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9	UNITED STATES DISTRICT COURT	
10	EASTERN DISTRICT OF CALIFORNIA	
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12	BINH TRAN,	1:14-cv-01320-DAD-EPG (PC)
13	Plaintiff,	ORDER DENYING PLAINTIFF'S MOTION FOR APPOINTMENT OF PRO BONO
14	v.	COUNSEL (ECF NO. 44)
15	E. SMITH,	
16	Defendant.	
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19	Binh Tran ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with	
20	this civil rights action filed pursuant to 42 U.S.C. § 1983 and attendant state law claim for	
21	common law negligence. On May 4, 2017, Plaintiff filed a motion for appointment of pro bono	
22	counsel. (ECF No. 44).	
23	Plaintiff asks for appointment of counsel because he is unable to afford counsel, because	
24	he is in prison, which limits his ability to litigate, because the issues in this case are complex,	
25	because English is his second language, and because this case will likely involve conflicting	
26	testimony.	
27	Plaintiff does not have a constitutional right to appointed counsel in this action, <u>Rand v.</u>	
28	<u>Rowland</u> , 113 F.3d 1520, 1525 (9th Cir. 1997), <u>withdrawn in part on other grounds</u> , 154 F.3d 952	

1 (9th Cir. 1998), and the Court cannot require an attorney to represent Plaintiff pursuant to 28 2 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 3 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in certain exceptional circumstances 4 the Court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 5 113 F.3d at 1525.

6 Without a reasonable method of securing and compensating counsel, the Court will seek 7 volunteer counsel only in the most serious and exceptional cases. In determining whether 8 "exceptional circumstances exist, the district court must evaluate both the likelihood of success of 9 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). 10

The Court will not order appointment of pro bono counsel at this time. At this early stage in 11 the proceedings, the Court cannot make a determination that Plaintiff is likely to succeed on the 12 merits. Moreover, based on the record in this case, the Court finds that Plaintiff can adequately 13 articulate his claims and respond to court orders. Finally, it does not appear that this case is complex. 14 15 Plaintiff is proceeding against one defendant on what appear to be straight forward claims for 16 violation of Plaintiff's Eighth Amendment rights and negligence.

Plaintiff is advised that he is not precluded from renewing the motion for appointment of pro 17 bono counsel at a later stage of the proceedings. Additionally, the Court notes that if Plaintiff needs 18 any deadlines to be extended, he is free to ask the Court to extend those deadlines. 19

20 For the foregoing reasons, Plaintiff's motion for appointment of pro bono counsel is DENIED without prejudice. 21

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IT IS SO ORDERED.

Dated: May 5, 2017

<u>Is/Encir</u> P. Grong UNITED STATES MAGISTRATE JUDGE