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

ORLANDO HERNANDEZ,)	No. C 08-0640 JSW (PR)
Plaintiff,)	ORDER DENYING MOTION FOR COUNSEL (Docket No. 12)
vs.)	
OFFICER SANCHEZ, et al.,)	
Defendants.)	


Plaintiff has filed a motion seeking appointment of counsel to represent him (docket no. 12). However, there is no constitutional right to counsel in a civil case unless an indigent litigant may lose his physical liberty if he loses the litigation. *See Lassiter v. Dep't of Social Services*, 452 U.S. 18, 25 (1981); *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (no constitutional right to counsel in § 1983 action), *withdrawn in part on other grounds on reh'g en banc*, 154 F.3d 952 (9th Cir. 1998) (en banc). A court “may request an attorney to represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1).

The decision to request counsel to represent an indigent litigant under § 1915 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 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 pro se in light of the complexity of the legal

1 issues involved. *See Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103
2 (9th Cir. 2004); *Rand*, 113 F.3d at 1525; *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th
3 Cir. 1991); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of these
4 factors must be viewed together before reaching a decision on a request for counsel
5 under § 1915. *See id.* Plaintiff's motion is DENIED without prejudice, for want of
6 exceptional circumstances (docket no. 12). Plaintiff will be provided with an additional
7 thirty days from the date of this order in which to file a response to Defendants' pending
8 motion.

9 IT IS SO ORDERED.

10 DATED: December 1, 2008

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12 _____
13 JEFFREY S. WHITE
14 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
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5 ORLANDO HERNANDEZ,
6 Plaintiff,
7

Case Number: CV08-00640 JSW

CERTIFICATE OF SERVICE

8 v.

9 SF POLICE DEPT et al,
10 Defendant.
11

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

13 That on December 1, 2008, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 Orlando Hernandez
18 2304416
19 San Francisco County Jail
20 850 Bryant Street
21 San Francisco, CA 94103

22 Dated: December 1, 2008

Jennifer Ottolini
Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk

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