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

JOAQUIN MARTINEZ,

No. 2:16-CV-0831-JAM-CMK-P

Plaintiff,

vs.

ORDER

J. LIZARRAGA, et al.,

Defendants.

_____ /

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) “Moushon to Combined” [sic] (Doc. 9) and (2) motion for the appointment of counsel (Doc. 8). Also before the court are additional exhibits filed on January 24, 2018 (Doc. 10).

Turning to plaintiff’s “Moushon to Combined,” it appears that plaintiff seeks leave to amend his complaint to incorporate additional documentation. Pursuant to Federal Rule of Civil Procedure 15(a)(1), a party may amend his pleading once as a matter of right at any time before being served with a responsive pleading. Because no responsive pleading has been filed, leave of court is not required before filing an amended complaint and plaintiff’s motion will be denied as unnecessary. To the extent plaintiff wishes to incorporate additional exhibits and/or

1 allegations in his original complaint, plaintiff may file a single amended complaint that includes
2 all his allegations and documentation he wishes to include. Plaintiff is advised that, if no
3 amended complaint is filed within the time provided, this action will proceed on plaintiff's
4 original complaint without reference to any additional documents. See Local Rule 220.

5 Plaintiff seeks the appointment of counsel. The United States Supreme Court has
6 ruled that district courts lack authority to require counsel to represent indigent prisoners in
7 § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain
8 exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to
9 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.
10 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). A finding of "exceptional
11 circumstances" requires an evaluation of both the likelihood of success on the merits and the
12 ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal
13 issues involved. See Terrell, 935 F.2d at 1017. Neither factor is dispositive and both must be
14 viewed together before reaching a decision. See id.

15 In the present case, the court does not at this time find the required exceptional
16 circumstances. Plaintiff's "next friend," inmate Anthony Ivan Bobadilla, states that he has been
17 assisting plaintiff with all his court documents and that, due to his transfer to a different prison, he
18 will no longer be able to assist plaintiff and, therefore, that plaintiff requires the appointment of
19 counsel. This circumstance is not unique or extraordinary. Furthermore, because plaintiff has
20 not submitted a single pleading containing all his claims and documentation, the court cannot
21 evaluate the complexity of his claims or the likelihood of success on the merits. Finally, because
22 it is unclear whether plaintiff or his next friend Mr. Bobadilla or someone else prepared the
23 pleadings currently on file, the court cannot evaluate at this time plaintiff's ability to articulate
24 his claims on his own.

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