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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 TOM MARK FRANKS,

12 Plaintiff,

13 vs.

14 SERGEANT KIRK, *et al.*

15 Defendant.
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Case No. 1:15-cv-00401-EPG-PC

**ORDER DENYING PLAINTIFF'S
SECOND MOTION FOR
APPOINTMENT OF COUNSEL**

(ECF No. 34)

18 Plaintiff Tom Mark Franks is proceeding *pro se* and *in forma pauperis* in this action
19 alleging violations of 42 U.S.C. § 1983. On December 5, 2016, Plaintiff filed a motion for the
20 appointment of counsel. (ECF No. 26.) That motion was denied. (ECF No. 27.) Plaintiff has
21 now filed a second motion for appointment of counsel. (ECF No. 34.) This motion is identical
22 to the first, except that Plaintiff has attached copies of letters that he has sent to several lawyer
23 referral services. Plaintiff reports that he has not heard back from any of the services he has
24 contacted.

25 As explained in the Court's prior order, Plaintiff does not have a constitutional right to
26 appointed counsel in this action, *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), and
27 the Court cannot require an attorney to represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1).
28 *Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296, 298

1 (1989). However, in certain exceptional circumstances the Court may request the voluntary
2 assistance of counsel pursuant to section 1915(e)(1). *Rand*, 113 F.3d at 1525. The Court thus
3 construes Plaintiff's motion as a motion to request the voluntary assistance of counsel.

4 The circumstances of the case have not changed substantially since Plaintiff's first
5 motion was denied. Plaintiff's second motion to request the voluntary assistance of counsel
6 (ECF No. 34) is thus DENIED.

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8 IT IS SO ORDERED.

9 Dated: March 21, 2017

10 /s/ Eric P. Gray
11 UNITED STATES MAGISTRATE JUDGE
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