of counsel.” *Mallard v. United States*
4 *District Court for the Southern District of Iowa*, 490 U.S. 296, 310, 109 S.Ct. 1814, 104 L.Ed.2d
5 318 (1989) (discussing § 1915(d)); see also *United States v. \$292,888.04 in U.S. Currency*, 54
6 F.3d 564, 569 (9th Cir. 1995). Appointment of counsel by the court is discretionary, not
7 mandatory. *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d at 569.

8 In this case, Plaintiff is not entitled to the assistance of counsel in his civil action as there
9 is no constitutional right to counsel in such cases, and the Court will not make a coercive
10 appointment of counsel.

11 Appointment of counsel may be made if a court finds that there are exceptional
12 circumstances after evaluating the likelihood of success on the merits and the ability of the party
13 to articulate his or her claims pro se in light of the complexity of the legal issues involved; the
14 factors must be viewed together. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991) (citing
15 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)). The Court cannot require an
16 attorney to represent Plaintiff. *Mallard v. United States District Court for the Southern District*
17 *of Iowa*, 490 U.S. at 298. Rather, the Court will seek volunteer counsel only in the most serious
18 and exceptional cases.

19 In light of the stage of the proceedings, the Court is unable to make a determination that
20 Plaintiff is likely to succeed on the merits. *Terrell v. Brewer*, 935 F.2d at 1017. Moreover, this
21 case does not appear to be particularly complex. Although this Court has encouraged Plaintiff to
22 obtain counsel because of the complexity of his case, the Plaintiff’s complaint asserts a claim of
23 unlawful termination from his employment. (See Doc. 9.) This court is faced with similar cases
24 almost daily.

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1 As such, this Court does not find the required exceptional circumstances. Even if it is
2 assumed that Plaintiff is not well versed in the law and that he has made serious allegations
3 which, if proved, would entitle him to relief, the case is not exceptional.

4 Accordingly, Plaintiff's request or motion for appointment of counsel is DENIED.

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6 IT IS SO ORDERED.

7 **Dated: November 28, 2012**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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