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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY W. ROBINSON,
Plaintiff,
v.
COUNTY OF SAN JOAQUIN,
Defendant.

No. 2:12-cv-2783 MCE GGH PS

ORDER

Presently before the court are plaintiff's motions for appointment of counsel and to proceed in forma pauperis, filed May 13, 2014, in response to the court's May 9, 2014 order, as well as an outstanding discovery matter.

Plaintiff has submitted an affidavit making the showing required by 28 U.S.C. § 1915(a)(1). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff's motion for appointment of counsel was filed as a result of advisement by the court that counsel might be warranted in this case. Any successful application for appointment of counsel must comply with criteria set forth in Bradshaw v. Zoological Society of San Diego, 662 F.2d 1301 (9th Cir. 1981). Before appointing counsel to plaintiff, the Ninth Circuit's decision in Bradshaw requires the court to consider (1) plaintiff's financial resources, (2) the efforts already made by plaintiff to secure counsel, and (3) plaintiff's likelihood of success on the merits. Id. at 1318. Appointment of counsel is not a matter of right. See Ivey v. Board of Regents, 673 F.2d 266 (9th Cir. 1982).

This court's General Order number 188 sets forth the specific requirements for appointment in this district under Bradshaw. First, plaintiff must complete an in forma pauperis

1 application. “Poverty generally means that the plaintiff has only enough money to eat and meet
2 other basic needs.” General Order No. 188, filed January 14, 1986, Ex. A at 3. In this case,
3 plaintiff’s approved application to proceed in forma pauperis automatically resolves this factor in
4 his favor.

5 Second, plaintiff must file a motion for appointment of counsel, along with a declaration
6 attesting to his previous efforts to obtain counsel. “Reasonable efforts mean that the plaintiff
7 tried the appropriate legal aid offices and also at least two lawyers without success.” Id. The
8 General Order and its exhibit detail how the motion must be made. Here, plaintiff has set forth
9 his attempts to retain counsel without success which have included visits to the Community Legal
10 Services Clinic at McGeorge School of Law, Legal Services of Northern California, University of
11 California, Davis Clinic, and two private attorneys. At this stage of the litigation, the court
12 cannot determine whether plaintiff is likely to succeed on the merits of his claim; however, his
13 claim appears to be colorable.

14 The three factors outlined in Bradshaw

15 are simply ingredients in the total mix of relevant information
16 which should guide the discretion of the district court. . . . We do
17 not suggest that plaintiff should be saddled with formalized
18 requirements such as the filing of affidavits, statements, or
19 structured pleadings. “Such technicalities are particularly
inappropriate in a statutory scheme in which laymen, unassisted by
trained lawyers, initiate the process.” District courts should be
sensitive to the problems faced by pro se litigants and innovative in
their responses to them.

20 Caston v. Sears, Roebuck & Co., 556 F.2d 1305, 1309, 1310 (5th Cir.1977) (internal
21 citation and quotation omitted), abrogated on other grounds as recognized by Hodges v. Dep’t of
22 Corr., 895 F.2d 1360, 1362 (11th Cir. 1990).

23 Taking plaintiff’s allegations as true, the undersigned finds that plaintiff’s Title VII claim
24 presents difficult issues regarding defendant’s potential liability. Without the aid of an attorney
25 for plaintiff, however, it is difficult to evaluate the merits of plaintiffs’ claim. One court has
26 addressed a similar issue as follows:

27 If a suit has very little prospect of success, the benefit that attorney
28 appointment provides the plaintiff may be offset by the burden of
litigation on the judiciary and the defendant, as well as on the

1 appointed attorney. At the same time, the absence of an attorney
2 for the plaintiff may make it difficult for the court to evaluate the
3 merits of the plaintiff's claim in deciding whether appointment is
4 appropriate. The balancing of these considerations is problematic.
5 Finding no satisfactory guidance in the case law or in the language
6 and history of the appointment provision, we will not attempt to
7 articulate a standard that greatly circumscribes the trial court's
8 discretion. We will, however, indicate at least the range within
9 which the court's discretion should be exercised: if the plaintiff's
10 claim appears to be patently frivolous, appointment should be
11 refused; if, on the other hand, the plaintiff appears to have some
12 chance of prevailing, then appointment should not be refused for
13 want of a meritorious claim.

8 Poindexter v. Federal Bureau of Investigations, 737 F.2d 1173, 1186-87 (D.C. Cir. 1984). The
9 undersigned finds that plaintiff's claim does not appear to be patently frivolous and that it may
10 have merit.¹ Therefore, the undersigned took steps to refer this matter to the members of the
11 court's Bradshaw panel with instructions to assess whether any member of the panel deemed
12 plaintiff's case meritorious and wished to assume his representation.

13 Thirteen attorneys have now been contacted over the past month, with information and
14 instructions to assess whether the case is meritorious and whether they wish to assume
15 representation, as well as being granted access to the public record of this action. Unfortunately,
16 the court must report that no attorney has been able or willing to take this case. Therefore,
17 plaintiff's request for appointment of counsel must be denied.

18 Also pending before the court is that portion of plaintiff's April 11, 2014 motion to
19 compel concerning his document request number 1, all emails dated between November 14, 2007
20 and July 1, 2011, in which his name is referenced. See ECF Nos. 67, 68 (finding the motion
21 timely because it relates to a previous motion to compel that was filed before the discovery
22 deadline), 82. As defendant has not yet been given the opportunity to respond to this renewed
23 motion, it shall do so at this time. Plaintiff may reply.

24 Accordingly, IT IS ORDERED that:

25 1. Plaintiff's motion to proceed in forma pauperis, filed May 13, 2014, (ECF No. 78), is
26 granted.

27 _____
28 ¹ Moreover, plaintiffs' ability to adequately present his claim may be hampered by the absence
of counsel. See Poindexter, 737 F.2d at 1188-89.

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2. Plaintiff's motion to appoint counsel, filed May 13, 2014, (ECF No. 77), is denied.

3. Defendant shall file an opposition to plaintiff's motion to compel, filed April 11, 2014, (ECF No. 67) within **fourteen days of the filed date of this** order. Plaintiff may file a reply **fourteen** days thereafter. The matter will then be taken under submission, with a hearing to be scheduled only if necessary.

Dated: June 26, 2014

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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