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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALEXANDRA FERREIRA DA SILVA,
Plaintiff,
v.
JONATHAN KEVIN ROSS, et al.,
Defendants.

No. 2:21-cv-01208-KJM-CKD PS

ORDER

On October 28, 2021, the undersigned filed an order and findings and recommendations in this case. (ECF No. 13.) Specifically, the undersigned found service appropriate for defendant Officer Heidi Morgan on plaintiff’s claim of excessive force and ordered the Clerk of the Court to issue process pursuant to Federal Rule of Civil Procedure 4. In order to effectuate service of process on Officer Morgan, plaintiff was directed to return the necessary documents to the US Marshal within 30 days.

By findings and recommendations issued concurrently, the undersigned recommended this court dismiss all other claims and defendants from this case. These findings and recommendations contained notice that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff was also notified that failure to file objections within the specified time could waive the right to appeal any order of the court adopting the findings and recommendations.

1 On November 4, 2021, plaintiff filed a motion for extension of time and requested the
2 appointment of counsel. (ECF No. 16.) On November 10, 2021, plaintiff filed a notice of
3 interlocutory appeal which has been processed to the United States Court of Appeals for the Ninth
4 Circuit. (ECF Nos. 17-19.) On November 16, 2021, plaintiff filed a document in this court in
5 which she requested permission to electronically file documents. (ECF No. 20.)

6 **Effect of the Interlocutory Appeal on the Pending Motions**

7 The filing of an interlocutory appeal “divests the district court of jurisdiction to proceed
8 with trial,” Chuman v. Wright, 960 F.2d 104, 105 (9th Cir. 1992), and “over the particular issues
9 involved in [the] appeal.” City of Los Angeles v. Santa Monica Baykeeper, 254 F.3d 882, 886
10 (9th Cir. 2001). However, the filing of an interlocutory appeal does not divest the trial court of
11 jurisdiction over aspects of the case that are not the subject of the appeal. United States v. Pitner,
12 307 F.3d 1178, 1183 n. 5 (9th Cir. 2002).

13 Here, it appears plaintiff is attempting to appeal some or all of the October 28, 2021 order
14 and findings and recommendations. However, the appeal is bound to be dismissed as premature
15 or otherwise procedurally improper. First, findings and recommendations cannot be directly
16 appealed; instead the proper course of action if plaintiff disagrees with any of the undersigned’s
17 findings and recommendations is to file objections to the findings and recommendations in this
18 court and then wait for the district court ruling by the assigned district judge – in this case the
19 Honorable Chief District Judge Kimberly J. Mueller – prior to filing an appeal. It further does not
20 appear the appeal is properly taken as to the order finding service appropriate for Officer Morgan.
21 Under these circumstances, the undersigned considers plaintiff’s pending motions and requests
22 which do not involve the subject of a properly filed appeal.

23 **Motion for Extension of Time**

24 Plaintiff’s request for an extension of time does not specify for what purpose the extension
25 of time is requested. The undersigned construes the filing as requesting an extension of time to
26 file objections to the October 28, 2021 recommendation to dismiss claims and defendants, and/or
27 requesting an extension of time to supply the U.S. Marshal with documents needed to effectuate
28 service of process. So construed, the request will be granted.

1 **Motion for Appointment of Counsel**

2 It is “well-established that there is generally no constitutional right to counsel in civil
3 cases.” United States v. Sardone, 94 F.3d 1233, 1236 (9th Cir. 1996). However, under
4 “exceptional circumstances,” a court may appoint counsel for indigent civil litigants pursuant to
5 28 U.S.C. § 1915(e)(1). When determining whether “exceptional circumstances” exist, a court
6 considers both “the likelihood of success on the merits as well as the ability of the petitioner to
7 articulate [the] claims pro se in light of the complexity of the legal issues involved.” Palmer v.
8 Valdez, 560 F.3d 965, 970 (9th Cir. 2009).

9 Plaintiff’s first request for counsel was denied on September 1, 2021. The court has
10 extremely limited resources to appoint attorneys in civil cases and there are no new circumstances
11 alleged. Considering the Palmer factors, plaintiff does not meet the burden of demonstrating
12 exceptional circumstances warranting the appointment of counsel at this time.

13 **Request to Participate in Electronic Case Filing**

14 Finally, plaintiff has requested to participate in electronic case filing. (ECF No. 20.)
15 Generally, “any person appearing pro se may not utilize electronic filing except with the
16 permission of the assigned Judge or Magistrate Judge.” See E.D. Cal. L.R. 133(b)(2). Plaintiff’s
17 request for electronic case filing does not provide good cause for deviance from the Local Rule
18 applicable to unrepresented litigants. At the current stage of this case, the motion will be denied.

19 **Conclusion**

20 Good cause appearing, IT IS HEREBY ORDERED:

- 21 1. Plaintiff’s motion for appointment of counsel (ECF No. 16) is DENIED;
- 22 2. Plaintiff’s motion for extension of time (ECF No. 16) is GRANTED to the extent that
23 plaintiff has up to and including December 17, 2021 to file objections to the October 28, 2021
24 findings and recommendations, and, further the motion for extension of time is GRANTED to the
25 extent that a new due date for plaintiff to provide the documents needed to effectuate service of
26 process on Officer Morgan as set forth in the October 28, 2021 order will be provided following
27 the dismissal or conclusion of the pending interlocutory appeal; and

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3. Plaintiff's request to participate in electronic case filing (ECF No. 20) is DENIED.

Dated: November 19, 2021



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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