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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FEDERICO HERNANDEZ,
Plaintiff,
v.
M. HERNANDEZ, et al.,
Defendant.

1:13-cv-01625 MJS (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(Document# 39)

On December 8, 2014, 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 (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).

In the present case, the court does not find the required exceptional

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

7 Finally, Plaintiff's motion is based in part on his allegation that Defendants have
8 refused to cooperate in discovery. However, discovery is not yet open. A telephonic
9 scheduling conference is set for December 18, 2014 at 10:00 a.m. to discuss the
10 conduct of discovery in this case. (ECF No. 38.) The Court will issue an order governing
11 discovery following the conference.

12 For the foregoing reasons, plaintiff's motion for the appointment of counsel is
13 HEREBY DENIED, without prejudice.

14 IT IS SO ORDERED.

15
16 Dated: December 11, 2014

/s/ Michael J. Seng
17 UNITED STATES MAGISTRATE JUDGE