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8   UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

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11   TREMAYNE DEON CARROLL,   No. 2:16-cv-01759-TLN-KJN P

12   Plaintiff,

13   v.   ORDER

14   STATE OF CALIFORNIA, et al.,

15   Defendants.

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17   Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant

18   to 42 U.S.C. § 1983. On April 18, 2017, the magistrate judge granted Plaintiff thirty days to file

19   an amended complaint. (ECF No. 39.) Thirty days passed and Plaintiff failed to file an amended

20   complaint or otherwise respond to the April 18, 2017 Order. Accordingly, on June 1, 2017, the

21   magistrate judge recommended that this action be dismissed. (ECF No. 41.) Plaintiff did not file

22   objections. On August 7, 2017, the undersigned adopted the findings and recommendations and

23   judgment was entered. (ECF Nos. 42 & 43.)

24   On August 24, 2017, Plaintiff filed a submission titled "petition for extension of time (45)

25   days and reconsideration for appointment of counsel." (ECF No. 44.) In this submission,

26   Plaintiff states that he is in the CDCR Mental Health Delivery System. Plaintiff also alleges that

27   he is housed in administrative segregation for non-disciplinary reasons. Plaintiff alleges that he

28   has no access to his legal property or the law library.

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1   The undersigned construes Plaintiff's August 24, 2017 submission as (i) a request for

2   relief from judgment pursuant to Federal Rule of Civil Procedure 60(b) and (ii) a request for

3   reconsideration of one or more of the previous denials of Plaintiff's requests for appointment of

4   counsel (ECF Nos. 11, 21 & 35). Plaintiff subsequently filed a submission titled "petition for

5   extension of time (60) days [and] request for appointment of counsel." (ECF No. 45.) The

6   undersigned construes this second submission as requesting the same two things as his August 24,

7   2017 submission for essentially the same reasons.

8   With respect to the first request, the Court finds there is good cause to vacate the August

9   7, 2017 judgment. Plaintiff will be granted sixty days from the date of this Order to file an

10   amended complaint.

11   With respect to the second request, the magistrate judge has denied Plaintiff's requests for

12   appointment of counsel in three separate Orders (ECF Nos. 11, 21 & 35). The magistrate judge

13   has accurately stated the law in those Orders, so the Court will not repeat it here. Having

14   carefully reviewed those Orders and Plaintiff's two most recent submissions (ECF Nos. 44 & 45),

15   the Court concludes that Plaintiff has not shown any basis why reconsideration is warranted.

16   In the abundance of caution, given Plaintiff's pro se status and the fact he did not include

17   the word "reconsideration" in the caption of his most recent submission (ECF No. 45), the

18   undersigned has conducted de novo review of Plaintiff's prior requests for appointment of

19   counsel. The undersigned would have reached the same result as the magistrate judge in each

20   instance. Simply put, the undersigned finds that Plaintiff has failed to meet his burden of

21   demonstrating exceptional circumstances warranting the appointment of counsel at this time.

22   *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009).

23   Accordingly, IT IS HEREBY ORDERED that:

24   1. Plaintiff's requests for relief from judgment (ECF Nos. 44 & 45) are granted; the

25   August 7, 2017 judgment (ECF No. 43) is vacated; Plaintiff is granted sixty days from the date of

26   this Order to file an amended complaint;

27   2. Plaintiff's request for reconsideration of the magistrate judge's orders (ECF Nos. 11,

28   21 & 35) is denied.

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3. To the extent Plaintiff is separately requesting appointment counsel again (rather than reconsideration of the earlier denials), that request is denied.

4. The Clerk of the Court is directed to amend court records to reflect the address for Plaintiff contained in his August 24, 2017 pleading.

Dated: January 8, 2018

Troy L. Nunley
United States District Judge