

1 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa,
2 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in certain exceptional circumstances
3 the Court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand,
4 113 F.3d at 1525.

5 Without a reasonable method of securing and compensating counsel, the Court will seek
6 volunteer counsel only in the most serious and exceptional cases. In determining whether
7 “exceptional circumstances exist, the district court must evaluate both the likelihood of success of
8 the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the
9 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

10 The Court will not order appointment of pro bono counsel. This case has already been
11 dismissed with prejudice, for failure to state a claim. Accordingly, the Court has already determined
12 that Plaintiff cannot succeed on the merits of his claim.

13 Additionally, the Court will strike Plaintiff’s Second Amended Complaint. Federal Rule of
14 Civil Procedure 12(f) states: “The court may strike from a pleading an insufficient defense or any
15 redundant, immaterial, impertinent, or scandalous matter. The court may act: (1) on its own; or (2) on
16 motion made by a party either before responding to the pleading or, if a response is not allowed,
17 within 21 days after being served with the pleading.”

18 Here, Plaintiff’s First Amended Complaint was dismissed, with prejudice, for failure to state a
19 claim. (ECF No. 29). The Court dismissed the case with prejudice because “[t]he Court previously
20 granted Plaintiff leave to amend the complaint, with ample guidance provided by the Court. Plaintiff
21 has now filed two complaints without stating any claims upon which relief may be granted under §
22 1983. The Court finds that the deficiencies outlined [in the screening order] are not capable of being
23 cured by amendment, and therefore further leave to amend should not be granted.” (Id. at p. 10).

24 The Court has reviewed Plaintiff’s Second Amended Complaint. The section containing the
25 factual allegations is less than a page and a half, and it contains significantly fewer factual allegations
26 than previously provided. Additionally, the factual allegations Plaintiff does provide are largely
27 identical to the allegations Plaintiff provided in his previous complaints. Accordingly, the Court sees
28 no reason to reconsider its prior ruling that leave to amend would not be granted, and will strike

1 Plaintiff's Second Amended Complaint.

2 For the foregoing reasons, Plaintiff's motion for appointment of pro bono counsel is DENIED
3 and Plaintiff's Second Amended Complaint is STRICKEN from the record.

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5 IT IS SO ORDERED.

6 Dated: February 16, 2017

/s/ Eric P. Gray
7 UNITED STATES MAGISTRATE JUDGE

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