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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GARY VANDERBUSCH,
Plaintiff,
v.
JOHN CHOKATOS,
Defendant.

Case No. 1:13-cv-01422-LJO-EPG (PC)
ORDER DENYING PLAINTIFF’S MOTION
FOR APPOINTMENT OF PRO BONO
COUNSEL
(ECF NO. 34)

Gary Vanderbusch (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. On June 30, 2017, Plaintiff filed a motion for appointment of pro bono counsel. (ECF No. 34).

Plaintiff asks for appointment of counsel because he is unable to afford counsel, because of the complexity of his case, because of his limited education, because he is unable to move around a lot, because his mental state is one of depression, and because Plaintiff believes that he has a good case.

Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), withdrawn in part on other grounds, 154 F.3d 952 (9th Cir. 1998), and the Court cannot require an attorney to represent Plaintiff pursuant to 28

1 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa,
2 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in certain exceptional circumstances
3 the Court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand,
4 113 F.3d at 1525.

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

10 The Court will not order appointment of pro bono counsel at this time. The Court has
11 reviewed the record in this case, and at this time the Court cannot make a determination that Plaintiff
12 is likely to succeed on the merits of his claim. Moreover, based on the record in this case, it appears
13 that Plaintiff can adequately articulate his claim and respond to Court orders.

14 Plaintiff is advised that he is not precluded from renewing the motion for appointment of pro
15 bono counsel at a later stage of the proceedings.

16 For the foregoing reasons, IT IS ORDERED that Plaintiff’s motion for appointment of pro
17 bono counsel is DENIED without prejudice.

18 IT IS SO ORDERED.

19 Dated: July 5, 2017

20 /s/ Eric P. Gray
21 UNITED STATES MAGISTRATE JUDGE