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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

EDWARD THOMAS,

2:08-cv-2188-SPG (PC)

Plaintiff,

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

vs.

THOMAS FELKER, WARDEN, HIGH
DESERT STATE PRISON, T. PEREZ,
ASSOCIATE WARDEN, HIGH DESERT
STATE PRISON, ET AL.,

Defendants.

On November 17, 2008, plaintiff filed a motion seeking the appointment of counsel. Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), withdrawn in part on other grounds by 154 F.3d 952, 954 n.1 (9th Cir. 1998) (en banc), and the court cannot require an attorney to represent plaintiff pursuant to 28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 § 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 of

1 the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the complexity
2 of the legal issues involved." Id. (internal quotation marks omitted).

3 In the present case, the court does not find the required exceptional circumstances.
4 Even if it is assumed that plaintiff is not well versed in the law and that he has made serious
5 allegations which, if proved, would entitle him to relief, his case is not exceptional. This court is
6 faced with cases of this general type frequently. Further, at this early stage in the proceedings, the
7 court cannot make a determination that plaintiff is likely to succeed on the merits, and after
8 reviewing the record in this case, the court does not find that plaintiff is unable to articulate his
9 claims adequately. Id.

10 For the foregoing reasons, plaintiff's motion for the appointment of counsel is
11 HEREBY DENIED, without prejudice.

12 IT IS SO ORDERED.

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14 **Dated:** January 22, 2009

/s/ Susan P. Graber

15 UNITED STATES CIRCUIT JUDGE
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