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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

REYNALDO SOLORZANO,  
  
Plaintiff,  
  
v.  
  
S. FRAUENHEIM, et al.,  
  
Defendants.

Case No. 1:16-cv-00314-LJO-SAB-PC

ORDER GRANTING PLAINTIFF’S  
MOTION FOR 30-DAY EXTENSION OF  
TIME TO FILE SECOND AMENDED  
COMPLAINT  
(ECF No. 12)

ORDER DENYING PLAINTIFF’S MOTION  
FOR THE APPOINTMENT OF COUNSEL  
(ECF No. 13)

**THIRTY DAY DEADLINE**

Plaintiff Reynaldo Solorzano is a state prisoner proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Currently before the Court are (1) Plaintiff’s motion for a 30-day extension of time to file a second amended complaint (ECF No. 12), and (2) Plaintiff’s motion for the appointment of counsel (ECF No. 13), both filed on June 21, 2017.

**I.**

**EXTENSION OF TIME**

Plaintiff seeks a 30-day extension of time to file a second amended complaint, contending that he has requested information and documentation to identify the Doe defendants in this

1 action, but is awaiting further information. (ECF No. 12.) Good cause being shown, Plaintiff's  
2 request for an extension is granted.

3 Plaintiff further states that he has been requesting information to identify the Doe  
4 defendants, with some difficulty. He also attaches documentation in support. The Court notes  
5 that it appears Plaintiff has been provided information relevant to the incident in which he claims  
6 he was battered on June 6, 2014. That information includes a general chrono, medical report, ad-  
7 seg placement notice, classification chrono, and a CDCR 128G form. (Id. at 12.) Plaintiff is  
8 encouraged to carefully review that documentation to attempt to determine the identity of the  
9 Doe defendants.

10 Plaintiff is also reminded that although Doe pleadings are disfavored, he will be afforded  
11 an opportunity to identify unknown defendants through discovery, unless it is clear that  
12 discovery will not reveal their identities or the complaint must be dismissed for other reasons.  
13 Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980).

## 14 II.

### 15 APPOINTMENT OF COUNSEL

16 Plaintiff requests the appointment of counsel, asserting that he is indigent, that his claim  
17 is meritorious, that a lawyer would better enable him to obtain records regarding the incident  
18 complained of, and that he has no legal training and a 9th grade education with difficulty in  
19 comprehension, reading and writing. (ECF No. 13.)

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

26 Without a reasonable method of securing and compensating counsel, the court will seek  
27 volunteer counsel only in the most serious and exceptional cases. In determining whether  
28 “exceptional circumstances exist, the district court must evaluate both the likelihood of success

1 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the  
2 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).  
3 The test for exceptional circumstances requires the Court to evaluate the Plaintiff’s likelihood of  
4 success 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. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th  
6 Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to  
7 most prisoners, such as lack of legal education and limited law library access, do not establish  
8 exceptional circumstances that would warrant a request for voluntary assistance of counsel.

9 In the present case, the Court does not find the required exceptional circumstances.  
10 Although the Court found Plaintiff had stated some cognizable claims in his first amended  
11 complaint, at this early stage, the Court cannot find a likelihood of success on the merits. Further,  
12 the record reflects that Plaintiff can sufficiently articulate his claims. Accordingly, Plaintiff’s  
13 motion for appointment of counsel is denied, without prejudice.

14 **III.**

15 **CONCLUSION AND ORDER**

16 Based on the foregoing, it is HEREBY ORDERED that:

- 17 1. Plaintiff’s motion for a 30-day extension of time to comply with the Court’s June  
18 5, 2017 order, (ECF No 12), is GRANTED;
- 19 2. Within **thirty (30) days** from the date of service of this order, Plaintiff must  
20 either:
- 21 a. File an amended complaint alleging his claims based on the June 6, 2014  
22 incident to cure the deficiencies identified by the Court in its June 5, 2017  
23 order, or
  - 24 b. Notify the Court in writing that he does not wish to file an amended  
25 complaint and wishes to proceed only against Does A, B, C, and D for  
26 failure to protect in violation of the Eighth Amendment;

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3. Plaintiff's motion for the appointment of counsel (ECF No. 13), is DENIED,  
without prejudice.

IT IS SO ORDERED.

Dated: June 22, 2017



UNITED STATES MAGISTRATE JUDGE