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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARMANDO HERRERA,
Plaintiff,
v.
GRAY,
Defendant.

No. 2-17-cv-0765 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 common to most prisoners, such as lack of legal education and limited law library access, do not

1 establish exceptional circumstances that warrant a request for voluntary assistance of counsel.


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

5 In addition, plaintiff has filed a motion for extension of time to file his amended
6 complaint. Plaintiff requests a ninety days extension of time on grounds that he is waiting to have
7 surgery. Plaintiff states that he does not know when this surgery will occur. Plaintiff is granted a
8 thirty days extension of time. Any further requests for extension of time must be supported by
9 substantial cause.

10 Good cause appearing, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff's motion for the appointment of counsel (ECF No. 13) is denied without
12 prejudice;
- 13 2. Plaintiff's motion for an extension of time (ECF No. 14) is granted; and
- 14 3. Plaintiff is granted thirty days from the date of this order in which to file his amended
15 complaint.

16 Dated: May 19, 2017

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19 KENDALL J. NEWMAN
20 UNITED STATES MAGISTRATE JUDGE

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