UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TERRY MACKEY,

Plaintiff,

ORDER DENYING MOTION TO APPOINT COUNSEL

V.

(ECF No. 20)

Defendants.

Plaintiff Terry Mackey ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma* pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's second amended complaint against: (1) Defendants Rudd and Ram for excessive force in violation of the Eighth Amendment; (2) Defendant Mix for failure to prevent harm in violation of the Eighth Amendment; (3) Defendants Rudd and Ram for a state law claim for battery; and (4) Defendants Rudd, Ram, and Mix for a state law claim for negligence.

Currently before the Court is Plaintiff's motion for appointment of counsel, filed January 2, 2025. (ECF No. 20.) Plaintiff states that he is unable to afford counsel, and the claims are complex because they are based on allegations of excessive use of force resulting in injury and may require expert testimony. The claims involve multiple defendants and witnesses and will require extensive discovery including confidential material, which Plaintiff cannot access due to his incarceration. Plaintiff is limited in knowledge of law, and appointment of counsel would

provide him the opportunity to obtain representation equally qualified with the counsel provided by the state for Defendants. Plaintiff has contacted 5 or more attorneys seeking assistance, with no luck. (*Id.*)

Defendants have not yet been served and have not had the opportunity to respond to Plaintiff's motion, but the Court finds a response unnecessary. The motion is deemed submitted. Local Rule 230(1).

Plaintiff is informed that he 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.

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

The Court has considered Plaintiff's request, but does not find the required exceptional circumstances. Even if it is assumed that Plaintiff has made serious allegations which, if proved, would entitle him to relief, his case is not exceptional. This Court is faced with similar cases filed almost daily by prisoners who must also conduct legal research, obtain discovery, and litigate their cases without the assistance of counsel and with limited access to witnesses or expert testimony.

Furthermore, at this stage in the proceedings, the Court cannot make a determination that Plaintiff is likely to succeed on the merits. Although Plaintiff's complaint was screened and found to state cognizable claims, this does not mean that Plaintiff's claims are likely to succeed on the merits. Finally, based on a review of the record in this case, the Court does not find that

Plaintiff cannot adequately articulate his claims. Accordingly, Plaintiff's motion to appoint counsel, (ECF No. 20), is HEREBY DENIED, without prejudice. IT IS SO ORDERED. 1s/ Barbara A. McAuliffe Dated: **January 6, 2025** UNITED STATES MAGISTRATE JUDGE