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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY E. HOWARD,
Plaintiff,
v.
TIM VIRGA, et al.,
Defendants.

No. 2:13-cv-1523 KJN P

ORDER

Plaintiff has filed his second request for an extension of time to file a second amended complaint pursuant to the court’s order of November 20, 2013. Good cause appearing, the request will be granted. No further extensions of time will be granted.

Plaintiff also requests that the court appoint counsel. District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily to represent such a plaintiff. See 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to

1 appoint counsel). The burden of demonstrating exceptional circumstances is on the plaintiff. Id.
2 Circumstances common to most prisoners, such as lack of legal education and limited law library
3 access, do not establish exceptional circumstances that warrant a request for voluntary assistance
4 of counsel.

5 Because plaintiff has not filed a second amended complaint, the court cannot determine
6 whether plaintiff's claims have merit.


7 Having considered the factors under Palmer, the court finds that plaintiff has failed to
8 meet his burden of demonstrating exceptional circumstances warranting the appointment of
9 counsel at this time.

10 IT IS HEREBY ORDERED that:

- 11 1. Plaintiff's request for an extension of time (ECF No. 19) is granted.
- 12 2. Plaintiff is granted thirty days from the date of this order in which to file a second
13 amended complaint. No further extensions of time will be granted.
- 14 3. Plaintiff's motion for the appointment of counsel (ECF No. 20) is denied without
15 prejudice.

16 Dated: February 4, 2014

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19 KENDALL J. NEWMAN
20 UNITED STATES MAGISTRATE JUDGE