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

CLARENCE A. GIPBSIN,
Plaintiff,
v.
SANDDU, et al.,
Defendants.

No. 2:19-CV-1276-KJM-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 is plaintiff’s first amended complaint (ECF No. 11) and Plaintiff’s motion for appointment of counsel (ECF No. 10).

I. PLAINTIFF’S COMPLAINT

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This

1 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the
2 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
3 of counsel because:

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

7 Id. at 1017.

8 In the present case, the court does not at this time find the required exceptional
9 circumstances. As discussed above, Plaintiff's complaint fails to meet the pleading requirement
10 under Rule 8. For that reason, as currently pleaded, there is no likelihood of success on the
11 merits. Further, Plaintiff's complaint seems to raise claims of alleged Eighth Amendment
12 violations related to medical treatment. These claims are similar to those raised by numerous pro
13 se plaintiffs. There is no indication that there is an exceptional component to Plaintiff's specific
14 claims such to justify the appointment of counsel. For these reasons, at this time, Plaintiff's
15 motion for appointment of counsel cannot be granted.

16 **III. CONCLUSION**

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's first amended complaint (ECF No. 11) is DISMISSED with
19 leave to amend;
- 20 2. Plaintiff shall file a second amended complaint within 30 days of the date
21 of service of this order; and
- 22 3. Plaintiff's motion for appointment of counsel (ECF No. 10) is DENIED.
23

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25 Dated: October 4, 2019



26
27 DENNIS M. COTA
28 UNITED STATES MAGISTRATE JUDGE