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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KARI HAMILTON,
Plaintiff,
v.
STATE FARM CLAIM #55-22D5-150,
Defendant.

No. 2:15-cv-2232-KJM-EFB PS

ORDER

On October 28, 2015, defendant filed a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), which it noticed for hearing on December 16, 2015. ECF Nos. 6, 10. Because plaintiff is currently incarcerated, Local Rule 230(l) applies. See E.D. Cal. L.R. 230(l) (providing that where one party is incarcerated and proceeding pro se, all motions “shall be submitted upon the record without oral argument unless otherwise ordered by the Court.). Accordingly, on November 9, 2015, the court vacated the hearing on the motion and directed plaintiff to file a response to the motion within 21 days as provided in Local Rule 230(l). ECF No. 11.

On December 1, 2015, rather than filing an opposition or statement of non-opposition to the motion, plaintiff filed a motion for appointment of counsel. ECF No. 12. Plaintiff also filed an application to proceed *in forma pauperis* to demonstrate that she is unable to afford counsel. ECF No. 13. 28 U.S.C. § 1915(e)(1) authorizes the appointment of counsel to represent an

1 indigent civil litigant in certain exceptional circumstances. *See Terrell v. Brewer*, 935 F.2d 1015,
2 1017 (9th Cir.1991); *Wood v. Housewright*, 900 F.2d 1332, 1335–36 (9th Cir. 1990); *Richards v.*
3 *Harper*, 864 F.2d 85, 87 (9th Cir. 1988). In considering whether exceptional circumstances exist,
4 the court must evaluate (1) the plaintiff’s likelihood of success on the merits; and (2) the ability of
5 the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved.
6 *Terrell*, 935 F.2d at 1017. The court cannot conclude that plaintiff’s likelihood of success, the
7 complexity of the issues, or the degree of plaintiff’s ability to articulate her claims amount to
8 exceptional circumstances justifying the appointment of counsel at this time.

9 Accordingly, it is hereby ORDERED that:

10 1. Plaintiff’s motion for appointment of counsel (ECF No. 12) is denied.

11 2. Plaintiff’s application to proceed *in forma pauperis* (ECF No. 13) is denied as
12 unnecessary.

13 3. Within twenty-one days from the date of service of this order, plaintiff shall file an
14 opposition or a statement of non-opposition to the pending motion to dismiss.

15 4. Defendant’s reply, if any, shall be filed seven days thereafter.

16 5. Plaintiff is admonished that failure to timely file an opposition or statement of non-
17 opposition will result in a recommendation that this action be dismissed.

18 DATED: December 2, 2015.

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20 EDMUND F. BRENNAN
21 UNITED STATES MAGISTRATE JUDGE
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