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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 MARK SCHMIDT, ) Case No.: 1:14-cv-01092-SAB (PC)  
12 )  
13 Plaintiff, )  
14 v. ) ORDER DENYING, WITHOUT PREJUDICE,  
15 RODRIGUES, et al., ) PLAINTIFF'S THIRD MOTION FOR  
16 Defendants. ) APPOINTMENT OF COUNSEL  
 ) [ECF No. 29]  
 )  
 )  
 )

17 Plaintiff Mark Schmidt is appearing pro se and in forma pauperis in this civil rights action  
18 pursuant to 42 U.S.C. § 1983.

19 On June 11, 2015, Plaintiff filed a third motion for the appointment of counsel. Plaintiff  
20 previously filed two separate motions for the appointment of counsel, which were denied. (ECF Nos.  
21 7, 10, 18 20 .)

22 As Plaintiff was previously advised, he does not have a constitutional right to appointed  
23 counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot  
24 require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States  
25 District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain  
26 exceptional circumstances the court may request the voluntary assistance of counsel pursuant to  
27 section 1915(e)(1). Rand, 113 F.3d at 1525.  
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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 on the  
4 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the  
5 legal issues involved.” Id. (internal quotation marks and citations omitted).

6 In the present case, the Court does not find the required exceptional circumstances. Even if it  
7 assumed that plaintiff is not well versed in the law and that he has made serious allegations which, if  
8 proved, would entitle him to relief, his case is not exceptional. This action is proceeding against  
9 Defendants Villanueva, Nye, Haws, and DeCou for endangering Plaintiff’s safety in violation of the  
10 Eighth Amendment. On April 2, 2015, the Court ordered service by the United States marshal. (ECF  
11 No. 25.) At this early stage in the proceedings, the Court cannot make a determination that Plaintiff is  
12 likely to succeed on the merits, and based on a review of the record in this case, the Court does not  
13 find that Plaintiff cannot adequately articulate his claims. Id.

14 For the foregoing reasons, Plaintiff’s third motion for the appointment of counsel is HEREBY  
15 DENIED, without prejudice.

16  
17 IT IS SO ORDERED.

18 Dated: June 15, 2015

  
UNITED STATES MAGISTRATE JUDGE