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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICARDO MARTINEZ,
Plaintiff,
v.
D. DAVEY,
Defendant.

Case No. 1:16-cv-01655-BAM (PC)
ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL
(ECF No. 16)

Plaintiff Ricardo Martinez (“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 motion for appointment of counsel, filed July 13, 2017. (ECF No. 16.)

Plaintiff states that he is without funds to pay costs or for experts, and he has limited education, experience, and cannot read or write English very well. (Id.)

Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), rev’d in part on other grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998), and the court cannot require an attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. U.S. Dist. Court for the S. Dist. of Iowa, 490 U.S. 296, 298 (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, a 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 The Court has considered Plaintiff’s motion for the appointment of counsel, but does not
7 find the required exceptional circumstances. Even if it is assumed that Plaintiff is not well versed
8 in the law and that he has made serious allegations which, if proved, would entitle him to relief,
9 his case is not exceptional. This Court is faced with similar cases filed by prisoners proceeding
10 pro se and in forma pauperis almost daily. These prisoners also must conduct legal research and
11 prosecute claims without the assistance of counsel.

12 Furthermore, at this stage in the proceedings, the Court cannot make a determination that
13 Plaintiff is likely to succeed on the merits. Plaintiff’s amended complaint has not been filed, and
14 thus the case does not yet proceed on any cognizable claims. Also, based on a review of the
15 limited record in this case, the Court does not find that Plaintiff cannot adequately articulate his
16 claims.

17 For the foregoing reasons, Plaintiff’s motion for the appointment of counsel (ECF No. 16)
18 is DENIED, without prejudice.

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20 IT IS SO ORDERED.

21 Dated: July 14, 2017

22 /s/ Barbara A. McAuliffe
23 UNITED STATES MAGISTRATE JUDGE
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