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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA
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9 ANTHONY M. MORGAN,) 1:16-cv-00149-BAM (PC)
10 Plaintiff,)
11 v.) ORDER DENYING PLAINTIFF’S THIRD
12 MARTHA MAYS, et al.,) MOTION REQUESTING THE
13 Defendants.) APPOINTMENT OF COUNSEL, WITHOUT
14) PREJUDICE
) (ECF No. 21)
)

15 Plaintiff Anthony M. Morgan (“Plaintiff”) is a state prisoner proceeding pro se and in
16 forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This case currently
17 proceeds on Plaintiff’s claim against Defendant Mays for delay of medical treatment in violation
18 of the Eighth Amendment.

19 Previously in this matter, Plaintiff filed two motions seeking the appointment of counsel,
20 (ECF Nos. 7, 12), each of which were denied, (ECF Nos. 8, 13.) Currently before the Court is
21 Plaintiff’s third motion for the appointment of counsel in this matter, filed January 6, 2017. (ECF
22 No. 21). In support of his current request, Plaintiff states that Defendant Mays has filed a
23 demand for a jury trial, that this matter is complicated, and that he is indigent and has no way of
24 hiring an attorney.

25 As Plaintiff has been previously informed, he does not have a constitutional right to
26 appointed counsel in this civil action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997),
27 and the Court cannot require an attorney to represent him 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, 109

1 S. Ct. 1814, 1816 (1989). However, in certain exceptional circumstances the Court may request
2 the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.
3 Without a reasonable method of securing and compensating counsel, the Court will seek
4 volunteer counsel only in the most serious and exceptional cases. In determining whether
5 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
6 of the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
7 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

8 In the present case, the Court does not find the required exceptional circumstances. Even
9 if it is assumed that Plaintiff is not well versed in the law and that he has made serious
10 allegations which, if proved, would entitle him to relief, his case is not exceptional. This Court is
11 faced with similar cases almost daily. Further, at this stage in the proceedings, the Court cannot
12 find any likelihood of success on the merits. Also, based on a review of the record in this case,
13 the court does not find that Plaintiff cannot adequately articulate his claims.

14 Accordingly, it is HEREBY ORDERED that Plaintiff’s third motion for the appointment
15 of counsel, filed January 6, 2017 (ECF No. 21) is DENIED, without prejudice.

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17 IT IS SO ORDERED.

18 Dated: January 10, 2017

19 /s/ Barbara A. McAuliffe
20 UNITED STATES MAGISTRATE JUDGE
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