

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

DANIEL TREGLIA,

Plaintiff,

No. 2: 09-cv-0352 MCE KJN P

vs.

DIRECTOR OF CALIFORNIA
DEPARTMENT OF CORRECTIONS,
et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner, proceeding without counsel and in forma pauperis, in this civil rights action filed pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion for appointment of counsel filed September 26, 2011.

“In proceedings in forma pauperis, the district court ‘may request an attorney to represent any person unable to afford counsel.’ 28 U.S.C. § 1915(e)(1). The decision to appoint such counsel is within ‘the sound discretion of the trial court and is granted only in exceptional circumstances.’ Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984). A finding of the exceptional circumstances of the plaintiff seeking assistance requires at least an evaluation of the likelihood of the plaintiff’s success on the merits and an evaluation of the plaintiff’s ability to articulate his claims ‘in light of the complexity of the legal issues involved.’ Wilborn v.

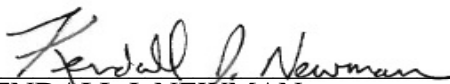
1 Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting Weygandt v. Look, 718 F.2d 952, 954
2 (9th Cir. 1983)).” Agyeman v. Corrections Corp. of America, 390 F.3d 1101, 1103 (9th Cir.
3 2004). “Neither of these factors is dispositive and both must be viewed together before reaching
4 a decision on request of counsel under section 1915(d).” Wilborn, supra, 789 F.2d at 1331 (fn.
5 omitted); see also, Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991).

6 Plaintiff meets both criteria listed above. Plaintiff alleges that defendants violated
7 his right to due process when they validated him as a gang associate and that defendants
8 retaliated against him for his legal activities. Plaintiff has a chance of success as to both claims.
9 In light of the complexity of both claims, appointment of counsel is warranted.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff’s motion for appointment of counsel (Dkt. No. 87) is granted; and
- 12 2. The Clerk of Court is directed to locate forthwith an attorney admitted to
13 practice in this court who is willing to accept the appointment.

14 DATED: September 28, 2011

15
16 
17 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

18 treg352.app