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5 **UNITED STATES DISTRICT COURT**

6 **EASTERN DISTRICT OF CALIFORNIA**
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9 BILAL AHDOM,) 1:09-cv-01874-AWI-BAM (PC)
10 Plaintiff,)
11 v.) ORDER DENYING PLAINTIFF’S MOTION
12 S. LOPEZ, et al.,) TO APPOINT COUNSEL WITHOUT
13 Defendants.) PREJUDICE
14) (ECF No. 134)
15) ORDER DIRECTING PLAINTIFF TO FILE
16) HIS RESPONSES TO THE PENDING
17) MOTIONS TO DISMISS WITHIN THIRTY
18) DAYS
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17 **I. Procedural Background**

18 Plaintiff Bilal Ahdom (“Plaintiff”), a state prisoner proceeding pro se and in forma
19 pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against
20 Defendants Araich, Chen, Shittu, Ashby, S. Lopez, Spaeth and Schaefer for deliberate
21 indifference to Plaintiff’s medical needs in violation of the Eighth Amendment to the United
22 States Constitution.

23 On December 2, 2013, Defendants filed three separate motions to dismiss. On December
24 26, 2013, Plaintiff requested an extension of time to file his oppositions to the motions to
25 dismiss. The Court granted his request and Plaintiff’s oppositions to the motions to dismiss were
26 due on or before February 13, 2014. (ECF No. 99.) On February 13, 2014, Plaintiff requested a
27 second extension of time to file his oppositions to the motions to dismiss. The Court granted his
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1 request and Plaintiff's oppositions to the motions to dismiss were due on or before March 17,
2 2014. (ECF No. 104.)

3 On April 3, 2014, Plaintiff filed a motion for temporary restraining order. Following
4 denial of his motion, Plaintiff submitted an interlocutory appeal to the Ninth Circuit Court of
5 Appeals. On October 1, 2014, the Ninth Circuit granted Plaintiff's request for voluntary
6 dismissal of his interlocutory appeal and issued its mandate. (ECF No. 130.)

7 On October 6, 2014, the Court ordered Plaintiff to file an opposition or statement of non-
8 opposition to Defendants' motions to dismiss within twenty-one (21) days. (ECF No. 131.)

9 In lieu of an opposition, Plaintiff filed a motion requesting a thirty-day extension of time
10 to prepare and file a motion for the appointment of counsel. Plaintiff asserted that he was not
11 capable of prosecuting this action because of his physical and cognitive functioning. Plaintiff
12 reportedly had a stroke, is confined to a wheelchair, experiences severe lumbar pain for which he
13 is taking high doses of morphine and needs assistance with day-to-day activities. (ECF No. 132.)

14 On November 3, 2014, the Court granted Plaintiff a thirty-day extension of time to file a
15 motion for appointment of counsel supported by current medical records or prison chronos
16 detailing his current mental and physical functioning. The Court granted Plaintiff a
17 corresponding extension of time to file his oppositions to the pending motions to dismiss. (ECF
18 No. 133.)

19 On November 21, 2014, Plaintiff filed the instant motion for the appointment of counsel.
20 (ECF No. 134.) Defendants did not respond and the motion is deemed submitted. Local Rule
21 230(l).

22 **II. Discussion**

23 As Plaintiff previously has been informed, he does not have a constitutional right to
24 appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the
25 court cannot require an attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1).
26 Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298, 109
27 S.Ct. 1814, 1816 (1989). However, in certain exceptional circumstances the court may request
28 the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

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

6 Here, Plaintiff contends that he is incapable of functioning at a normal cognitive level
7 because he takes a high-dose of Morphine twice daily to manage the chronic pain of his spinal
8 injury. Plaintiff believes that he cannot research, prepare or comprehend the issues before this
9 Court. He has had to obtain assistance from untrained inmates to litigate this case. Plaintiff also
10 contends that he has limited physical capacity, including limited use of his right upper extremity
11 due to stroke. Plaintiff also requires assistance with meal access and moving within the
12 institution. Plaintiff requires a wheelchair, wheelchair accessible tables, a back brace, an extra
13 mattress, and a trapeze bar to get in and out of the wheelchair.

14 According to exhibits attached to Plaintiff’s moving papers, as of September 9, 2014, he
15 has a back brace, wheelchair and trapeze bar and requires assistance with meal access and other
16 movement inside the prison. (ECF No. 134, p. 10, Ex. B.) He may work if he sits, but has
17 limited use of his right upper extremity. (Id.) A medication record, which expired November
18 2014, indicated that Plaintiff was taking 15 mg of Morphine every evening and 30 mg of
19 Morphine every morning. (ECF No. 134, p. 8, Ex. A.) Plaintiff reports that he continues to take
20 this medication.

21 The Court has considered Plaintiff’s moving papers and supporting documents. Despite
22 Plaintiff’s apparent limitations, the pleadings and motions on file at this juncture indicate that
23 Plaintiff can adequately articulate his claims with the assistance of other prisoners, including his
24 current prisoner-paralegal assistant. (ECF No. 134, p. 5; ECF No. 132, p. 2.) Further, at this
25 stage of the proceedings, the Court cannot make a determination that Plaintiff is likely to succeed
26 on the merits. Rand, 113 F.3d at 1525.

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It is FURTHER ORDERED that Plaintiff's oppositions, if any, to the pending motions to dismiss, shall be served and filed within thirty (30) days following service of this order. If Plaintiff fails to comply with this order, this action may be dismissed for failure to obey a court order.

Dated: February 12, 2015

UNITED STATES MAGISTRATE JUDGE