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

ROMEO V. APOSTOL,

Plaintiff,

No. C 09-02676 JSW

v.

CASTRO VALLEY UNIFIED SCHOOL
DISTRICT, et al.,

Defendants.

**ORDER DENYING
APPLICATION TO PROCEED *IN
FORMA PAUPERIS* AND
DENYING REQUEST FOR
APPOINTMENT OF COUNSEL**

Now before the Court is Plaintiff’s application to proceed *in forma pauperis* and request for appointment of counsel submitted filed on June 5, 2009. To institute any civil action, suit or proceeding in federal court, the clerk of the district court requires the parties instituting such action to pay a filing fee of \$350.00. *See* 28 U.S.C. § 1914(a). However, the Court can authorize the commencement of any suit without prepayment of fees. *See* 28 U.S.C. § 1915(a). The plaintiff may file without prepayment of fees if the party submits an affidavit of poverty. *Id.* The court “may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.” *Id.* at § 1915(d). The Court finds that Plaintiff’s claim of poverty is unconvincing. Plaintiff maintains receives \$2200 a month, owns a home and owns a car. On this basis, the application to proceed *in forma pauperis* is DENIED.

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, a situation not presented by this case. *See Lassiter v. Dep’t of Social Services*, 452 U.S. 18, 25 (1981); *Rand v. Rowland*, 113 F.3d 1520,

United States District Court
For the Northern District of California

1 1525 (9th Cir. 1997) (no constitutional right to counsel in Section 1983 action), *withdrawn in*
2 *part on other grounds on reh'g en banc*, 154 F.3d 952 (9th Cir. 1998) (en banc.) However,
3 pursuant to 28 U.S.C. § 1915(e)(1), a “court may request an attorney to represent any person
4 unable to afford counsel.” This Court has discretion in considering whether to appoint counsel
5 under section 1915(e)(1) and, in general, that discretion should be exercised only in exceptional
6 circumstances. *Rand*, 113 F.3d at 1525. In making that determination, the Court considers the
7 likelihood of a plaintiff’s success on the merits and the plaintiff’s ability to articulate his or her
8 claims in light of the complexity of the legal issues involved. *Id.*; *see also Agyeman v.*
9 *Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).

10 While this Order should not be construed as a prejudgment of Plaintiff’s claims, at this
11 time the Court declines to exercise its discretion to appoint counsel as this case does not appear
12 to present an exceptional circumstance meriting appointment of counsel. Accordingly,
13 Plaintiff’s request for appointment of counsel is DENIED.

14 In addition, without making any endorsement in this regard, Plaintiff is advised that the
15 San Francisco Bar Association operates a lawyer referral service which may be helpful in
16 securing pro bono counsel. Moreover, Plaintiff may wish to seek assistance from the Legal
17 Help Center, located on the 15th Floor of the Courthouse, Room 2796, where Plaintiff may sign
18 up for a free appointment with an attorney who may be able to provide basic legal help, but not
19 legal representation.

20 **IT IS SO ORDERED.**

21
22 Dated: July 17, 2009



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 ROMEO V APOSTOL,
6 Plaintiff,

Case Number: CV09-02676 JSW

7 **CERTIFICATE OF SERVICE**

8 v.

9 CASTRO VALLEY UNIFIED SCHOOL
DISTRICT 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 July 21, 2009, 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 Romeo V. Apostol
18 10499 S. Manthey Road
Lathrop, CA 95330

19 Dated: July 21, 2009

20 
Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk
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