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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD CHARLES HANNA,
Plaintiff,
v.
COUNTY OF MARIPOSA, et al.,
Defendants.

Case No. 1:12-cv-01885-AWI-SAB
**ORDER RE TRANSCRIPT REQUEST AND
DENYING PLAINTIFF’S MOTION FOR
APPOINTMENT OF COUNSEL**
(ECF No. 48)

On February 22, 2013, pursuant to Plaintiff’s notice of voluntary dismissal, this action was dismissed with prejudice. The Court held an evidentiary hearing on March 13, 2014, to consider whether default should be set aside in this action. On May 5, 2014, an order issued denying the motion to set aside the judgment. On July 2, 2014, Plaintiff filed a motion for transcripts and requested a form for appointment of counsel.

Initially, the expenditure of public funds on behalf of an indigent litigant is proper only when authorized by Congress. See Tedder v. Odel, 890 F.2d 210 (9th Cir. 1989) (citations omitted). The in forma pauperis statute does not authorize the expenditure of public funds to provide copies of transcripts. To request a copy of the transcripts of the evidentiary hearing held on March 13, 2014, Plaintiff is directed to the court’s website at www.caed.uscourts.gov. The Transcript Order Form (CAED 435) is available under Forms; Civil Forms. Plaintiff is advised that the Court Reporter for the hearing was Karen Hooven. To obtain the estimated cost of the

1 hearing transcript, Plaintiff may contact Ms. Hooven at (559) 264-0584.

2 Plaintiff also requests a form to apply for appointment of counsel. There is no form to
3 request appointment of counsel, however, the Court shall construe the request as a motion for
4 appointment of counsel. Generally, a plaintiff in a civil action does not have a constitutional right
5 to appointed counsel. Hernandez v. Whiting, 881 F.2d 768, 770-71 (9th Cir. 1989). The court
6 has discretion to appoint an attorney to represent "any person unable to afford counsel." 28
7 U.S.C. § 1915(e)(1). Three factors the court should consider in determining whether to appoint
8 counsel are the plaintiff's financial resources, efforts the plaintiff has made to obtain counsel, and
9 the merit of plaintiff's claims. Johnson v. U.S. Dep't of Treasury, 939 F.2d 820, 823 (9th Cir.
10 1991).

11 Additionally, court appointment of counsel pursuant to 28 U.S.C. § 1915(e)(1) requires
12 exceptional circumstances. Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). " "A finding
13 of exceptional circumstances requires an evaluation of both 'the likelihood of success on the
14 merits and the ability of the petitioner to articulate his claims pro se in light of the complexity of
15 the legal issues involved.' Neither of these factors is dispositive and both must be viewed
16 together before reaching a decision." Terrell, 935 F.2d at 1017 (quoting Wilborn v. Escalderon,
17 789 F.2d 1328, 1331 (9th Cir.1986)).

18 Plaintiff is proceeding in forma pauperis in this action and was represented by counsel
19 during the pendency of the action and at the time that judgment was entered. Plaintiff has not
20 presented any evidence that Mr. Action is no longer willing to represent him in this action or that
21 he has made any attempts to obtain replacement counsel. Further, judgment has been entered in
22 this action pursuant to Plaintiff's notice of voluntary dismissal. While Plaintiff moved to set
23 aside the entry of judgment, the Court has found that the parties entered into a settlement
24 agreement and the motion to set aside entry of judgment has been denied.

25 Further, the Court does not find exceptional circumstances exist in this action to require
26 the appointment of counsel. Plaintiff appeared pro se during the evidentiary hearing on his
27 motion to set aside the judgment in this action, and based upon the hearing and the record post
28 judgment, the Court finds that Plaintiff is adequately able to articulate his claims. At this

1 juncture, this action has been closed and there are no pending motions or issues to be decided.
2 Further, the legal issues involved in Plaintiff's motion to set aside default judgment were not
3 complex. Plaintiff's motion to set aside default was based in large part on factual issues requiring
4 a credibility determination. Based upon consideration of the above, Plaintiff's motion for
5 appointment of counsel is denied.

6 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for transcripts
7 and appointment of counsel, filed July 2, 2014, is HEREBY DENIED.

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9 IT IS SO ORDERED.

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11 Dated: July 7, 2014



12 UNITED STATES MAGISTRATE JUDGE

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