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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BENJAMIN K. TOSCANO,  
Plaintiff,  
v.  
SCOTT KERNAN,  
Defendant(s).

1:16-cv-01554 EPG (PC)  
  
ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL  
  
(Document# 3)

Benjamin K. Toscano (“Plaintiff”) filed a complaint on September 23, 2016 in the Northern District of California. (ECF No. 1). Plaintiff’s case was transferred to this Court on October 12, 2016. (ECF No. 4) On the same day, plaintiff filed a motion seeking the appointment of counsel. (ECF No. 3)

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

1 “exceptional circumstances exist, the district court must evaluate both the likelihood of success  
2 of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the  
3 complexity of the legal issues involved.” *Id.* (internal quotation marks and citations omitted).

4 In the present case, the court does not find the required exceptional circumstances. Even  
5 if it is assumed that plaintiff is not well versed in the law and that he has made serious allegations  
6 which, if proved, would entitle him to relief, his case is not exceptional. This court is faced with  
7 similar cases almost daily. Further, at this early stage in the proceedings, the court cannot make a  
8 determination that plaintiff is likely to succeed on the merits, and based on a review of the record  
9 in this case, the court does not find that plaintiff cannot adequately articulate his claims. *Id.*

10 The next step in this case is that the Court will screen the complaint to determine if it  
11 states cognizable claims and will issue an order. It is too early to determine that Plaintiff’s case  
12 has a likelihood of success on the merits and that appointment of counsel would be appropriate.

13 For the foregoing reasons, plaintiff’s motion for the appointment of counsel is HEREBY  
14 DENIED, without prejudice.

15 IT IS SO ORDERED.

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17 Dated: October 21, 2016

18 */s/ Eric P. Gray*  
19 UNITED STATES MAGISTRATE JUDGE  
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