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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

ROBERTO HERRERA,
Plaintiff,
vs.
H. NGUYEN,
Defendant.

1:12-cv-01915 GSA (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(MOTION #10)

_____ /

On April 22, 2013, 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, and
2 Plaintiff's motion shall be denied. At this early stage in the proceedings, the court cannot make
3 a determination that Plaintiff is likely to succeed on the merits. Plaintiff's Complaint was
4 dismissed on April 3, 2013, for failure to state a claim, with leave to amend. To date, Plaintiff
5 has not filed an amended complaint. Thus, there is no complaint on record in this case for
6 which the Court has found cognizable claims. It is too early for service of process, and no other
7 parties have yet appeared. Moreover, the Court does not find that Plaintiff cannot adequately
8 articulate his claims or respond to the Court's orders. Plaintiff is advised that he is not
9 precluded from renewing the motion for appointment of counsel at a later stage of the
10 proceedings.

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

13 IT IS SO ORDERED.

14 **Dated: May 2, 2013**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE