

1 Rather than filing an amended complaint, on January 5, 2018, Plaintiff filed a motion to
2 appoint counsel. (ECF No. 18.) Plaintiff explains that he is unable to afford counsel, he is
3 mentally ill and has been placed in mental health crisis beds and mental hospitals, and his
4 imprisonment limits his ability to litigate. Plaintiff states that his case presents meritorious
5 claims, as shown by the Court’s screening order that allows him to proceed. Plaintiff argues that
6 he might suffer retaliation from prison officials for investigating his claim. He further asserts that
7 the case may be strongly disputed by defendants, and require depositions and evidence better
8 accessed by counsel. (Id.) Plaintiff attaches various exhibits purportedly relating to his mental
9 health records.

10 As Plaintiff has been informed, he does not have a constitutional right to appointed
11 counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), rev’d in part on
12 other grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998), and the court cannot require an attorney to
13 represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. U.S. Dist. Court for the S. Dist.
14 of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may
15 request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at
16 1525.

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

22 The Court has considered Plaintiff’s renewed motion for the appointment of counsel, but
23 does not find the required exceptional circumstances. Even if it is assumed that Plaintiff is not
24 well versed in the law and that he has made serious allegations which, if proved, would entitle
25 him to relief, his case is not exceptional. This Court is faced with similar cases filed by prisoners
26 proceeding pro se and suffering from serious physical and mental health conditions almost daily.
27 These prisoners also must conduct legal research and prosecute claims without the assistance of
28 counsel.

1 Furthermore, at this stage in the proceedings, the Court cannot make a determination that
2 Plaintiff is likely to succeed on the merits. Further, given Plaintiff's failure to state a claim thus
3 far, the Court cannot find any likelihood of success on the merits. As discussed, Plaintiff has not
4 yet filed a second amended complaint. Once he has done so, the second amended complaint will
5 be screened to determine whether Plaintiff has articulated a cognizable claim. The Court's
6 issuance of a screening order, without a finding that Plaintiff has stated a cognizable claim, does
7 not demonstrate that Plaintiff's claims are likely to succeed on the merits.

8 Upon consideration of the motion, the Court finds it appropriate to grant Plaintiff a brief
9 extension of time to file a second amended complaint. Plaintiff is reminded, pursuant to the
10 Court's December 1, 2017, screening order, that he may only amend his complaint to address
11 claims arising from the June 2015 incident, and his amended complaint may not exceed **twenty-**
12 **five (25) pages.**

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff's motion to appoint counsel (ECF No. 18) is DENIED, without prejudice;
- 15 2. The Clerk's office shall send Plaintiff a complaint form;
- 16 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a
17 second amended complaint; and
- 18 4. **If Plaintiff fails to file an amended complaint in compliance with this order, the**
19 **Court will recommend dismissal of this action, with prejudice, for failure to obey**
20 **a court order and for failure to state a claim.**

21 IT IS SO ORDERED.
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23 Dated: January 11, 2018

24 /s/ Barbara A. McAuliffe
25 UNITED STATES MAGISTRATE JUDGE
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