

1 As previously explained, Plaintiff does not have a constitutional right to appointed counsel
2 in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), partially overruled on other
3 grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998), and the court cannot require an attorney to
4 represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for
5 the Southern District of Iowa, 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in
6 certain exceptional circumstances the court may request the voluntary assistance of counsel
7 pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

8 Without a reasonable method of securing and compensating counsel, the court will seek
9 volunteer counsel only in the most serious and exceptional cases. In determining whether
10 “exceptional circumstances exist, a district court must evaluate both the likelihood of success on
11 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
12 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

13 Plaintiff currently is housed at the California Health Care Facility in Stockton, California.
14 He asserts that counsel is necessary because he is sick. Plaintiff explains that when he comes
15 from dialysis treatment, he “can’t hold-up,” lies down and sleeps. (ECF No. 32, p. 1.) Plaintiff
16 believes that he needs counsel to protect his interests. At this juncture, the Court does not find the
17 required exceptional circumstances. Plaintiff has not provided the Court with any supporting
18 documentation or evidence regarding his condition or his asserted inability to prosecute this
19 action. Further, at this early stage in the proceedings, the Court cannot make a determination that
20 Plaintiff is likely to succeed on the merits, and based on a review of the record in this case, the
21 Court does not find that Plaintiff cannot adequately articulate his claims. Id.

22 For the foregoing reasons, Plaintiff’s motion for the appointment of counsel is HEREBY
23 DENIED without prejudice. As necessary and appropriate, Plaintiff may renew his motion for
24 the appointment of counsel supported by medical records or other relevant documents.

25 IT IS SO ORDERED.

26 Dated: December 15, 2014

27 /s/ Barbara A. McAuliffe
28 UNITED STATES MAGISTRATE JUDGE