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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL J. SULLIVAN,
Plaintiff,
v.
M.D. BITER, et al.,
Defendant.

1:12-cv-01662-AWI-GSA (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(Document #38)

On March 3, 2014, 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 early stage in the proceedings, the court cannot make a determination that plaintiff is likely to
3 succeed on the merits. Plaintiff's first amended complaint was dismissed on September 16, 2003,
4 for failure to state a claim, with leave to amend, and Plaintiff has not filed the second amended
5 complaint. (Doc. 30.) No other parties have yet appeared. Moreover, based on a review of the
6 record in this case, the court finds that plaintiff is responsive, adequately communicates, and is
7 able to articulate his claims. See First Amended Complaint, Doc. 28. Therefore, plaintiff's
8 motion shall be denied without prejudice to renewal of the motion 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: March 14, 2014

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