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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ERNESTO SOTO,

Plaintiff,

v.

MATTHEW CATE, et al.,

Defendants.

CASE: 1:12-cv-00477-GBC-(PC)

ORDER DENYING INCORRECT MOTION
TO PROCEED IN FORMA PAUPERIS

Doc. 2

ORDER TO SUBMIT APPLICATION
TO PROCEED IN FORMA PAUPERIS
OR PAY FILING FEE WITHIN 45 DAYS

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

Doc. 3

Plaintiff is a state prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has not paid the \$350.00 filing fee, or submitted a correct application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

On March 29, 2012, 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 (1989). However, in certain exceptional circumstances the Court may request the voluntary assistance of counsel pursuant to § 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

1 the merits [and] the ability of the [Plaintiff] to articulate his claims *pro se* in light of the complexity
2 of the legal issues involved.” *Id.*

3 In the present case, the Court does not find the required exceptional circumstances. Even if
4 it is assumed that Plaintiff is not well versed in the law and that he has made serious allegations
5 which, if proved, would entitle him to relief, his case is not exceptional. This Court is faced with
6 similar cases almost daily. Further, at this early stage in the proceedings, the Court cannot make a
7 determination that Plaintiff is likely to succeed on the merits, and based on a review of the record
8 in this case, the Court does not find that Plaintiff cannot adequately articulate his claims. *Id.*

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff’s motion for the appointment of counsel is HEREBY DENIED, without
11 prejudice;
- 12 2. Plaintiff’s incorrect motion to proceed in forma pauperis is HEREBY DENIED,
13 without prejudice;
- 14 3. The Clerk’s Office shall send to Plaintiff the correct form for application to proceed
15 in forma pauperis; and
- 16 4. Within **forty-five (45) days** of the date of service of this order, Plaintiff shall submit
17 the attached application to proceed in forma pauperis, completed and signed, or in
18 the alternative, pay the \$350.00 filing fee for this action. **Failure to comply with this**
19 **order will result in dismissal of this action.**

20
21 IT IS SO ORDERED.

22 Dated: April 3, 2012

23 
24 UNITED STATES MAGISTRATE JUDGE