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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LANCE WILLIAMS,
Plaintiff,
v.
WASCO STATE PRISON, et al,
Defendant.

1:14-cv-01714-MJS (PC)
**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL
(ECF No. 23)**

On October 15, 2015, 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).

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. However, 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
2 he has made serious allegations which, if proved, would entitle him to relief, his case is
3 not 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.

7 Plaintiff also asserts that the appointment of counsel is necessary because he is
8 in the Enhanced Outpatient Program and receiving mental health medication that has
9 severe side effects. Plaintiff does not describe the side effects or how they affect his
10 ability to litigate his case.

11 Attached to Plaintiff's motion are copies of his medical records, which include a
12 March 2011 Client Intake Form revealing a diagnostic impression of Major Depressive
13 Disorder with Psychotic Features, Axis I. The records also reveal that Plaintiff claims to
14 suffer from hallucinations and he is taking medication. However, Plaintiff is described as
15 "high functioning" when he is on medication and is said to be "[a]ble to communicate his
16 needs and able to follow instructions [without] problems/difficulties." ECF No. 23 at 19.
17 Moreover, a recent Interdisciplinary Progress Note dated August 25, 2014, reveals that
18 Plaintiff appears to be malingering. See ECF No. 23 at 9.

19 Based on the foregoing, the Court thus finds that Plaintiff has not shown that the
20 interests of justice or exceptional circumstances warrant appointment of counsel. See La
21 Mere v. Risley, 827 F.2d 622, 626 (9th Cir. 1987). Accordingly, his motion will be denied.

22 For the foregoing reasons, Plaintiff's motion for the appointment of counsel (ECF
23 No. 23) is HEREBY DENIED, without prejudice.

24 IT IS SO ORDERED.

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26 Dated: October 22, 2015

27 /s/ Michael J. Seng
28 UNITED STATES MAGISTRATE JUDGE

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