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

WILLIAM TOWNSEND, JR.,

Plaintiff,

v.

C.S.P. SOLANO,

Defendant.

Case No. CIV 08-1177RJB

ORDER ON PENDING  
MOTIONS

This matter comes before the court on plaintiff’s application to proceed *in forma pauperis* (Dkt. 2 and 11), plaintiff’s motion for appointment of counsel (Dkt. 3 and 12), plaintiff’s motion regarding the status of his motion for appointment of counsel (Dkt. 8), and plaintiff’s motion for an extension of time to file this lawsuit (Dkt. 9) . The court has considered the relevant documents and the remainder of the file herein.

On May 29, 2008, plaintiff, a state prisoner proceeding *pro se*, filed this civil lawsuit (Dkt. 1), an application to proceed *in forma pauperis* (Dkt. 2), and a motion for appointment of counsel (Dkt. 3) Plaintiff subsequently filed other motions and requests that are pending. Dkt. 8, 9, 11, and 12. On January 21, 2009, the case was reassigned to the undersigned judge. Dkt. 13. The court will address each of these motions.

*I. Application to Proceed in forma pauperis.* On May 29, 2008, plaintiff filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 (Dkt. 2); he filed a second application to proceed *in forma pauperis* on December 15, 2008 (Dkt. 11). Plaintiff’s declarations indicate that he is unable to

1 afford to pay the full filing fee at this time. Accordingly, plaintiff's application to proceed *in forma*  
2 *pauperis* (Dkt. 2 and 11) should be granted.

3 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a)  
4 and 1915(b)(1). Plaintiff has not been assessed an initial partial filing fee. By separate order, the court will  
5 direct the appropriate agency to collect the filing fee from plaintiff's trust account and forward it to the  
6 Clerk of the Court. Plaintiff will be obligated for monthly payments of twenty percent of the preceding  
7 month's income credited to plaintiff's prison trust account. These payments will be forwarded by the  
8 appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00,  
9 until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

10 2. *Motion for Appointment of Counsel.* On May 29, 2008, plaintiff filed a motion for appointment  
11 of counsel, contending that he is unable to afford to retain counsel, that the issues are complex, and that he  
12 requires counsel to prepare for an evidentiary hearing. Dkt. 3. On December 15, 2008, plaintiff again  
13 requested that the court appoint counsel. Dkt. 12.

14 Under 28 U.S.C. § 1915(e)(1), the court may request an attorney to represent any person unable to  
15 afford counsel. Under Section 1915, the court may appoint counsel in exceptional circumstances.  
16 *Franklin v. Murphy*, 745 F.2d 1221,1236 (9th Cir. 1984) . To find exceptional circumstances, the court  
17 must evaluate the likelihood of success on the merits and the ability of the petitioner to articulate the claims  
18 *pro se* in light of the complexity of the legal issues involved. *Weygandt v. Look*, 718 F.2d 952, 954 (9th  
19 Cir. 1983). The complaint has not yet been served and plaintiff has not at this point shown that he is likely  
20 to succeed on the merits. Further, plaintiff is capable of raising issues and explaining his position. Because  
21 the case does not present exceptional circumstances, the request for appointment of counsel should be  
22 denied. If the Court later orders an evidentiary hearing, counsel may be appointed if plaintiff qualifies.

23 3. *Motion re: Status.* On December 3, 2008, plaintiff filed a motion, requesting to know the status  
24 of his motion for appointment of counsel. Dkt. 8. Because plaintiff's motion for counsel is resolved by this  
25 order, his request for status of that motion is moot and should be denied.

26 4. *Motion for Extension of Time.* On December 11, 2008, plaintiff filed a request for an extension  
27 of time to file this lawsuit. Dkt. 9. It appears that plaintiff is unclear as to whether he has filed this lawsuit  
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1 in federal court. Because he filed the suit on May 29, 2008, his request for an extension of time is  
2 unnecessary and should be denied.

3 Therefore, it is hereby

4 **ORDERED** that:

5 1. Plaintiff's application to proceed *in forma pauperis* (Dkt. 2 and 11) is **GRANTED**.

6 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff has not  
7 been assessed an initial partial filing fee. All fees shall be collected and paid in accordance with this court's  
8 order to the Director of the California Department of Corrections and Rehabilitation filed concurrently  
9 herewith.


10 3. Plaintiff's motion for appointment of counsel (Dkt. 3 and 12) is **DENIED**. If the Court later  
11 orders an evidentiary hearing, counsel may be appointed if plaintiff qualifies.

12 4. Plaintiff's motion requesting to know the status of his motion for appointment of counsel (Dkt.  
13 8) is **DENIED** as moot.

14 5. Plaintiff's request for an extension of time to file this lawsuit (Dkt. 9) is **DENIED**.

15 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any  
16 party appearing *pro se* at said party's last known address.

17 DATED this 23<sup>rd</sup> day of January, 2009.

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20 ROBERT J. BRYAN  
21 United States District Judge  
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