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

JAMES TROTTER,

 Plaintiff,

 v.

WARDEN PFEIFFER, et al.

 Defendants.

Case No. 1:18-cv-00259-BAM (PC)

**ORDER GRANTING PLAINTIFF’S MOTION
FOR EXTENSION OF TIME TO FILE
SECOND AMENDED COMPLAINT AND
DENYING, WITHOUT PREJUDICE,
PLAINTIFF’S MOTION FOR
APPOINTMENT OF COUNSEL**

(ECF Nos. 44, 45)

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

Currently before the Court are Plaintiff’s motion for an extension of time to file a second amended complaint and Plaintiff’s motion to appoint counsel, both filed on August 9, 2019. (ECF Nos. 44, 45.)

I. Plaintiff’s Motion for an Extension of Time to File Second Amended Complaint

On July 3, 2019, the Court issued a screening order finding that Plaintiff’s first amended complaint fails to comply with Federal Rule of Civil Procedure 8 and fails to state any cognizable claim for relief. (ECF No. 37.) The Court granted Plaintiff thirty days to either file a second amended complaint or a notice of voluntary dismissal. (*Id.* at 15-16.)

On August 9, 2019, Plaintiff filed a motion for an extension of time to file a second amended complaint. (ECF No. 44.) In his motion, Plaintiff asserts that he needs additional time to prepare

1 and file a second amended complaint because, due to overcrowding and lockdowns, he has very
2 limited access to the law library.

3 Having considered the request, the Court finds that Plaintiff has established good cause to
4 grant an extension of time to file a second amended complaint. Fed. R. Civ. P. 6(b). Therefore,
5 the Court grants Plaintiff's motion for an extension of time.

6 **II. Plaintiff's Motion for Appointment of Counsel**

7 On August 9, 2019, Plaintiff filed a motion for appointment of counsel. (ECF No. 45.) In
8 his motion, Plaintiff asserts that, since he is indigent and unable to afford counsel, he is requesting
9 the appointment of counsel so that his interests "may be protected by the professional assistance
10 required." (Id.)

11 The Court notes that Plaintiff does not have a constitutional right to appointed counsel in
12 this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require
13 any attorney to represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1), Mallard v. United States
14 District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). Nevertheless, in certain
15 exceptional circumstances, the Court may request the voluntary assistance of counsel pursuant to §
16 1915(e)(1). Rand, 113 F.3d at 1525. Without a reasonable method of securing and compensating
17 counsel, the Court will seek volunteer counsel only in the most serious and exceptional cases. In
18 determining whether "exceptional circumstances exist, the district court must evaluate both the
19 likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims pro se
20 in light of the complexity of the legal issues involved." Id. (internal quotation marks and citations
21 omitted). "Neither of these considerations is dispositive and instead must be viewed together."
22 Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009). The burden of demonstrating exceptional
23 circumstances is on Plaintiff. Id.

24 However, circumstances common to most prisoners, such as lack of legal education, limited
25 law library access, and lack of funds to hire counsel, do not alone establish the exceptional
26 circumstances that would warrant granting a request for voluntary assistance of counsel. Further,
27 having considered the factors under Palmer, the Court finds that Plaintiff has failed to meet his
28 burden of demonstrating exceptional circumstances warranting the appointment of counsel at this

1 time. Therefore, Plaintiff's motion for appointment of counsel is denied, without prejudice.

2 **III. Order**

3 Accordingly, it is HEREBY ORDERED that:

- 4 1. Plaintiff's motion for an extension of time to file a second amended complaint, (ECF
5 No. 44), is GRANTED;
- 6 2. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a
7 second amended complaint curing the deficiencies identified in the Court's July 3,
8 2019 screening order, or file a notice of voluntary dismissal;
- 9 3. If Plaintiff fails to file a second amended complaint, the Court will recommend to
10 the District Judge that this action be dismissed for failure to state a claim, failure to
11 prosecute, and failure to obey a court order; and
- 12 4. Plaintiff's motion for appointment of counsel, (ECF No. 45), is DENIED, without
13 prejudice.

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15 IT IS SO ORDERED.

16 Dated: August 13, 2019

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE
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