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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PHILIP W. HENDERSON,  
Plaintiff,  
v.  
U.S. DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF  
CALIFORNIA,  
Defendant.

Case No. [16-cv-05058-JSC](#)

**ORDER DENYING  
APPOINTMENT OF COUNSEL  
AND CHALLENGING  
CERTIFICATION OF BAD FAITH**

Re: Dkt. Nos. 13, 14

Plaintiff, a California prisoner, filed this pro se civil action against a federal judge who previously denied his petition for a writ of habeas corpus. The complaint was dismissed for failure to state a cognizable claim for relief, and the Court certified that any appeal would not be taken in good faith for purposes of proceeding in forma pauperis on appeal. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. 24(a). The Clerk entered judgment and closed the file. Thereafter, Plaintiff filed a motion for appointment of counsel and a motion “challenging improper certification of bad faith” and “requesting recusal.”

This Court is not the proper venue for challenging this Court’s determination of bad faith under Section 1915(a)(3). Plaintiff may obtain review of that decision by filing a motion for leave to proceed in forma pauperis on appeal in the United States Court of Appeals. *O’Neal v. Price*, 531 F.3d 1146, 1150 (9th Cir. 2008) (“If upon review of the record [the Ninth Circuit] determine[s] that the district court erred in making a §1915(a)(3) certification, [the Ninth Circuit] may vacate the district court’s certification, grant the prisoner leave to take an appeal in forma pauperis, and construe the prisoner’s motion as a timely notice of appeal.”) (citing 28 U.S.C. §

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2106). As there is no matter properly pending in this Court in this case, the requests for appointment of counsel and recusal are DENIED as moot.

**IT IS SO ORDERED.**

Dated:

  
JACQUELINE SCOTT CORLEY  
United States Magistrate Judge

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 PHILIP W. HENDERSON,  
4 Plaintiff,

Case No. [16-cv-05058-JSC](#)

5 v.

**CERTIFICATE OF SERVICE**

6 U.S. DISTRICT COURT FOR THE  
7 NORTHERN DISTRICT OF  
8 CALIFORNIA,  
9 Defendant.

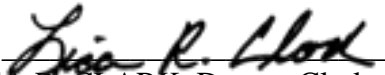
10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
11 District Court, Northern District of California.

12 That on February 10, 2017, I SERVED a true and correct copy(ies) of the attached, by  
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
15 receptacle located in the Clerk's office.  
16

17  
18 Philip W. Henderson  
19 D-36152  
20 Mule Creek State Prison 14-223L  
21 P.O. Box 409099  
22 Ione, CA 95640-9000

23 Dated: February 10, 2017

24 Susan Y. Soong  
25 Clerk, United States District Court

26  
27 By:   
28 LISA R. CLARK, Deputy Clerk to the  
Honorable JACQUELINE SCOTT CORLEY