

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MICHAEL J. PAYAN,  
Plaintiff,  
v.  
H. TATE, et al.,  
Defendants.

1:13-cv-00807-LJO-DLB (PC)  
  
ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL  
  
(Document #59)

On April 27, 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 In the present case, the Court does not find the required exceptional circumstances. Even  
2 if it is assumed that Plaintiff is not well versed in the law and that he has made serious allegations  
3 which, if proved, would entitle him to relief, his case is not exceptional. This Court is faced with  
4 similar cases almost daily. Further, at this early stage in the proceedings, the Court cannot make  
5 a determination that plaintiff is likely to succeed on the merits, and based on a review of the  
6 record in this case, the Court does not find that Plaintiff cannot adequately articulate his claims.

7 Id.

8 Plaintiff also requests counsel because he is a validated gang member housed in the  
9 Security Housing Unit, and is therefore prevented from communicating with other inmates.  
10 However, this does not require the appointment of counsel. Moreover, the Court does not have  
11 authority to order prison officials to take any action, including ordering them to allow Plaintiff to  
12 locate and communicate with other inmates. This is especially true in situations where  
13 communication may impact institutional safety and security. Plaintiff may utilize the discovery  
14 procedures allowed under the Federal Rules of Civil Procedure in attempting to obtain the  
15 information he seeks.

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

18 IT IS SO ORDERED.

19  
20 Dated: April 30, 2015

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE