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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 RAUL ARELLANO, JR.,

12 Plaintiff,

13 v.

14 SAN DIEGO, COUNTY OF, et al.,

15 Defendants.
16

Case No.: 14-CV-2404 JLS (KSC)

**ORDER DENYING MOTION TO
APPOINT COUNSEL AND
GRANTING MOTION FOR
EXTENSION OF TIME**

(ECF Nos. 119, 122)

17 Presently before the Court is Plaintiff Raul Arellano, Jr.’s Motion to Appoint
18 Counsel, (ECF No. 119), and his Motion for Extension of Time, (ECF No. 122). The Court
19 previously granted Plaintiff’s Motion to Amend on April 17, 2018, (ECF No. 117), and
20 allowed Plaintiff forty days to file an amended Complaint. Plaintiff subsequently filed a
21 document that requests the Court appoint him counsel. (ECF No. 119.) Plaintiff explains
22 that he is losing his vision and needs an attorney to assist him. (*See id.*) In the meantime,
23 Plaintiff filed a Motion asking for an extension of time to file his amended Complaint until
24 his motion to appoint counsel is resolved. (ECF No. 122.)

25 **I. Motion to Appoint Counsel**

26 There is no constitutional right to counsel in a civil case. *Lassiter v. Dep’t of Social*
27 *Servs. of Durham Cnty.*, 452 U.S. 18, 25 (1981). While under 28 U.S.C. § 1915(e)(1),
28 district courts have some limited discretion to “request” that an attorney represent an

1 indigent civil litigant, *Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004),
2 this discretion is rarely exercised and only under “exceptional circumstances.” *Id.*; *see also*
3 *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). A finding of exceptional
4 circumstances requires “an evaluation of the likelihood of the plaintiff’s success on the
5 merits and an evaluation of the plaintiff’s ability to articulate his claims ‘in light of the
6 complexity of the legal issues involved.’” *Agyeman*, 390 F.3d at 1103 (quoting *Wilborn v.*
7 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

8 Here, Plaintiff does not meet the requirements for exceptional circumstances.
9 Plaintiff has not demonstrated a likelihood of success on the merits. While some of
10 Plaintiff’s claims have survived the motion to dismiss stage, there has been no substantive
11 motions after discovery to test Plaintiff’s claims.

12 With regard to ability to articulate his claims, Plaintiff states the he cannot read and
13 no one in prison can help him with researching the law, only to transcribe his documents.
14 (ECF No. 119.) The State of California filed a status report in this case describing
15 Plaintiff’s medical issues. (ECF No. 120.) The status report states that Plaintiff’s treating
16 physicians have been unable to diagnose him and that Plaintiff was scheduled for an
17 appointment with a provider outside the prison in May 2018. (*Id.* at 1–2.) There has been
18 no further filing expressing whether that appointment occurred, but the status report goes
19 on to state that Plaintiff was able to engage in discussions and apparently write a letter in a
20 different case, *Arellano v. Blahnik*, No. 16-CV-2412 CAB (RNB). (*Id.* at 2.) The status
21 report also notes that Plaintiff has been granted reasonable accommodations under the
22 Americans with Disabilities Act (“ADA”), including use of a machine in the law library
23 that magnifies text or audibly reads the text to Plaintiff and the use of a pocket magnifier.
24 (*Id.* at 4.) Further, an ADA-skilled worker is available to read text to Plaintiff and act as
25 his scribe. (*Id.*)

26 The foregoing demonstrates to the Court that Plaintiff has reasonable
27 accommodations that will allow him access to courts and does not rise to the level of
28 exceptional circumstances required to appoint counsel. Accordingly, the Court **DENIES**

1 **WITHOUT PREJUDICE** Plaintiff’s Motion to Appoint Counsel, (ECF No. 119).

2 **II. Motion for Extension of Time**

3 Plaintiff also filed a request for an extension of time until his request for counsel is
4 ruled on by the Court. (ECF No. 122). Plaintiff’s current deadline to file an amended
5 complaint was Tuesday May 29, 2018.¹ It appears that Plaintiff’s request for extension of
6 time was timely when he filed it.² Plaintiff’s request for an extension of time was timely
7 filed and he is still proceeding without counsel. *See Balistreri v. Pacifica Police Dep’t*,
8 901 F.2d 696, 699 (9th Cir. 1990) (noting the court has a “duty to ensure that pro se litigants
9 do not lose their right to a hearing on the merits of their claim due to . . . technical
10 procedural requirements”). The Court finds good cause to support Plaintiff’s request.

11 **III. Conclusion**

12 Accordingly, the Court:

- 13 1) **DENIES** Plaintiff’s Motion to Appoint Counsel, (ECF No. 119).
- 14 2) **GRANTS** Plaintiff’s Motion for an Extension of Time to File an amended
15 Complaint, (ECF No. 122). Plaintiff’s amended Complaint, should he elect to file one,
16 must be filed no later than Monday, July 16, 2018. The Court cautions Plaintiff that his
17 amended Complaint must be complete in itself without reference to his original Complaint.
18 *See Civil Local Rule 15.1; Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (en
19 banc) (noting that claims dismissed with leave to amend which are not re-alleged in an
20 amended pleading may be “considered waived if not repled.”); *Hal Roach Studios, Inc. v.*
21 *Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading
22 supersedes the original.”). If Plaintiff does not file an amended Complaint then the case
23


24 ¹ According to Federal Rule of Civil Procedure 6(a)(1)(c), the last day for filing cannot fall on a Saturday,
25 Sunday, or legal holiday and Monday May 28, 2018 was a federal holiday so Plaintiff’s deadline was the
26 following Tuesday.

27 ² Plaintiff’s filing was dated May 25, 2018, (ECF No. 122, at 1), and was posted May 29, 2018. It is
28 difficult to ascertain when Plaintiff handed the letter to prison officials, which would meet his filing
requirements under the so-called prisoner mailbox rule, *see Douglas v. Noelle*, 567 F.3d 1103, 1107 (9th
Cir. 2009) (holding mailbox rule applies to prisoner claims under 42 U.S.C. § 1983), but the Court will
consider his Motion timely filed.

1 will proceed as to the claims and Defendants that survived the previous motions to dismiss.

2 **IT IS SO ORDERED.**

3 Dated: June 13, 2018

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5 Hon. Janis L. Sammartino
6 United States District Judge
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