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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL DAVID JOHNSON,
Plaintiff,
v.
J.A. BEARD, et al.,
Defendants.

No. 2:15-cv-1313 TLN KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se, in an action brought under 42 U.S.C. § 1983. Plaintiff 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 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 appoint counsel). The burden of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances

1 common to most prisoners, such as lack of legal education and limited law library access, do not
2 establish exceptional circumstances that warrant a request for voluntary assistance of counsel.

3 At this time, no operative pleading is on file. Thus, it remains unclear whether plaintiff
4 can allege facts demonstrating that defendants were deliberately indifferent to plaintiff's serious
5 medical needs. (See e.g., ECF Nos. 40, 44.) Rather, plaintiff again refers to "medical neglect."
6 (ECF No. 45.) Plaintiff has previously been informed that negligence (including medical
7 misdiagnosis), fails to state an Eighth Amendment violation. (ECF No. 44 at 10-11.)


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

11 Plaintiff filed a motion for a lengthy 60 to 90-day extension of time to file an amended
12 complaint based on his limited law library availability and his need to do research. However,
13 plaintiff is reminded that his primary focus should be on the facts of his particular care, or lack
14 thereof, which he believes establishes deliberate indifference. Nevertheless, good cause
15 appearing, the court will grant plaintiff's request for an extension of time. However, plaintiff is
16 cautioned that no further extensions of time will be granted absent a showing of substantial cause.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's motion for the appointment of counsel (ECF No. 45) is denied without
19 prejudice;
- 20 2. Plaintiff's motion for extension of time (ECF No. 45) is granted; and
- 21 3. Plaintiff is granted ninety days from the date of this order in which to file a third
22 amended complaint.

23 Dated: July 29, 2019

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25 _____
26 KENDALL J. NEWMAN
27 UNITED STATES MAGISTRATE JUDGE

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