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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DANNY RAY GARCIA,

No. 2:14-CV-0093-CMK-P

Plaintiff,

vs.

ORDER

TSENG,

Defendant.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are plaintiff’s (1) motion for an extension of time (Doc. 46) and (2) motion for appointment of counsel (Doc. 45).

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). A finding of “exceptional circumstances” requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his

1 own in light of the complexity of the legal issues involved. See Terrell, 935 F.2d at 1017.
2 Neither factor is dispositive and both must be viewed together before reaching a decision. See
3 id.

4 In the present case, the court does not at this time find the required exceptional
5 circumstances. Specifically, plaintiff states that he requires the appointment of counsel because,
6 in reviewing defendant's motion for summary judgment, he has encountered numerous issues
7 beyond his legal knowledge. This circumstance is not exceptional, but is common to almost all
8 prisoner plaintiffs. Moreover, plaintiff has demonstrated an ability to articulate his claims on his
9 own, the legal issues involved in the case are not complex, and plaintiff has not demonstrated
10 any particular likelihood of success on the merits.

11 Plaintiff seeks additional time to file an opposition to defendant's motion for
12 summary judgment. Good cause appearing therefor, plaintiff's request will be granted.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff's request for the appointment of counsel (Doc. 45) is denied;
- 15 2. Plaintiff's motion for an extension of time (Doc. 46) is granted;
- 16 3. Plaintiff's opposition to defendant's motion for summary judgment is due
17 within 30 days of the date of this order.

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20 DATED: January 16, 2018

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22 **CRAIG M. KELLISON**
23 UNITED STATES MAGISTRATE JUDGE
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