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

8 DAVID L. STRATMON, JR.,) Case No.: 1:12-cv-01837-DAD-SAB (PC)
9 Plaintiff,)
10 v.) ORDER DENYING PLAINTIFF’S SECOND
11 ANGELA MORRIS,) MOTION FOR THE APPOINTMENT OF
12 Defendant.) COUNSEL
13) [ECF No. 65]
14)

15 Plaintiff David L. Stratmon, Jr. is a federal prisoner proceeding pro se in this civil rights action
16 pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388
17 (1971). This matter proceeds on Plaintiff’s claim that Defendant Morris interfered with his receipt of
18 incoming mail and failed to notify him that his mail was being withheld. This matter was referred to
19 the undersigned pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302.

20 Currently before the Court is Plaintiff’s second motion for the appointment of counsel. (ECF
21 No. 65.) Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.
22 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require an attorney to represent
23 Plaintiff pursuant to 28 U.S.C. § 1915(e)(1), Mallard v. United States District Court for the Southern
24 District of Iowa, 490 U.S. 296, 298, 109 S. Ct. 1814, 1816 (1989). However, in certain exceptional
25 circumstances the Court may request the voluntary assistance of counsel pursuant to section
26 1915(e)(1). Rand, 113 F.3d at 1525.

27 Without a reasonable method of securing and compensating counsel, the Court will seek
28 volunteer counsel only in the most serious and exceptional cases. In determining whether “exceptional

1 circumstances exist, a district court must evaluate both the likelihood of success of the merits [and] the
2 ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues
3 involved.” *Id.* (internal quotation marks and citations omitted).

4 Plaintiff seeks the appointment of counsel because he is unable to afford counsel, the legal
5 issues are complex, his legal documents and reference materials have been destroyed and confiscated,
6 and he has limited knowledge of the law. In the present case, the Court does not find that exceptional
7 circumstances exist which would warrant a request for the voluntary assistance of counsel.
8 Circumstances common to most prisoners, such as non-attorney status and limited law library access,
9 do not establish exceptional circumstances. Further, the record reflects that Plaintiff is adequately able
10 to articulate his claim, and the issues raised are not complex. As discovery is underway, at this stage,
11 the Court does not find any likelihood of success on the merits.

12 Accordingly, Plaintiff’s second motion for appointment of counsel is denied, without
13 prejudice.

14
15 IT IS SO ORDERED.

16 Dated: September 5, 2017


UNITED STATES MAGISTRATE JUDGE