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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERTO HERRERA,
Plaintiff,
v.
HUU NGUYEN, et al.,
Defendants.

Case No. 1:12-cv-01565-SKO (PC)
**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL AND
GRANTING THIRTY-DAY EXTENSION
OF TIME TO FILE SECOND AMENDED
COMPLAINT**
(Doc. 26)

Plaintiff Roberto Herrera, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on September 24, 2012. On April 30, 2014, 2013, Plaintiff filed a motion seeking the appointment of counsel and an extension of time to file a second amended complaint in compliance with the screening order filed on April 4, 2014.

Plaintiff does not have a constitutional right to the appointment of counsel in this action. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009); *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The Court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1), but it will do so only if exceptional circumstances exist. *Palmer*, 560 F.3d at 970; *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). In making this determination, the Court must evaluate the likelihood of success on the merits and the ability of Plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved. *Palmer*, 560 F.3d at 970 (citation and quotation marks omitted); *Wilborn*, 789 F.2d at 1331. Neither consideration is

1 dispositive and they must be viewed together. *Palmer*, 560 F.3d at 970 (citation and quotation
2 marks omitted); *Wilborn* 789 F.2d at 1331.

3 In the present case, the Court does not find the required exceptional circumstances. Even
4 if it is assumed that Plaintiff is not well versed in the law and that he has made serious allegations
5 which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with
6 similar cases almost daily. Further, at this early stage in the proceedings, the Court cannot make a
7 determination that Plaintiff is likely to succeed on the merits, and based on a review of the record
8 in this case, the Court does not find that Plaintiff cannot adequately articulate his claims. *Id.*
9 Therefore, his motion for counsel is denied.

10 Plaintiff's motion for an extension of time to file a second amended is granted.

11 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 12 1. Plaintiff's motion for the appointment of counsel is DENIED;
- 13 2. Plaintiff's motion for an extension of time to file a second amended complaint is
14 GRANTED; and
- 15 3. Plaintiff has **thirty (30) days** from the date of service of this order within which to
16 file a second amended complaint.

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18 IT IS SO ORDERED.

19 Dated: May 2, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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