

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  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT R. RECINO,  
Plaintiff,  
v.  
UNKNOWN,  
Defendant.

Case No. 1:15-cv-00362-LJO-BAM (PC)  
ORDER DENYING PLAINTIFF’S SECOND  
MOTION TO APPOINT COUNSEL  
(ECF No. 36)

Plaintiff Robert R. Recino (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action currently proceeds on Plaintiff’s third amended complaint against the two unknown correctional officer defendants for allegedly failing to intercede as Plaintiff was beaten by other inmates, and for delaying in obtaining medical treatment for him after the beating, in violation of the Eighth Amendment.

Currently before the Court is Plaintiff’s second motion seeking the appointment of counsel, with a declaration in support. (ECF No. 36.) Plaintiff states that he cannot afford a lawyer, that his incarceration limits his ability to litigate his case, and that the case is complex and he is a first-time litigant. He further states that he is physically and mentally handicapped, such that he cannot proceed without representation, and that he requires counsel to assist in his investigation to determine the identity of the unnamed defendants in this case.

1 As previously explained, Plaintiff does not have a constitutional right to appointed counsel  
2 in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot  
3 require an attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United  
4 States District Court for the Southern District of Iowa, 490 U.S. 296, 298, 109 S.Ct. 1814, 1816  
5 (1989). However, in certain exceptional circumstances the Court may request the voluntary  
6 assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525. Without a  
7 reasonable method of securing and compensating counsel, the Court will seek volunteer counsel  
8 only in the most serious and exceptional cases. In determining whether “exceptional  
9 circumstances exist, the district court must evaluate both the likelihood of success on the merits  
10 [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the  
11 legal issues involved.” Id. (internal quotation marks and citations omitted).

12 In the present case, the court does not find the required exceptional circumstances. Even if  
13 it is assumed that Plaintiff is not well versed in the law and that he has made serious allegations  
14 which, if proved, would entitle him to relief, his case is not exceptional. His incarcerated status is  
15 also not sufficient to make this case exceptional; this court is faced with similar cases by inmate  
16 plaintiffs almost daily. Further, at this early stage, the court cannot find that Plaintiff is likely to  
17 succeed on the merits. Id. The Court has also granted Plaintiff ample time to conduct an  
18 investigation into locating the identity of the unnamed defendants, and if he faces any specific  
19 issues, he may seek an appropriate extension of time upon a showing of good case. The Court  
20 notes that thus far Plaintiff’s filings and arguments are understandable, despite his claimed  
21 limitations.

22 For these reasons, Plaintiff’s second motion for the appointment of counsel (ECF No. 36)  
23 is HEREBY DENIED, without prejudice.

24  
25 IT IS SO ORDERED.

26 Dated: September 12, 2016

27 /s/ Barbara A. McAuliffe  
28 UNITED STATES MAGISTRATE JUDGE