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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
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9 GEORGE MCCLURE,

10 Plaintiff,

11 v.

12 C. K. CHEN, et al.,

13 Defendants.
14

1:14-cv-00932-DAD-GSA-PC

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL TO ASSIST
PLAINTIFF AT DEPOSITION, OR IN THE
ALTERNATIVE, TO ALLOW INMATE
PARTHEMORE TO ATTEND DEPOSITION AND
ASSIST PLAINTIFF
(ECF No. 73.)**

15 **I. BACKGROUND**

16 George McClure (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis*
17 with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
18 commencing this action on June 4, 2014. (ECF No. 1.) This case is now in the discovery phase.

19 On November 30, 2018, Plaintiff filed a motion for appointment of counsel to represent
20 him at an upcoming deposition, or in the alternative, to allow inmate Parthemore, Plaintiff’s
21 jailhouse lawyer and advisor, to attend the deposition and assist Plaintiff. (ECF No. 73.)

22 **II. APPOINTMENT OF COUNSEL**

23 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.
24 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require an attorney to
25 represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court
26 for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional
27 circumstances the Court may request the voluntary assistance of counsel pursuant to section
28 1915(e)(1). Rand, 113 F.3d at 1525.

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

6 Plaintiff seeks the appointment of an attorney to assist him at his deposition scheduled
7 for December 12, 2018, at the California Institution for Men (CIM) in Chino, California, where
8 Plaintiff is currently incarcerated. Plaintiff argues that he is unable to afford counsel and his
9 eyesight is failing, which will greatly hamper his ability to participate in the deposition. Plaintiff
10 asserts that inmates are locked in one-man cages during depositions which will hinder his
11 movement and access to important documents. Plaintiff states that he has written fifteen letters
12 to attorneys seeking representation, and none of the attorneys have replied. Plaintiff also asserts
13 that all of the legal work in this case has been done by another inmate, Mr. Ira D. Parthemore, a
14 “jailhouse lawyer” and advisor. (ECF No. 73 at 2:10-12.)

15 While these conditions are challenging, they do not make Plaintiff’s case exceptional
16 under the law. At this stage of the proceedings the court cannot find that Plaintiff is likely to
17 succeed on the merits. While the court has found that Plaintiff’s amended complaint “states a
18 claim for damages against Defendants Horton and Chen for violating Plaintiff’s rights under the
19 Eighth Amendment,” these findings are not a determination that Plaintiff is likely to succeed on
20 the merits. (ECF No. 15 at 1:19-21.) The legal issue in this case --whether defendants failed to
21 provide adequate medical care -- is not complex, and based on a review of the record in this case,
22 Plaintiff can adequately articulate his claims. Thus, the court does not find the required
23 exceptional circumstances, therefore Plaintiff’s motion shall be denied without prejudice to
24 renewal of the motion at a later stage of the proceedings.

25 **III. ASSISTANCE BY INMATE PARTHEMORE AT DEPOSITION**

26 In the alternative, Plaintiff requests the court to issue an order directing the Warden of
27 CIM to allow inmate Parthemore to attend the upcoming deposition with Plaintiff to assist him
28 with reading and answering questions. As stated above, Mr. Ira D. Parthemore is a “jailhouse

1 lawyer” and advisor. (ECF No. 73 at 2:10-12.) Plaintiff requests that he and inmate Parthemore
2 be allowed to sit at a table, not in cages, in order to properly review and produce documents for
3 defense counsel.

4 Plaintiff has not demonstrated that circumstances in this action warrant permitting an
5 inmate to assist Plaintiff at his deposition. While cases guarantee prisoners the right to seek
6 assistance and advice on legal matters from other inmates in certain matters, the cases do not
7 permit *representation* during litigation by non-party lay-persons. Johnson v. Avery, 393 U.S.
8 483, 89 S.Ct. 747, 21 L.Ed.2d 718 (1969); Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41
9 L.Ed.2d 935 (1974)). While Plaintiff may proceed *pro se* to represent his own interests and assert
10 that his rights were violated, the Ninth Circuit has held that “constitutional claims are personal
11 and cannot be asserted vicariously,” and that an individual “has no authority to appear as an
12 attorney for others than himself.” Johns v. County of San Diego, 114 F.3d 874, 876 (9th Cir.
13 1997) citing United States v. Mitchell, 915 F.2d 521, 526 n. 8 (9th Cir. 1990) (quoting C.E. Pope
14 Equity Trust v. United States, 818 F.2d 696, 697 (9th Cir.1987)).

15 Accordingly, Plaintiff’s motion to allow inmate Parthemore to attend the upcoming
16 deposition and assist Plaintiff shall be denied.

17 **IV. CONCLUSION**

18 Based on the foregoing, IT IS HEREBY ORDERED that:

- 19 1. Plaintiff’s motion for appointment of counsel is DENIED without prejudice; and
- 20 2. Plaintiff’s motion to allow inmate Parthemore to attend the upcoming deposition
21 and assist Plaintiff, is DENIED.

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23 IT IS SO ORDERED.

24 Dated: December 3, 2018

25 /s/ Gary S. Austin
26 UNITED STATES MAGISTRATE JUDGE
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