

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JOHN FRATUS,

Plaintiff,

v.

CALIFORNIA DEPT. OF  
CORRECTIONS, et al.,

Defendants.

Case No. 1:12-cv-00906-LJO-SKO (PC)

ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL

(Doc. 34)

---

Plaintiff John Fratus, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on June 4, 2012. On August 13, 2014, Plaintiff filed a motion for the appointment of counsel.

Plaintiff does not have a constitutional right to the appointment of counsel in this action. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009); *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The Court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1), but it will do so only if exceptional circumstances exist. *Palmer*, 560 F.3d at 970; *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). In making this determination, the Court must evaluate the likelihood of success on the merits and the ability of Plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved. *Palmer*, 560 F.3d at 970 (citation and quotation marks omitted); *Wilborn*, 789 F.2d at 1331. Neither consideration is

1 dispositive and they must be viewed together. *Palmer*, 560 F.3d at 970 (citation and quotation  
2 marks omitted); *Wilborn* 789 F.2d at 1331.

3 In the present case, the Court does not find the required exceptional circumstances. Even  
4 if 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. The Court is faced with  
6 similar cases almost daily. Further, at this 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. *Palmer*,  
9 560 F.3d at 970.

10 While the Court recognizes that Plaintiff is at a disadvantage due to his pro se status and  
11 his incarceration, the test is not whether Plaintiff would benefit from the appointment of counsel.  
12 *See Wilborn*, 789 F.2d at 1331 (“Most actions require development of further facts during  
13 litigation and a pro se litigant will seldom be in a position to investigate easily the facts necessary  
14 to support the case.”) The test is whether exceptional circumstances exist and here, they do not;  
15 the record in this case demonstrates that Plaintiff is more than capable of articulating his claims.

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

18  
19 IT IS SO ORDERED.

20 Dated: December 2, 2014

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

21  
22  
23  
24  
25  
26  
27  
28