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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOSEPH A. BROWN,  
Plaintiff,  
v.  
UNITED STATES OF AMERICA, et al.,  
Defendant.

1:12-cv-00165 AWI GSA (PC)  
ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL  
(Document# 41)

On October 28, 2013, 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 filed the Third Amended Complaint on September 23, 2013 and lodged a  
4 proposed supplemental complaint on October 28, 2013, and the Complaint and supplemental  
5 complaint await the Court's review and screening required under 28 U.S.C. 1915. Thus, to date  
6 the Court has not found any cognizable claims in plaintiff's complaint for which to initiate service  
7 of process, and no other parties have yet appeared. Moreover, based on a review of the record in  
8 this case, the Court does not find that plaintiff cannot adequately articulate his claims. Therefore,  
9 Plaintiff's motion shall be denied without prejudice to renewal of the motion at a later stage of the  
10 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: November 7, 2013

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