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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JAMES C. McCURDY,) Case No.: 1:17-cv-01356-LJO-SAB (PC)
)
Plaintiff,)
)
v.) ORDER DENYING, WITHOUT PREJUDICE,
) PLAINTIFF’S MOTION FOR APPOINTMENT OF
) COUNSEL
)
S. KERNAN, et al.,) [ECF No. 60]
)
Defendants.)
)
)
)
)

Plaintiff James C. McCurdy is appearing 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 October 15, 2019.

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 any 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 (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 the
4 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the
5 legal issues involved.” Id. (internal quotation marks and citations omitted).

6 In the present case, the court does not find the required exceptional circumstances. Even if it
7 assumed that plaintiff is not well versed in the law and that he has made serious allegations which, if
8 proved, would entitle him to relief, his case is not exceptional. The Court is faced with similar cases
9 almost daily. While the Court recognizes that Plaintiff is at a disadvantage due to his pro se status and
10 his incarceration, the test is not whether Plaintiff would benefit from the appointment of counsel. See
11 Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most actions require development of
12 further facts during litigation and a pro se litigant will seldom be in a position to investigate easily the
13 facts necessary to support the case.”) The test is whether exception circumstances exist and here, they
14 do not. Considering the nature of Plaintiff’s excessive force claims together with Plaintiff’s ability to
15 articulate his claim, the Court does not find exception circumstances exist to justify appointment of
16 counsel. Circumstances common to most prisoners, such as lack of legal education and limited law
17 library access, do not establish exceptional circumstances that would warrant a request for voluntary
18 assistance of counsel. Accordingly, Plaintiff’s motion for the appointment of counsel is denied,
19 without prejudice.

20
21 IT IS SO ORDERED.

22 Dated: October 17, 2019



UNITED STATES MAGISTRATE JUDGE