

1 represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. U.S. Dist. Court for the S. Dist.
2 of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may
3 request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at
4 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, a district court must evaluate both the likelihood of success on
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 has considered Plaintiff’s motion for the appointment of counsel, but again
11 does not find the required exceptional circumstances. Even if it is assumed that Plaintiff is not
12 well versed in the law and that he has made serious allegations which, if proved, would entitle
13 him to relief, his case is not exceptional. This Court is faced with similar cases involving claims
14 of failure to protect filed by prisoners proceeding pro se and in forma pauperis almost daily.
15 These prisoners also must conduct discovery, perform legal research, and prosecute claims
16 without the assistance of counsel.

17 Furthermore, at this stage in the proceedings, the Court cannot make a determination that
18 Plaintiff is likely to succeed on the merits. Although the Court has determined Plaintiff has stated
19 some claims which may proceed in litigation, it has not determined that those claims have a
20 likelihood of ultimately being successful. Also, based on a review of the limited record in this
21 case, the Court does not find that Plaintiff cannot adequately articulate his claims.

22 For the foregoing reasons, Plaintiff’s second motion for the appointment of counsel (ECF
23 No. 35) is DENIED, without prejudice.

24
25 IT IS SO ORDERED.

26 Dated: October 4, 2017

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