

1 **II. MOTION TO EXTEND TIME TO RESPOND**

2 Plaintiff moves for a 30-day continuance to comply with Local Rule 7.1-1, which governs
3 the requirements for the certificate of interested parties.¹ (Mot. to Extend (ECF No. 23).) Under
4 Local Rule 7-2(d), the “failure of an opposing party to file points and authorities in response to
5 any motion, except a motion under Fed. R. Civ. P. 56 or a motion for attorney’s fees, constitutes a
6 consent to granting of the motion.” Here, defendants did not file a response. The court therefore
7 grants plaintiff’s motion.

8 **III. MOTION FOR APPOINTMENT OF COUNSEL**

9 Plaintiff also moves for the ex parte appointment of legal counsel to assist him in this
10 case. As a preliminary matter, the court finds no reason why this motion should be sealed on the
11 docket. Therefore, the court orders the clerk of court to unseal plaintiff’s motion.

12 Civil litigants do not have a Sixth Amendment right to appointed counsel. *Storseth v.*
13 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). In very limited circumstances, federal courts are
14 empowered to request an attorney to represent an indigent civil litigant. For example, courts have
15 discretion, under 28 U.S.C. § 1915(e)(1), to “request” that an attorney represent indigent civil
16 litigants upon a showing of “exceptional circumstances.” *Agyeman v. Corrections Corp. of Am.*,

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19 ¹ Local Rule 7.1-1 states that

20 (a) Unless the court orders otherwise, in all cases except habeas corpus cases, pro se parties and
21 attorneys for private non-governmental parties must identify in the disclosure statement all
22 persons, associations of persons, firms, partnerships or corporations (including parent
23 corporations) that have a direct, pecuniary interest in the outcome of the case.

24 The disclosure statement must include the following certification:

25 The undersigned, pro se party or attorney of record for _____, certifies that the following
26 may have a direct, pecuniary interest in the outcome of this case: (here list the names of all such
27 parties and identify their connection and interests.) These representations are made to enable
28 judges of the court to evaluate possible disqualifications or recusal.

Signature, Pro Se Party or Attorney of Record for _____.

(b) If there are no known interested parties other than those participating in the case, a statement to that effect will satisfy this rule.

(c) A party must file its disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court. A party must promptly file a supplemental certification upon any change in the information that this rule requires.

1 390 F.3d 1101, 1103 (9th Cir. 2004). The circumstances in which a court will make such a
2 request, however, are exceedingly rare and require a finding of extraordinary circumstances.
3 *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986); *Wilborn v.*
4 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

5 To determine whether the “exceptional circumstances” necessary for appointment of
6 counsel are present, the court evaluates (1) the likelihood of plaintiff’s success on the merits and
7 (2) the plaintiff’s ability to articulate his claim pro se “in light of the complexity of the legal
8 issues involved.” *Agyeman*, 390 F.3d at 1103 (quoting *Wilborn*, 789 F.2d at 1331). Neither of
9 these factors is dispositive and both must be viewed together. *Wilborn*, 789 F.2d at 1331. It is
10 within the court’s discretion whether to request that an attorney represent an indigent civil litigant
11 under 28 U.S.C. § 1915(e)(1). *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009).

12 Here, Barber does not demonstrate the exceptional circumstances required for the
13 appointment of an attorney. Given the case’s early procedural posture, the court is unable to
14 evaluate Barber’s likelihood of success on the merits. But Barber has thus far demonstrated an
15 ability to articulate his claims without an attorney, and the legal issues in this case are not
16 complex. Any pro se litigant “would be better served with the assistance of counsel.” *Rand v.*
17 *Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (citing *Wilborn*, 789 F.2d at 1331). Nonetheless,
18 so long as a pro se litigant can “articulate his claims against the relative complexity of the
19 matter,” the “exceptional circumstances” which might require the appointment of counsel do not
20 exist. *Id.* The court in its discretion therefore will deny Barber’s motion.

21 **IV. MOTION TO EXTEND**

22 Plaintiff also moves to extend discovery deadlines for 90 days. (Mot. to Extend (ECF No.
23 26).) Defendants respond with a notice of non-opposition and a proposed schedule for the
24 completion of discovery. (ECF No. 27.) Plaintiff did not file a reply objecting to the proposed
25 schedule. As such, the court grants plaintiff’s motion and adopts defendants’ proposed schedule.

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V. CONCLUSION

IT IS THEREFORE ORDERED that plaintiff Barber’s motion to extend time to respond (ECF No. 23) is GRANTED. Plaintiff must file a certificate of interested parties by July 10, 2019.

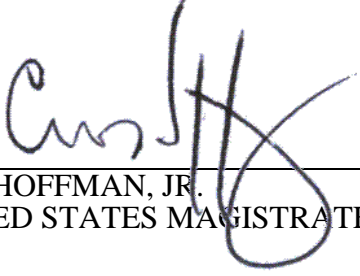
IT IS FURTHER ORDERED that plaintiff’s ex parte motion for appointment of counsel (ECF No. 24) is DENIED without prejudice.

IT IS FURTHER ORDERED that the clerk of court shall unseal plaintiff’s motion for appointment of counsel (ECF No. 24) and serve the motion on defendants.

IT IS FURTHER ORDERED that plaintiff Barber’s motion to extend the scheduling order (ECF No. 26) is GRANTED. The scheduling order is amended accordingly:

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| Discovery cutoff | October 7, 2019 |
| Motions to amend pleadings and add parties | September 5, 2019 |
| Expert designations | August 22, 2019 |
| Rebuttal expert designations | September 23, 2019 |
| Discovery motions | October 21, 2019 |
| Dispositive motions | November 6, 2019 |
| Pretrial Order | December 6, 2019 |

DATED: June 6, 2019



C.W. HOFFMAN, JR.
UNITED STATES MAGISTRATE JUDGE