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

DARRELL HARRIS,
Plaintiff,
v.
R. PIMENTEL, et al.,
Defendants.

Case No. 1:13-cv-01354-LJO-MJS (PC)
**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL
(ECF No. 20)**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. The matter proceeds against Defendant Escamilla on the First Amended Complaint's free exercise, RLUIPA and equal protection claims for damages.

Before the Court is Plaintiff's motion for 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), partially overruled on other grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998), and the Court can not 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 (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

1 seek volunteer counsel only in the most serious and exceptional cases. In determining
2 whether “exceptional circumstances exist, the district court must evaluate both the
3 likelihood of success of the merits [and] the ability of the [plaintiff] to articulate his or her
4 claims pro se in light of the complexity of the legal issues involved.” *Id.* Neither of these
5 factors is dispositive and both must be viewed together before reaching a decision on
6 request of counsel under section 1915(d). *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th
7 Cir. 1986); *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009).

8 The burden of demonstrating exceptional circumstances is on the Plaintiff. See
9 *Palmer*, 560 F.3d at 970 (plaintiff “has not made the requisite showing of exceptional
10 circumstances for the appointment of counsel”); accord, *Alvarez v. Jacquez*, 415 F. App’x
11 830, 831 (9th Cir. 2011) (plaintiff “failed to show exceptional circumstances”); *Simmons v.*
12 *Hambly*, 14 F. App’x 918, 919 (9th Cir. 2001) (same); *Davis v. Yarborough*, 459 F. App’x
13 601, 602 (9th Cir. 2011) (plaintiff “did not show the ‘exceptional circumstances’ required to
14 appoint counsel under 28 U.S.C. § 1915(e)(1).”).

15 In the present case, the Court does not find the required exceptional circumstances.
16 Even if it is assumed that Plaintiff is not well versed in the law and that he has made
17 serious allegations which, if proved, would entitle him to relief, his case is not exceptional.
18 This Court is faced with similar cases almost daily. Further, the Court cannot make a
19 determination at this early stage of the litigation that Plaintiff is likely to succeed on the
20 merits. The free exercise, RLUIPA and equal protection claims in issue do not appear to be
21 novel or unduly complex. The facts alleged to date appear straightforward and unlikely to
22 involve extensive investigation and discovery.

23 The papers filed by Plaintiff in this case reflect an appreciation of the legal issues
24 and standards and an ability to express same adequately in writing. At present, the Court is
25 unable to find that Plaintiff is unable adequately to articulate his claims.

26 Finally, nothing suggests that Plaintiff has made diligent effort to secure counsel.¹
27 Plaintiff’s lack of funds alone does not necessarily mean efforts to secure counsel would be

28 ¹ See e.g. *Thornton v. Schwarzenegger*, 2011 WL 90320, *3-4 (S.D. Cal. January 11, 2011) (cases cited).

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futile.

For the reasons stated, it is HEREBY ORDERED that Plaintiff's motion for appointment of counsel (ECF No. 20) is DENIED, without prejudice.

IT IS SO ORDERED.

Dated: September 23, 2014

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE