

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PATRICK JACKSON,

1:17-cv-00110-MJS (PC)

Plaintiff,

v.

L. SMALLEY, et al..

**ORDER DENYING PLAINTIFF'S SECOND
MOTION FOR APPOINTMENT OF
COUNSEL**

Defendants.

19 On January 24, 2017, Plaintiff filed a motion seeking the appointment of counsel.
20 (ECF No. 3.) The Court denied Plaintiff's motion, finding that no exceptional
21 circumstances existed to warrant the appointment of counsel. (ECF No. 7.) On May 1,
22 2017, Plaintiff filed a second motion seeking the appointment of counsel. (ECF No. 15.)
23 That motion is now before the Court.

24 Plaintiff does not have a constitutional right to appointed counsel in this action,
25 Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and a court cannot require an
26 attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1), Mallard v. United
27 States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). In

1 certain exceptional circumstances, a court may request the voluntary assistance of
2 counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525. However, without a
3 reasonable method of securing and compensating counsel, volunteer counsel will be
4 appointed only in the most serious and exceptional cases. In determining whether
5 "exceptional circumstances exist," a court "must evaluate both the likelihood of success
6 of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the
7 complexity of the legal issues involved." Id. (internal quotation marks and citations
8 omitted).

9 As the Court stated in its previous order denying Plaintiff's motion for appointment
10 of counsel, the Court does not find the required exceptional circumstances in the present
11 case. The Court finds that there has been no change in circumstances since the Court's
12 previous ruling. Even if it is assumed that Plaintiff is not well versed in the law and that
13 he has made serious allegations which, if proved, would entitle him to relief, his case is
14 not exceptional. This Court is faced with similar cases almost daily. At this early stage in
15 the proceedings, the Court cannot make a determination that Plaintiff is likely to succeed
16 on the merits, and based on a review of the record in this case, the Court does not find
17 that Plaintiff cannot adequately articulate his claims. Id.

18 For the foregoing reasons, Plaintiff's second motion for the appointment of
19 counsel is HEREBY DENIED, without prejudice.

20 IT IS SO ORDERED.
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22 Dated: May 5, 2017

23 /s/ Michael J. Seng
24 UNITED STATES MAGISTRATE JUDGE
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