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

JOAQUIN MARTINEZ,
Plaintiff,
v.
J. LIZARRAGA, et al.,
Defendants.

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

ORDER

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 motion for the appointment of counsel (Docs. 27 and 31). Also before the court are plaintiff’s motions for an extension of time to file a first amended complaint (Docs. 28 and 31). Plaintiff’s motions for injunctive relief (Docs. 29 and 30) are addressed by separate findings and recommendations issued herewith.

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 own in light of the

1 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is
2 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the
3 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
4 of counsel because:

5 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
6 articulate his claim. The facts he alleged and the issues he raised were not
7 of substantial complexity. The compelling evidence against Terrell made it
8 extremely unlikely that he would succeed on the merits.

9 Id. at 1017.

10 In the present case, the court does not at this time find the required exceptional
11 circumstances. As explained in the November 2, 2018, order, the court finds plaintiff's complaint
12 currently does not state any claim upon which relief can be granted. Therefore, the court cannot
13 conclude plaintiff is likely to succeed on the merits of his claims. Nor can the court make any
14 assessment of the legal or factual complexity involved in this case absent an operable pleading
15 sufficient for service on defendants. Finally, while plaintiff alleges he suffers a mental illness
16 making it difficult for him to litigate this action, plaintiff also states he is being treated for his
17 mental illness by prison officials. To the extent plaintiff's mental illness necessitates additional
18 time to comply with court deadlines, the court will accommodate reasonable requests for
19 extensions of time.

20 In that regard, plaintiff seeks additional time to file a first amended complaint
21 pursuant to the court's November 2, 2018, order. Good cause appearing therefore, plaintiff's
22 requests will be granted.

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's requests for the appointment of counsel (Docs. 27 and 31) are denied;
 2. Plaintiff's requests for an extension of time (Docs. 28 and 31) are granted;
- and
3. Plaintiff shall file a first amended complaint within 30 days of the date of this order.

Dated: January 9, 2019



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE