

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BINH TRAN,
Plaintiff,
vs.
M. JUNIOUS, et al.,
Defendants.

1:14-cv-01320-EPG-PC
ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL
(ECF No. 17.)

On April 7, 2016, 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).

1 In the present case, the Court does not find the required exceptional circumstances. At
2 this stage of the proceedings, the Court cannot make a determination that Plaintiff is likely to
3 succeed on the merits. While the Court has screened Plaintiff's Second Amended Complaint
4 and "finds that it states claims against Defendant Smith for violation of the Eighth Amendment
5 and negligence," this finding is not a determination that Plaintiff is likely to succeed on the
6 merits. (ECF No. 16 at 6:27-28.) Moreover, to date Defendant Smith has not been served or
7 appeared in this action. Plaintiff's claims do not appear complex, and based on a review of the
8 record in this case, it appears that Plaintiff can adequately articulate his claims. Thus, the Court
9 does not find the required exceptional circumstances, and Plaintiff's motion shall be denied
10 without prejudice to renewal of the motion at a later stage of the proceedings.

11 Accordingly, for the foregoing reasons, Plaintiff's motion for the appointment of
12 counsel is HEREBY DENIED, without prejudice.

13
14 IT IS SO ORDERED.

15 Dated: May 6, 2016

16 /s/ Eric P. Grogan
17 UNITED STATES MAGISTRATE JUDGE
18
19
20
21
22
23
24
25
26
27
28