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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY WAYNE QUINN,
Plaintiff,
v.
JOHN M. DOWBAK,
Defendant.

No. 2:17-cv-0992-MCE-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Defendant moves to dismiss plaintiff’s second amended complaint. ECF No. 32. Plaintiff has requested the appointment of counsel and an extension of time to file an opposition to the motion to dismiss because he is recovering from surgery to his dominant hand. ECF Nos. 34, 35. While plaintiff is granted more time to file an opposition, his request for appointment of counsel is denied.

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 to 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 the likelihood of success on the merits as well as the

1 ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues
2 involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Having considered those factors,
3 the court finds there are no exceptional circumstances in this case.

4 Nevertheless, in light of plaintiff's representations regarding his inability to prepare an
5 opposition with his injured hand, he is granted an extension of 60 days from the date of this order
6 to file any amended opposition¹ to the motion to dismiss.

7 Accordingly, it is hereby ORDERED that:

- 8 1. Plaintiff's motion for counsel (ECF No. 35) is DENIED;
- 9 2. Plaintiff's motion for an extension of time (ECF No. 34) is GRANTED IN PART, and
10 plaintiff shall have 60 days from the date of this order to submit an amended
11 opposition to the pending motion to dismiss. Defendant may, within seven days of the
12 filing of an amended opposition, file an amended reply brief. If plaintiff fails to
13 submit an amended opposition within the 60 days provided by this order, the court
14 will deem the matter submitted on the existing briefs.

15 Dated: November 20, 2018.

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17 EDMUND F. BRENNAN
18 UNITED STATES MAGISTRATE JUDGE

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28 ¹ Plaintiff filed a single-page, typed opposition brief on the same day he requested counsel
and an extension of time. ECF No. 36.