

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUIS MANUEL GARCES,
Plaintiff,
v.
J. PICKETT, et al.,
Defendants.

No. 2:17-cv-0319 JAM AC P

ORDER

Plaintiff has filed a second request for an extension of time to respond to defendants' motion for judgment on the pleadings. ECF No. 80. The current deadline for responding to the motion is July 1, 2019. The request also seeks reconsideration of the order granting defendants' motion for a protective order. Id. at 3. Plaintiff has also filed a motion for counsel and a request to delay his deposition until after the motion for counsel has been ruled on. ECF Nos. 82, 83.

I. Motion for Extension of Time

It appears from plaintiff's motion that he has not yet received a copy of the court's May 29, 2019 order granting his previous motion for extension and is therefore unaware of his already extended deadline. ECF No. 80 at 3-4. The Clerk of the Court will therefore be directed to send plaintiff another copy of the order and the instant motion will be granted only in part.

Plaintiff appears to believe that defendants' motion for judgment on the pleadings is a motion for summary judgment that requires him to provide evidence in support of his claims.

1 However, in deciding a motion for judgment on the pleadings, the court looks only at the claims
2 in the complaint and does not consider additional evidence. In other words, the court looks at the
3 complaint to see if it states a claim on which relief can be granted. McGlinchy v. Shell Chem.
4 Co., 845 F.2d 802, 810 (9th Cir. 1988) (a “motion for judgment on the pleadings faces the same
5 test as a motion under Rule 12(b)(6)” when it is used to raise the defense of failure to state a
6 claim (citations omitted).) Plaintiff may, but is not required to, stand on his complaint and this
7 court’s screening order.

8 II. Motion for Reconsideration

9 Local Rule 230(j) requires that a motion for reconsideration state “what new or different
10 facts or circumstances are claimed to exist which did not exist or were not shown upon such prior
11 motion, or what other grounds exist for the motion.” L.R. 230(j)(3).

12 Plaintiff’s motion requests that the court reconsider the order granting defendants’ motion
13 for a protective order on the ground that he was not given an opportunity to respond before the
14 motion was granted. ECF No. 80 at 3. However, given the nature of the request, the court did not
15 require complete briefing on the motion in order for it to be fairly adjudicated.

16 Defendants’ motion for protective order sought to stay discovery pending resolution of
17 their motion for judgment on the pleadings. ECF No. 67. Although plaintiff’s recently filed
18 opposition states that he needs discovery to obtain evidence of his claims (ECF No. 78), as
19 addressed above, because defendants filed a motion for judgement on the pleadings under Federal
20 Rule of Civil Procedure 12(c), the court will not consider additional evidence when deciding the
21 motion and will look only at the facts alleged in the complaint. Accordingly, plaintiff has no need
22 for discovery in order to respond to the motion. In the event defendants’ motion for judgment on
23 the pleadings is denied, discovery will be re-opened. Plaintiff has therefore failed demonstrate
24 that reconsideration is warranted and the request for reconsideration will be denied.

25 III. Motion for Counsel

26 Plaintiff has requested the appointment of counsel. The United States Supreme Court has
27 ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983
28 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional

1 circumstances, the district court may request the voluntary assistance of counsel pursuant to 28
2 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.
3 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

4 “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the
5 likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his claims
6 *pro se* in light of the complexity of the legal issues involved.’” Palmer v. Valdez, 560 F.3d 965,
7 970 (9th Cir. 2009) (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). The burden
8 of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances common to
9 most prisoners, such as lack of legal education and limited law library access, do not establish
10 exceptional circumstances that would warrant a request for voluntary assistance of counsel.

11 Plaintiff’s request for counsel is based upon his limited access to the law library and
12 limited education. ECF No. 83. Neither of these circumstances constitutes an extraordinary
13 circumstance warranting the appointment of counsel. Furthermore, to date, plaintiff has shown
14 himself capable of articulating his claims without assistance. Accordingly, the motion for
15 appointment of counsel will be denied.

16 IV. Motion to Delay Deposition

17 Plaintiff has also filed a motion to delay his deposition until after the court considers his
18 request for appointment of counsel. The request will be denied. As addressed above, plaintiff’s
19 motion to appoint counsel will be denied, so there is no reason to delay his deposition.
20 Furthermore, it is not clear that plaintiff’s deposition has in fact been scheduled, as plaintiff has
21 not provided the date on which his deposition is to take place and discovery in this matter is
22 currently stayed pending resolution of defendants’ motion for judgment on the pleadings.

23 Accordingly, IT IS HEREBY ORDERED that:

24 1. Plaintiff’s motion for an extension of time (ECF No. 80) is granted in part and plaintiff
25 shall have an additional ten days, up to July 11, 2019, in which to file and serve an opposition to
26 defendants’ motion for judgment on the pleadings.

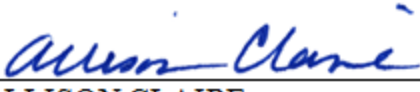
27 2. Plaintiff’s request to reconsider the order granting defendants’ motion for protective
28 order (ECF No. 80) is denied.

1 3. Plaintiff's motion for appointment of counsel (ECF No. 83) is denied.

2 4. Plaintiff's motion to delay his deposition (ECF No. 82) is denied.

3 5. The Clerk of the Court is directed to serve plaintiff with a copy of this court's order
4 filed May 29, 2019 (ECF No. 76).

5 DATED: June 17, 2019

6 
7 ALLISON CLAIRE
8 UNITED STATES MAGISTRATE JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28