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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BENJAMIN K. TOSCANO,  
Plaintiff,  
v.  
STATE OF CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, et al.,  
Defendants.

1:16-cv-01551-AWI-BAM (PC)  
  
ORDER DENYING PLAINTIFF’S MOTION  
FOR COUNSEL WITHOUT PREJUDICE  
  
(ECF No. 13)

Plaintiff Benjamin K. Toscano (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff’s second motion for the appointment of counsel filed on February 27, 2017. Plaintiff requests appointment of counsel because he cannot afford to employ an attorney. (ECF No. 13).

As Plaintiff was previously informed, he 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.

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

6 In the present case, the Court does not find the required exceptional circumstances.  
7 Beyond an assertion that he is unable to afford counsel, Plaintiff has not identified any  
8 circumstances warranting appointment of counsel. Even if it is assumed that Plaintiff is not well  
9 versed in the law and that he has made serious allegations which, if proved, would entitle him to  
10 relief, his case is not exceptional. This Court is faced with similar cases almost daily. Further, at  
11 this early stage in the proceedings, the Court cannot make a determination that Plaintiff is likely  
12 to succeed on the merits. Plaintiff’s complaint has not been screened and there has been no  
13 finding that Plaintiff has stated cognizable claims. Additionally, based on a review of the record  
14 in this case, the Court does not find that Plaintiff cannot adequately articulate his claims.

15 For these reasons, Plaintiff’s motion for the appointment of counsel is **HEREBY**  
16 **DENIED**, without prejudice.

17 **IT IS SO ORDERED.**

18  
19 Dated: March 1, 2017

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE