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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 JOSE GOMEZ,

No. 2:13-CV-0480-GEB-CMK-P

12 Plaintiff,

13 vs.

ORDER

14 SANDERS, et al.,

15 Defendants.
16 _____/

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Plaintiff seeks the appointment of counsel. The United States Supreme Court
19 has ruled that district courts lack authority to require counsel to represent indigent prisoners in
20 § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain
21 exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to
22 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.
23 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). A finding of “exceptional
24 circumstances” requires an evaluation of both the likelihood of success on the merits and the
25 ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal
26 issues involved. See Terrell, 935 F.2d at 1017. Neither factor is dispositive and both must be

1 viewed together before reaching a decision. See id.

2 In the present case, the court does not at this time find the required exceptional
3 circumstances. This case involves claims of an Eighth Amendment violation for the denial of
4 adequate medical treatment, specifically failure to place plaintiff on a kidney transplant list. The
5 claims are fairly straightforward and not particularly complex, either legally or factually.
6 Plaintiff requests the appointment of counsel due to his inability to pay for counsel, difficulties
7 relating to his imprisonment and inexperience, and a limited grasp of the English language.
8 However, none of those reasons meet the exceptional circumstance requirement for the
9 appointment counsel. There is nothing in plaintiff's motion to indicate he is unable to
10 comprehend these proceedings, even with a limited grasp of the English language, and based on
11 the filings in the case thus far, it would appear plaintiff has the ability to articulate his claims.
12 The difficulties he may have due to his imprisonment and/or inexperience is not unique to
13 plaintiff, as most pro se prison litigants have the same difficulties. Finally, as to the merits of
14 plaintiff's case, based on the arguments made and evidence submitted with the defendant's
15 motion for summary judgment, the undersigned cannot find there is a reasonable likelihood that
16 plaintiff will be successful on the merits of his case at this time. If this action survives summary
17 judgment, plaintiff may renew his motion for the appointment of counsel.

18 However, it appears that plaintiff is facing some difficulties in accessing the law
19 library. Defendants filed a motion for summary judgement to which plaintiff has not filed an
20 opposition. To the extent plaintiff needs additional time in which to respond given his limited
21 access to the law library and other difficulties set forth in his motion, the court will sua sponte
22 extend the time plaintiff has in which to file his opposition to the pending motion for summary
23 judgment. Plaintiff is reminded that if he does not serve and file a written opposition to the
24 motion or a request to postpone consideration of the motion, the court may consider the failure to
25 act as a waiver of opposition to the defendants' motion. If the defendants' motion for summary
26 judgment, whether opposed or unopposed, is granted, judgment will be entered for the

1 defendants without a trial and the case will be closed. See Rand v. Rowland, 154 F.3d 952, 957
2 (9th Cir. 1998) (en banc), and Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988).

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Plaintiff's requests for the appointment of counsel (Docs. 49, 59) are
5 denied; and

6 2. Plaintiff shall file an opposition to the pending motion for summary
7 judgment within 60 days from the date of this order.

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9 DATED: September 18, 2017

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11 **CRAIG M. KELLISON**
12 UNITED STATES MAGISTRATE JUDGE
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