

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
7

8 JOEY ERWIN,

9 Plaintiff,

10 v.

11 PAM AHLIN, et al.,

12 Defendants.
13

Case No. 1:18-cv-00050-LJO-SAB (PC)

ORDER DENYING PLAINTIFF’S MOTION
FOR APPOINTMENT OF COUNSEL

(ECF No. 27)

14 Plaintiff Joey Erwin, a civil detainee, is appearing pro se and in forma pauperis in this
15 civil rights action pursuant to 42 U.S.C. § 1983. On December 21, 2018, Plaintiff filed a motion
16 for appointment of counsel. (ECF No. 27.)

17 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.
18 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to
19 represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court
20 for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional
21 circumstances the court may request the voluntary assistance of counsel pursuant to section
22 1915(e)(1). Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009); Rand, 113 F.3d at 1525.

23 Without a reasonable method of securing and compensating counsel, the court will seek
24 volunteer counsel only in the most serious and exceptional cases. In determining whether
25 exceptional circumstances exist, the district court considers “whether there is a ‘likelihood of
26 success on the merits’ and whether ‘the prisoner is unable to articulate his claims in light of the
27 complexity of the legal issues involved.’ ” Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir.
28 1986); Harrington v. Scribner, 785 F.3d 1299, 1309 (9th Cir. 2015) (citations omitted); Palmer,

1 560 F.3d at 970. “Neither of these factors is dispositive and both must be viewed together before
2 reaching a decision on request of counsel.” Wilborn, 789 F.2d at 1331.

3 Plaintiff seeks appointment of counsel arguing that he is untrained in the law and is
4 limited in his ability to obtain and access records and witnesses. However, circumstances
5 common to most prisoners, such as lack of legal education and limited law library access, do not
6 establish exceptional circumstances that would warrant a request for voluntary assistance of
7 counsel. Plaintiff’s confinement, lack of legal education, and difficulties obtaining witnesses and
8 evidence are common to all prisoners and do not demonstrate exceptional circumstances to
9 justify appointment of counsel.

10 While Plaintiff contends that Defendants’ responses to interrogatories are inadequate, that
11 is not a reason for the Court to appoint counsel. Plaintiff may file a motion to compel to address
12 any inadequate responses to discovery.

13 Based on review of the documents filed in this action and Plaintiff’s motion for
14 appointment of counsel, the Court finds that Plaintiff can adequately articulate his claims and
15 respond to the Court’s orders.

16 Plaintiff argues that he needs appointment of counsel due to the complexity of the issues
17 raised in this action, but Plaintiff’s claims in this action are not complex nor do they involve
18 novel legal issues.

19 Finally, at this stage in the proceedings, the Court cannot find that it is likely that Plaintiff
20 will prevail on his claims. The Court does not find that the required exceptional circumstances
21 exist to appoint counsel in this action.

22 Accordingly, Plaintiff’s motion for appointment of counsel is **HEREBY DENIED**
23 without prejudice.

24 IT IS SO ORDERED.

25 Dated: **December 26, 2018**

26 
27 _____
28 UNITED STATES MAGISTRATE JUDGE