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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RONALD TIMBERLAND,
Plaintiff,
v.
G. MASCARENAS, et al.,
Defendant.

1:16-cv-00922-LJO-GSA (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(Document# 22)

On April 9, 2018, plaintiff filed a motion seeking the appointment of counsel. Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

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

1 In the present case, the court does not find the required exceptional circumstances. On
2 February 27, 2018, the court entered findings and recommendations, recommending that this case
3 be dismissed based on plaintiff's failure to state a claim in the First Amended Complaint. (ECF
4 No. 18.) Based on the findings and recommendations, the court has determined that plaintiff is
5 unlikely to succeed on the merits. In the First Amended Complaint, Plaintiff brings due process
6 claims under the Fourteenth Amendment and failure to protect claims under the Eighth
7 Amendment. These claims are not complex, and a review of the record shows that plaintiff is
8 responsive, adequately communicates, and is able to articulate his claims. Therefore, plaintiff's
9 motion shall be denied, without prejudice to renewal of the motion at a later stage of the
10 proceedings.

11 For the foregoing reasons, plaintiff's motion for the appointment of counsel is HEREBY
12 DENIED, without prejudice.

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14 IT IS SO ORDERED.

15 Dated: April 10, 2018

/s/ Gary S. Austin
16 UNITED STATES MAGISTRATE JUDGE
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