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

ROSS SHADE,

Plaintiff,

No. 2:08-cv-1069 LKK JFM PS

vs.

BANK OF AMERICA, et al.,

ORDER

Defendants.

\_\_\_\_\_ /

Plaintiff is proceeding pro se and seeks leave to proceed in forma pauperis. 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302(c)(21).

On August 10, 2009, plaintiff filed motions to substitute Bank of America Corporation and FIA Card Services, NA, as Doe defendants. However, on August 10, 2009, plaintiff filed a third amended complaint pursuant to this court’s July 28, 2009 order. In the third amended complaint, plaintiff included these two new defendants. Accordingly, plaintiff’s motions to substitute are unnecessary and will be denied as moot.

The third amended complaint states a cognizable claim for relief as to the named defendants. If the allegations of the amended complaint are proven, plaintiff has a reasonable opportunity to prevail on the merits of this action. Defendants Patenaude and Patenaude & Felix have appeared in the action so plaintiff’s service of the third amended complaint on them is sufficient. However, service of process must be executed on the two new defendants. Plaintiff is

1 cautioned that he may not use Reed Smith LLP and/or its address for service of process on these  
2 two new defendants unless Reed Smith has confirmed they are authorized to receive service of  
3 process on their behalf.

4 On August 10, 2009, plaintiff filed a request for accommodation. Plaintiff  
5 indicates he has difficulty hearing and would therefore be unable to answer arguments. Plaintiff  
6 is advised that he can request that a particular motion be heard on the papers only, so no in-court  
7 hearing is required.

8 Plaintiff has also requested appointment of counsel. The statutory basis for  
9 plaintiff's request is not clear. Under 42 U.S.C. § 2000e-5(f)(1)(B), any successful application  
10 for appointment of counsel must comply with criteria set forth in Bradshaw v. Zoological Society  
11 of San Diego, 662 F.2d 1301 (9th Cir. 1981). Before appointing counsel to plaintiff, the Ninth  
12 Circuit's decision in Bradshaw requires the court to consider (1) plaintiff's financial resources,  
13 (2) the efforts already made by plaintiff to secure counsel, and (3) plaintiff's likelihood of  
14 success on the merits. Id. at 1318. Appointment of counsel is not a matter of right. See Ivey v.  
15 Board of Regents, 673 F. 2d 266 (9th Cir. 1982). Plaintiff has failed to make a showing as to the  
16 first two factors, and it is too early for this court to determine plaintiff's likely success on the  
17 merits. The request for appointment of counsel will therefore be denied without prejudice.

18 In accordance with the above, IT IS HEREBY ORDERED that:

- 19 1. Plaintiff's August 10, 2009 motions to substitute are denied (docket nos. 39 &  
20 40).
- 21 2. The Clerk of the Court shall send plaintiff two USM-285 forms, one summons,  
22 an instruction sheet and a copy of the third amended complaint filed August 10, 2009.
- 23 3. Within thirty days from the date of this order, plaintiff shall complete the  
24 attached Notice of Submission of Documents and submit the completed Notice to the court with  
25 the following documents:

- 26 a. One completed summons;

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b. One completed USM-285 form for defendants Bank of America Corporation and FIA Card Services; and

c. Three copies of the endorsed third amended complaint filed August 10, 2009.

4. Plaintiff need not attempt service on defendants and need not request waiver of service. Upon receipt of the above-described documents, the court will direct the United States Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without prepayment of costs.

5. Failure to comply with this order may result in a recommendation that this action be dismissed.

6. Plaintiff's August 10, 2009 motion for appointment of counsel is denied without prejudice. (Docket No. 42.)

DATED: August 18, 2009.

  
UNITED STATES MAGISTRATE JUDGE

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

ROSS SHADE,

Plaintiff,

No. 2:08-cv-1069 LKK JFM PS

vs.

BANK OF AMERICA, et al.,

NOTICE OF SUBMISSION

Defendants.

OF DOCUMENTS

\_\_\_\_\_ /

Plaintiff hereby submits the following documents in compliance with the court's  
order filed \_\_\_\_\_:

\_\_\_\_\_ completed summons form

\_\_\_\_\_ completed USM-285 forms

\_\_\_\_\_ copies of the third amended complaint

DATED:

\_\_\_\_\_  
Plaintiff