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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
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10 BARTON R. SHAFER,

11 Plaintiff,

12 v.

13 AVENAL STATE PRISON,

14 Defendant(s).
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Case No. 1:14-cv-00846-MJS (PC)

**ORDER GRANTING PLAINTIFF'S
REQUEST FOR EXTENSION OF TIME TO
FILE FIRST AMENDED COMPLAINT
(ECF No. 16)**

**FIRST AMENDED COMPLAINT DUE IN
THIRTY DAYS**

**ORDER DENYING PLAINTIFF'S REQUEST
FOR APPOINTMENT OF COUNSEL
(ECF No. 16)**

21
22 Plaintiff is proceeding pro se and in forma pauperis in this civil rights action filed
23 pursuant to 42 U.S.C. § 1983. The Complaint was dismissed for failure to state a claim.
24 Plaintiff was allowed leave to file an amended pleading by not later than August 18, 2014.

25 Before the Court are Plaintiff's requests for (1) extension of the August 18th
26 deadline, and (2) appointment of counsel.

27 The Court finds good cause to extend time to file an amended pleading.

28 However, the request for appointment of counsel shall be denied. Plaintiff does not

1 have a constitutional right to appointed counsel in this action, *Rand v. Rowland*, 113 F.3d
2 1520, 1525 (9th Cir. 1997), partially overruled on other grounds, 154 F.3d 952, 954 n.1 (9th
3 Cir. 1998), and the Court cannot require an attorney to represent him pursuant to 28 U.S.C.
4 § 1915(e)(1). *Mallard v. United States District Court for the Southern District of Iowa*, 490
5 U.S. 296, 298 (1989). In certain exceptional circumstances the Court may request the
6 voluntary assistance of counsel pursuant to section 1915(e)(1). *Rand*, 113 F.3d at 1525.
7 However, without a reasonable method of securing and compensating counsel, the Court
8 will seek volunteer counsel only in the most serious and exceptional cases. In determining
9 whether “exceptional circumstances exist, the district court must evaluate both the
10 likelihood of success of the merits [and] the ability of the [plaintiff] to articulate his or her
11 claims pro se in light of the complexity of the legal issues involved.” *Id.* Neither of these
12 factors is dispositive and both must be viewed together before reaching a decision on
13 request of counsel under section 1915(d). *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th
14 Cir. 1986); *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009).

15 The burden of demonstrating exceptional circumstances is on the Plaintiff. See
16 *Palmer*, 560 F.3d at 970 (plaintiff “has not made the requisite showing of exceptional
17 circumstances for the appointment of counsel”); accord, *Alvarez v. Jacquez*, 415 F. App’x
18 830, 831 (9th Cir. 2011) (plaintiff “failed to show exceptional circumstances”); *Simmons v.*
19 *Hambly*, 14 F. App’x. 918, 919 (9th Cir. 2001) (same); *Davis v. Yarborough*, 459 F. App’x
20 601, 602 (9th Cir. 2011) (plaintiff “did not show the ‘exceptional circumstances’ required to
21 appoint counsel under 28 U.S.C. § 1915(e)(1).”).

22 There are not exceptional circumstances supporting appointment of counsel. The
23 Court cannot make a determination at this early stage of the litigation that Plaintiff is likely
24 to succeed on the merits. The claims alleged do not appear to be novel or unduly complex.
25 The facts alleged to date appear straightforward and unlikely to involve any extensive
26 investigation and discovery. Even if it is assumed that Plaintiff is not well versed in the law
27 and that he has made serious allegations which, if proved, would entitle him to relief, his
28 case is not exceptional. This Court is faced with similar cases almost daily.

1 The papers filed by Plaintiff in this case reflect an appreciation of the legal issues
2 and standards and an ability to express same adequately in writing. The Court does not
3 find that at present he cannot adequately articulate his claims pro se.

4 Finally, Plaintiff makes no showing that he has exhausted diligent efforts to secure
5 counsel. His lack of funds and efforts to date do not demonstrate that further efforts to
6 secure counsel necessarily would be futile.¹

7 Accordingly, for the reasons stated, it is HEREBY ORDERED that:

8 1. Plaintiff's motion for extension of time (ECF No. 16) is GRANTED such that
9 Plaintiff's first amended complaint shall be due not later than thirty days
10 following service of this Order, and

11 2. Plaintiff's motion for appointment of counsel (ECF No. 16) is DENIED, without
12 prejudice.

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14 IT IS SO ORDERED.

15 Dated: July 30, 2014

/s/ Michael J. Seng
16 UNITED STATES MAGISTRATE JUDGE
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¹ See e.g., *Thornton v. Schwarzenegger*, 2011 WL 90320, *3-4 (S.D. Cal. January 11, 2011) (cases cited).