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4 IN THE UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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7  
8 TODD L. ASHKER,

9 Plaintiff,

10 v.

11 MICHAEL SAYRE, et al.,

12 Defendants.  
13 \_\_\_\_\_/

No. 05-03759 CW

ORDER DENYING  
PLAINTIFF'S  
MOTION TO APPOINT  
COUNSEL ON APPEAL

14 On February 4, 2010, judgment entered in this case awarding  
15 Plaintiff Todd L. Ashker, an inmate at Pelican Bay State Prison  
16 (PBSP), money damages in the amount of \$6,500 from Defendant Dr.  
17 Michael Sayre, Chief Medical Officer at PBSP, and injunctive relief  
18 on his breach of contract claim against Defendant Matthew Cate, in  
19 his official capacity as Director of the California Department of  
20 Corrections and Rehabilitation. Defendant Cate has appealed from  
21 the final judgment against him and the related order for specific  
22 performance and Plaintiff has cross-appealed. Plaintiff moves for  
23 appointment of counsel on appeal.

24 Pursuant to 28 U.S.C. § 1915(e)(1), a court may appoint an  
25 attorney to represent any person unable to afford counsel. Counsel  
26 may be appointed under exceptional circumstances, which requires a  
27 consideration of the likelihood of success on the merits and the  
28

1 ability of the pro se litigant to articulate his claims in light of  
2 the complexity of the legal issues involved. Terrell v. Brewer,  
3 935 F.2d 1015, 1017 (9th Cir. 1991). Both factors must be reviewed  
4 together in reaching a decision. Id.

5 There is little likelihood that Plaintiff will succeed on the  
6 merits of the claims contained in his cross-appeal and he is able  
7 to articulate them on appeal. Therefore, his motion for  
8 appointment of counsel to represent him on his cross-appeal is  
9 denied.

10 It is likely that Plaintiff will succeed on the merits of  
11 Defendant Cate's appeal of the breach of contract claim and the  
12 related order for specific performance, but the issues are complex  
13 and it may be difficult for Plaintiff to represent himself as  
14 appellee. However, Plaintiff has not met his burden of showing  
15 that he is unable to afford counsel. In his declaration submitted  
16 in support of his motion, Plaintiff states, "I am not able  
17 financially to afford counsel to assist me on appeal. . . I only  
18 have a few grand left to my name, and have no other income. . ."  
19 Plaintiff also states that he has written to many attorneys to  
20 represent him on appeal, but they all declined. He presents no  
21 documentation of either point.

22 In order to meet his burden of showing that he cannot afford  
23 counsel, Plaintiff must provide the following documentation: the  
24 last six months of statements from his prison trust account and his  
25 non-prison trust account; statements from any bank accounts he  
26 owns; copies of rejection letters he has received from attorneys  
27 indicating the fees they would charge; and any other documentation  
28

1 that will demonstrate his inability to afford counsel.

2 Based upon the foregoing, Plaintiff's motion for the  
3 appointment of counsel to represent him on his cross-appeal is  
4 denied and his motion for appointment of counsel to represent him  
5 on Defendant Cate's appeal is denied without prejudice to refiling  
6 with the documentation necessary to support his claim that he is  
7 unable to afford counsel. If Plaintiff substantiates his claim  
8 that he is unable to afford counsel, the Court will seek pro bono  
9 counsel to represent him. Plaintiff may also file a motion for  
10 appointment of counsel directly in the Ninth Circuit Court of  
11 Appeals for consideration under its Pro Bono Program.

12  
13 IT IS SO ORDERED.

14  
15 Dated: June 15, 2010



\_\_\_\_\_  
CLAUDIA WILKEN  
United States District Judge

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

4 ASHKER,

5 Plaintiff,

6 v.

7 ALAMEIDA ET AL et al,

8 Defendant.  
9 \_\_\_\_\_/

Case Number: CV05-03759 CW

**CERTIFICATE OF SERVICE**

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

12 That on June 15, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies)  
13 in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in  
14 the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's  
15 office.

16 Todd A. Ashker C58191  
17 Pelican Bay State Prison  
18 Box 7500  
19 D1-119  
20 Crescent City, CA 95532

21 Dated: June 15, 2010

22 Richard W. Wieking, Clerk  
23 By: Ronnie Hersler, Adm Law Clerk  
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25  
26  
27  
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