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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EDWARD FURNACE,
Plaintiff,
v.
B. COPE, et al,
Defendants.

1:16-cv-00420-LJO-BAM (PC)

ORDER DENYING MOTION TO APPOINT
COUNSEL WITHOUT PREJUDICE

(ECF No. 25)

Plaintiff Edward Furnace (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. On May 23, 2016, Plaintiff filed a motion to appoint counsel, arguing that he required the assistance of counsel to assist with gaining the identity of a John Doe defendant in time to comply with the deadline for service of the defendants under Federal Rule of Civil Procedure 4(m). (ECF No. 11.) The Court denied the motion, finding that the matter did not present exceptional circumstances, and Plaintiff’s duties regarding service had not yet been triggered. (ECF No. 12.)

On August 14, 2017, Plaintiff filed a renewed motion to appoint counsel. (ECF No. 25.) Plaintiff again argues that he requires appointed counsel to assist with gaining the identity of Defendant John Doe in time to comply with Federal Rule of Civil Procedure 4(m).

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1 Plaintiff is reminded that he does not have a constitutional right to appointed counsel in
2 this civil action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot
3 require an attorney to represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. U.S.
4 Dist. Ct. for the S. Dist. of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional
5 circumstances the Court may request the voluntary assistance of counsel pursuant to section
6 1915(e)(1). Rand, 113 F.3d at 1525. Without a reasonable method of securing and compensating
7 counsel, the Court will seek volunteer counsel only in the most serious and exceptional cases. In
8 determining whether “exceptional circumstances exist, the district court must evaluate both the
9 likelihood of success of the merits [and] the ability of the [plaintiff] to articulate his claims pro se
10 in light of the complexity of the legal issues involved.” Id. (internal quotation marks and citations
11 omitted).

12 The Court has considered Plaintiff’s renewed motion for the appointment of counsel, but
13 again does not find the required exceptional circumstances. As previously indicated, Plaintiff’s
14 indigent circumstances, the complexity of the case, and Plaintiff’s limited knowledge of the law
15 do not make his case exceptional. This Court is faced with similar cases almost daily. Further, at
16 this early stage in the proceedings, the Court cannot make a determination that Plaintiff is likely
17 to succeed on the merits, and based on a review of the record in this case, the court does not find
18 that Plaintiff cannot adequately articulate his claims. Id.

19 Regarding Plaintiff’s argument that he requires appointed counsel to assist with
20 identifying Defendant John Doe and service of the complaint, that argument remains premature.
21 Plaintiff filed a second amended complaint on August 14, 2017. (ECF No. 24.) The Court is
22 required to screen complaints brought by prisoners seeking relief against a governmental entity or
23 officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Thus, Plaintiff’s second
24 amended complaint cannot be served until it has been properly screened. If Plaintiff’s complaint
25 survives screening, a subsequent order regarding service will follow. Thus, Plaintiff’s duties
26 regarding service of the complaint, including under Rule 4(m), have not yet been triggered in this
27 matter.

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For the foregoing reasons, Plaintiff's motion to appoint counsel (ECF No. 25) is HEREBY DENIED, without prejudice.

IT IS SO ORDERED.

Dated: August 23, 2017

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE