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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DARRELL JUNIOR LESCALLETT,)	1:13-cv-01342-LJO-BAM (PC)
)	
Plaintiff,)	ORDER DENYING PLAINTIFF’S SECOND
)	MOTION REQUESTING THE
v.)	APPOINTMENT OF COUNSEL, WITHOUT
)	PREJUDICE
R. DIAZ, et al.,)	
)	(ECF No. 43)
Defendants.)	
)	
)	
)	

Plaintiff Darrell Junior Lescallett (“Plaintiff”) is a state prisoner proceeding in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action currently proceeds on Plaintiff’s claims for retaliation in violation of the First Amendment against Defendants Gipson, Broomfield and Doe Defendants.

Currently before the Court is Plaintiff’s second motion for the appointment of counsel, filed on September 26, 2017. (ECF No. 43.)¹ Plaintiff states that he is unable to afford counsel, that his imprisonment limits his ability to litigate, that the issues in his matter are complex, and he has limited law library access and limited knowledge of the law. Plaintiff further states that a trial in this matter will likely involve conflicting testimony, and counsel would better enable Plaintiff to present evidence and cross-examine witnesses.

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¹ The substance of Plaintiff’s first motion to appoint counsel was not addressed by the Court, because that motion was not signed by Plaintiff. (ECF No. 42.)

1 Plaintiff does not have a constitutional right to appointed counsel in this civil action,
2 Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require an attorney
3 to represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court
4 for the Southern District of Iowa, 490 U.S. 296, 298, 109 S. Ct. 1814, 1816 (1989). However, in
5 certain exceptional circumstances the Court may request the voluntary assistance of counsel
6 pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525. Without a reasonable method of securing
7 and compensating counsel, the Court will seek volunteer counsel only in the most serious and
8 exceptional cases. In determining whether “exceptional circumstances exist, the district court
9 must evaluate both the likelihood of success of the merits [and] the ability of the [plaintiff] to
10 articulate his claims pro se in light of the complexity of the legal issues involved.” Id. (internal
11 quotation marks and citations omitted).

12 In the present case, the Court does not find the required exceptional circumstances. Even
13 if it is assumed that Plaintiff is not well versed in the law and that he has made serious
14 allegations which, if proved, would entitle him to relief, his case is not exceptional. This Court is
15 faced with similar cases almost daily. Further, at this early stage in the proceedings, the Court
16 cannot find any likelihood of success on the merits. Also, based on a review of the record in this
17 case, the court does not find that Plaintiff cannot adequately articulate his claims. His pleadings,
18 motions, and other filings are comprehensible. Thus, the Court does not find this to be a serious
19 and exceptional case necessitating the appointment of counsel at this time.

20 Accordingly, it is HEREBY ORDERED that Plaintiff’s motion for the appointment of
21 counsel (ECF No. 29) is DENIED, without prejudice.

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23 IT IS SO ORDERED.

24 Dated: September 29, 2016

/s/ Barbara A. McAuliffe
25 UNITED STATES MAGISTRATE JUDGE
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