



1 for failure to exhaust administrative remedies. (ECF No. 29.)

2 Currently before the Court is Plaintiff's motion for an extension of time to file an  
3 opposition to Defendants' motion for summary judgment, Plaintiff's renewed motion for  
4 appointment of counsel, and Plaintiff's motion for an order requiring Defendants to consider  
5 Plaintiff's settlement offer, filed on January 6, 2020. (ECF No. 30.)

6 **II. Motion for Extension of Time to File Second Amended Complaint**

7 Plaintiff requests that this Court grant him an extension of time to file his opposition to  
8 Defendants' motion for summary judgment. (ECF No. 30.) Plaintiff asserts that he needs  
9 additional time to adequately prepare his opposition because he has been unable to get access to  
10 the prison law library due to the numbers of other inmates also wanting access and the library's  
11 limited schedule during the holiday season. (Id.)

12 Having considered the request, the Court finds that Plaintiff has demonstrated good cause  
13 for an extension of time. Fed. R. Civ. P. 6(b). Therefore, Plaintiff's motion for an extension of  
14 time to file his opposition to Defendants' summary judgment motion is granted. Plaintiff shall  
15 file his opposition to Defendants' motion for summary judgment, if any, no later than thirty (30)  
16 days from the date of service of this order.

17 **III. Motion for Appointment of Counsel**

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

24 Without a reasonable method of securing and compensating counsel, the Court will seek  
25 volunteer counsel only in the most serious and exceptional cases. In determining whether  
26 "exceptional circumstances exist, the district court must evaluate both the likelihood of success  
27 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the  
28 complexity of the legal issues involved." Id. (internal quotation marks and citations omitted).

1 “Neither of these considerations is dispositive and instead must be viewed together.” Palmer v.  
2 Valdez, 560 F.3d 965, 970 (9th Cir. 2009). The burden of demonstrating exceptional  
3 circumstances is on the plaintiff. Id.

4 Here, Plaintiff contends that the Court should appoint counsel to represent Plaintiff in this  
5 action because Plaintiff is an indigent layperson at law, who suffers from post-traumatic stress  
6 disorder. Specifically, Plaintiff asserts that they have a hard time with concentrating, especially  
7 while reading, which results in a loss of comprehension and understanding.

8 However, the Court has considered Plaintiff’s renewed motion for appointed counsel, but  
9 does not find the required exceptional circumstances. Initially, circumstances common to most  
10 prisoners, such as lack of legal education, limited law library access, and lack of funds to hire  
11 counsel, do not alone establish the exceptional circumstances that would warrant appointment of  
12 counsel. Further, Plaintiff’s apprehension with pursuing this case on his own, while  
13 understandable, is not sufficient grounds for appointing counsel. See Wilborn v. Escalderon, 789  
14 F.2d 1328, 1331 (9th Cir. 1986) (“Most actions require development of further facts during  
15 litigation and a pro se litigant will seldom be in a position to investigate easily the facts necessary  
16 to support the case.”). Additionally, while Plaintiff has pled cognizable claims, Plaintiff has not  
17 established that they are likely to succeed on the merits of those cognizable claims. Finally,  
18 based on a review of the record in this case, the Court finds that the legal issues in this case do not  
19 appear to be particularly complex and that Plaintiff can adequately articulate their claims.

20 Therefore, the Court denies, without prejudice, Plaintiff’s renewed motion for  
21 appointment of counsel.

22 **IV. Motion for Order Requiring Defendants to Consider Plaintiff’s Settlement Offer**

23 Plaintiff moves this Court for an order requiring Defendants to consider Plaintiff’s latest  
24 settlement offer. (ECF No. 30, at 4.) However, Plaintiff does not have a legal right to compel  
25 Defendants to consider, or accept, Plaintiff’s settlement offers. Therefore, the Court denies  
26 Plaintiff’s motion for an order requiring Defendants to consider Plaintiff’s latest settlement offer.

27 However, Plaintiff is not precluded from negotiating a settlement directly with defense  
28 counsel.

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**V. Order**

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for an extension of time to file an opposition to Defendants' motion for summary judgment, (ECF No. 30), is GRANTED;
2. Plaintiff is directed to file an opposition to Defendants' summary judgment motion within **thirty (30) days** from the date of service of this order;
3. Plaintiff's renewed motion for appointment of counsel, (ECF No. 30), is DENIED, without prejudice; and
4. Plaintiff's motion for order requiring Defendants to consider Plaintiff's settlement offer, (ECF No. 30), is DENIED.

IT IS SO ORDERED.

Dated: January 8, 2020

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE