

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JEFFREY P. PERROTTE,  
Plaintiff,  
v.  
STACEY JOHNSON, et al.,  
Defendants.

) Case No.: 1:15-cv-00026-LJO-SAB (PC)  
)  
)  
) ORDER DENYING PLAINTIFF'S REQUEST FOR  
) APPOINTMENT OF COUNSEL, GRANTING  
) REQUEST FOR EXTENSION OF TIME TO FILE  
) OPPOSITION, AND DENYING, WITHOUT  
) PREJUDICE, REQUEST FOR SETTLEMENT  
) CONFERENCE  
)  
) [ECF No. 108]

Plaintiff Jeffrey P. Perrotte is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's motion for appointment of counsel, referral of case for settlement conference, and request for extension of time to file a further opposition to Defendants' exhaustion-related motion for summary judgment, filed November 20, 2017.

## I. Request for 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 any 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.

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       The test for exceptional circumstances requires the Court to evaluate the Plaintiff’s likelihood  
7 of success on the merits and the ability of the Plaintiff to articulate his claims pro se in light of the  
8 complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir.  
9 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). While a pro se litigant may be better  
10 served with the assistance of counsel, so long as a pro se litigant, such as Plaintiff in this instance, is  
11 able to “articulate his claims against the relative complexity of the matter,” the “exceptional  
12 circumstances” which might require the appointment of counsel do not exist. Rand v. Rowland, 113  
13 F.3d at 1525 (finding no abuse of discretion under 28 U.S.C. § 1915(e) when district court denied  
14 appointment of counsel despite fact that pro se prisoner “may well have fared better-particularly in the  
15 realm of discovery and the securing of expert testimony.”) Based on the record in this case, Plaintiff is  
16 able to articulate his claims and litigate this action. Circumstances common to most prisoners, such as  
17 lack of financial resources, lack of legal education and limited law library access, do not establish  
18 exceptional circumstances that would warrant a request for voluntary assistance of counsel.  
19 Accordingly, Plaintiff’s second motion for appointment of counsel is DENIED, without prejudice.

20       **II.       Settlement Conference**

21       Plaintiff is advised that settlement offers and/or negotiations between the parties shall not be  
22 filed with the Court and the parties are free to engage in ongoing settlement negotiations amongst  
23 themselves. If both parties believe a settlement conference will be beneficial, they may contact the  
24 Court and a settlement conference will be arranged. Accordingly, Plaintiff’s motion for settlement of  
25 the case shall be denied, without prejudice.

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### 1 III. Extension of Time to File a Further Opposition

2       Although Plaintiff presents arguments relating to the pending motion for summary judgment,  
3 Plaintiff seeks an extension of time to file a further opposition to Defendants' motion for summary  
4 judgment.

5 On the basis of good cause, the Court will grant Plaintiff thirty (30) days from the date of  
6 service of this order to file an opposition to Defendants' motion for summary judgment. However, no  
7 further extension of time will be granted absent extraordinary circumstances, not present here.

9 | IT IS SO ORDERED.

10 | Dated: **November 28, 2017**

Emily A. Bae  
UNITED STATES MAGISTRATE JUDGE