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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELVIN FELTON,
Plaintiff,
v.
J. LOPEZ, et al.,
Defendants.

1:12-cv-01066 AWI-GSA (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(Document# 59)

On January 26, 2015, 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 Plaintiff argues that he needs assistance to participate fully in discovery. This alone does
2 not make Plaintiff's case exceptional under the Ninth Circuit's standards discussed above. At this
3 stage in the proceedings, the court cannot make a determination that Plaintiff is likely to succeed
4 on the merits. Plaintiff has been granted thirty days in which to file an Amended Complaint
5 containing all of the claims he seeks to pursue. Thus, there is presently no operative complaint on
6 record in this case. Moreover, based on the court's record, the court does not find that Plaintiff
7 cannot adequately articulate his claims or respond to the court's orders. Plaintiff is advised that
8 he is not precluded from renewing the motion for appointment of counsel at a later stage of the
9 proceedings.

10 For the foregoing reasons, Plaintiff's motion for the appointment of counsel is HEREBY
11 DENIED, without prejudice.

12 IT IS SO ORDERED.

13 Dated: January 29, 2015

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