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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 MICHAEL FRIES,

12 Plaintiff,

13 vs.

14 PFEIFFER et al.,

15 Defendants.
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1:22-cv-00380-ADA-GSA-PC

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

**ORDER GRANTING EXTENSION OF
TIME TO FILE AMENDED COMPLAINT**

(ECF No. 19.)

**DEADLINE TO FILE FIRST AMENDED
COMPLAINT: DECEMBER 21, 2022**

21 **I. BACKGROUND**

22 Michael Fries (“Plaintiff”) is a state prisoner proceeding *pro se* with this civil rights action
23 pursuant to 42 U.S.C. § 1983. On November 3, 2022, Plaintiff filed a motion appointment of
24 counsel, or in the alternative, an extension of time to file his amended complaint. (ECF No. 19.)

25 **II. MOTION FOR APPOINTMENT OF COUNSEL**

26 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.
27 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an attorney to
28 represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court

1 for the Southern District of Iowa, 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in
2 certain exceptional circumstances the court may request the voluntary assistance of counsel
3 pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

4 Without a reasonable method of securing and compensating counsel, the court will seek
5 volunteer counsel only in the most serious and exceptional cases. In determining whether
6 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
7 of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the
8 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

9 In the present case, the court does not find the required exceptional circumstances.
10 Plaintiff seeks appointment of counsel to assist him with litigation of this case. He asserts that
11 he has never graduated from school and he requires counsel to assist him with presenting and
12 obtaining facts and evidence supporting the legal issues in this complex and meritorious case.

13 None of these circumstances is exceptional under the law. Plaintiff’s original complaint
14 was dismissed for violation of Rule 8(a), with leave to amend, and Plaintiff has not filed his
15 amended complaint. Therefore, there is no viable complaint on file in this case, and the court
16 cannot determine whether Plaintiff’s case has merit. Plaintiff’s claims of retaliation, failure to
17 protect, mail tampering, confiscation of medical aids, and use of an improper appeals process are
18 not complex, and based on a review of the record in this case, Plaintiff can adequately articulate
19 his claims and respond to court orders. Thus, the Court does not find the required exceptional
20 circumstances, and Plaintiff’s motion for appointment of counsel shall be denied, without
21 prejudice to renewal of the motion at a later stage of the proceedings.

22 **III. MOTION FOR EXTENSION OF TIME**

23 Plaintiff seeks an extension of time to file his First Amended Complaint. The Court finds
24 good cause to grant Plaintiff an extension of time until December 21, 2022 in which to file the
25 First Amended Complaint. Therefore, Plaintiff’s motion shall be granted.

26 **IV. CONCLUSION**

27 Accordingly, **THE COURT HEREBY ORDERS** that:

- 28 1. Plaintiff’s motion for appointment of counsel is DENIED, without prejudice; and

