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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID BENNETT,

 Plaintiff,

 v.

DEBBIE ASUNCION, et al.,

 Defendants.

CASE NO. 1:16-cv-01749-AWI-MJS (PC)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR AN EXTENSION OF TIME
TO RESPOND TO FINDINGS AND
RECOMMENDATION**

**ORDER DENYING PLAINTIFF'S MOTION
FOR APPOINTMENT OF COUNSEL**

(ECF No. 31)

THIRTY DAY (30) DAY DEADLINE

Plaintiff is a former prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983.

Before the Court is Plaintiff's April 02, 2018 motion requesting additional time to file objections to the findings and recommendations and requesting appointment of counsel. (ECF No. 31.)

I. Extension of time.

Plaintiff seeks an extension of time of time to file objections to this Court's findings and recommendation (ECF No. 30) to dismiss first amended complaint without leave to amend for failure to state a claim. Plaintiff states that he has not been able to access his

1 legal files because he has been placed in Atascadero State Hospital as a mentally
2 disordered offender.

3 Good cause having been presented, Plaintiff's motion will be granted and Plaintiff
4 will be afforded thirty days from the date of service of this order to file objections.

5 **II. Appointment of Counsel**

6 Plaintiff does not have a constitutional right to appointed counsel in this action,
7 Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require an
8 attorney to represent Plaintiff pursuant to 28 U.S.C. ' 1915(e)(1), Mallard v. United States
9 District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). In certain
10 exceptional circumstances the court may request the voluntary assistance of counsel
11 pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525. However, without a reasonable
12 method of securing and compensating counsel, the Court will seek volunteer counsel
13 only in the most serious and exceptional cases. In determining whether exceptional
14 circumstances exist, the district court must evaluate both the likelihood of success of the
15 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
16 complexity of the legal issues involved. Id. (internal quotation marks and citations
17 omitted).

18 In the present case, the Court does not find the required exceptional
19 circumstances. Even if it is assumed that Plaintiff is not well versed in the law and that he
20 has made serious allegations which, if proved, would entitle him to relief, his case is not
21 exceptional. This Court is faced with similar cases almost daily. Further, at this early
22 stage in the proceedings, the Court cannot make a determination that Plaintiff is likely to
23 succeed on the merits. And, based on a review of the record in this case, even though
24 the issues are complex, the court does not find that Plaintiff cannot adequately articulate
25 his claims. Id.

26 For the foregoing reasons, Plaintiff's motion for the appointment of counsel is
27 denied, without prejudice.

28

1 **III. Conclusion and Order**

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

- 3
- 4 1. Plaintiff's motion (ECF No. 31) is GRANTED insofar as it requests an
5 extension of time. Plaintiff shall have thirty days from the date of service of
6 this order to file objections to the findings and recommendation.
- 7 2. Plaintiff's motion (ECF No. 31) is DENIED in all other respects.

8 IT IS SO ORDERED.

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10 Dated: April 6, 2018

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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