

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSH THOMAS,  
Plaintiff,  
v.  
BRIAN ROBERTS, et al.,  
Defendants.

No. 2:16-cv-0724 CKD P

ORDER

Plaintiff has filed a request for an extension of time to file an amended complaint. Good cause appearing, plaintiff’s request will be granted. Plaintiff’s amended complaint will be due within 30 days,

Plaintiff has also requested appointment of counsel. The court cannot *require* an attorney to represent a plaintiff who cannot pay for the attorney’s services. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). However, under the federal in forma pauperis statute, 28 U.S.C. § 1915, the court may *request* that an attorney represent a person unable to afford counsel. 28 U.S.C. § 1915(e)(1). The court will make that request only when there are exceptional circumstances. When determining whether “exceptional circumstances” exist, the court considers, among other things, 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). While the court is aware of the

1 difficulties attendant to litigating an action while incarcerated, circumstances common to most  
2 prisoners do not establish “exceptional circumstances.”

3 In the present case, the court does not find the required exceptional circumstances at this  
4 stage of these proceedings.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. Plaintiff’s request for an extension of time to file an amended complaint (ECF No. 20)  
7 is granted;
- 8 2. Plaintiff shall file his amended complaint within 30 days;
- 9 3. Failure to file an amended complaint within 30 days will result in dismissal; and
- 10 4. Plaintiff’s motion for the appointment of counsel is denied.

11 Dated: February 28, 2017

  
\_\_\_\_\_  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

16 1  
17 thom0724.ext