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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-NONE-GSA (PC)  
  
ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL  
  
(Document #64)

On March 24, 2020, Plaintiff filed a motion seeking the appointment of counsel. (ECF No. 64.) 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.  
2 Plaintiff argues that he cannot afford the cost of an attorney and requires assistance with  
3 discovery. While these conditions are challenging for Plaintiff, they do not make his case  
4 exceptional under the Ninth Circuit law discussed above. At this stage in the proceedings, the  
5 court cannot make a determination that Plaintiff is likely to succeed on the merits. Defendant's  
6 motion for summary judgment is now pending and may dispose of the case. Moreover, based on  
7 the record in this case, the court finds that Plaintiff is able to adequately articulate his claims and  
8 respond to the court's orders. Further, the legal issue in this case -- whether defendant  
9 Mascarenas failed to protect Plaintiff from harm -- is not complex. Therefore, Plaintiff's motion  
10 shall be denied without prejudice to renewal of the motion at a later stage of the proceedings.

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

13  
14 IT IS SO ORDERED.

15 Dated: March 26, 2020

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE