

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

4 JAMES EVANS, JR.,

No. C 10-00588 SBA (PR)

5 Plaintiff,

**ORDER GRANTING IN FORMA
PAUPERIS STATUS AND ORDER
DENYING APPOINTMENT OF
COUNSEL**

6 v.

7 EDMUND G. BROWN, JR., et al.,

8 Defendants.
9 _____/

10 Plaintiff, a state prisoner, has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983
11 and an application for in forma pauperis status.

12 Plaintiff's application for in forma pauperis status is GRANTED. The total filing fee due is
13 \$350.00. The initial partial filing fee due for Plaintiff at this time is \$0.00. A copy of this Order and
14 the attached instruction sheet will be sent to Plaintiff, the Prison Trust Account Office and the
15 Court's Financial Office.

16 Plaintiff also requests appointment of counsel to represent him in this action. There is no
17 constitutional right to counsel in a civil case unless an indigent litigant may lose his physical liberty
18 if he loses the litigation. See Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 25 (1981); Rand v.
19 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (no constitutional right to counsel in § 1983 action),
20 withdrawn in part on other grounds on reh'g en banc, 154 F.3d 952 (9th Cir. 1998) (en banc). The
21 court may ask counsel to represent an indigent litigant under 28 U.S.C. § 1915 only in "exceptional
22 circumstances," the determination of which requires an evaluation of both (1) the likelihood of
23 success on the merits, and (2) the ability of the plaintiff to articulate his claims pro se in light of the
24 complexity of the legal issues involved. See id. at 1525; Terrell v. Brewer, 935 F.2d 1015, 1017
25 (9th Cir. 1991); Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of these factors
26 must be viewed together before reaching a decision on a request for counsel under § 1915. See id.
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1 The Court is unable to assess at this time whether exceptional circumstances exist which
2 would warrant seeking volunteer counsel to accept a pro bono appointment. The proceedings are at
3 an early stage and it is premature for the Court to determine Plaintiff's likelihood of success on the
4 merits. Moreover, Plaintiff has been able to articulate his claims adequately pro se in light of the
5 complexity of the issues involved. See Agyeman v. Corrs. Corp. of Am., 390 F.3d 1101, 1103 (9th
6 Cir. 2004). Accordingly, the request for appointment of counsel at this time is DENIED. The Court
7 will consider appointment of counsel later in the proceedings, after Defendants have filed their
8 dispositive motion and the Court has a better understanding of the procedural and substantive
9 matters at issue. Therefore, Plaintiff may file a renewed motion for the appointment of counsel after
10 Defendants' dispositive motion has been filed. If the Court decides that appointment of counsel is
11 warranted at that time, it will seek volunteer counsel to agree to represent Plaintiff pro bono.

12 The Court will review Plaintiff's complaint in a separate written Order.

13 This Order terminates Docket nos. 11, 13 and 14.

14 IT IS SO ORDERED.

15 DATED: 6/21/10


SAUNDRA BROWN ARMSTRONG
United States District Judge

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

INSTRUCTIONS FOR PAYMENT OF PRISONER'S FILING FEE

The prisoner shown as the plaintiff or petitioner on the attached order has filed a civil action in forma pauperis in this court and owes to the court a filing fee. Pursuant to 28 U.S.C. § 1915, the fee is to be paid as follows:

The initial partial filing fee listed on the attached order should be deducted by the prison trust account office from the prisoner's trust account and forwarded to the clerk of the court as the first installment payment on the filing fee. This amount is twenty percent of the greater of (a) the average monthly deposits to the prisoner's account for the 6-month period immediately preceding the filing of the complaint/petition or (b) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint/petition.

Thereafter, on a monthly basis, 20 percent of the preceding month's income credited to the prisoner's trust account should be deducted and forwarded to the court each time the amount in the account exceeds ten dollars (\$10.00). The prison trust account office should continue to do this until the filing fee has been paid in full.

If the prisoner does not have sufficient funds in his/her account to pay the initial partial filing fee, the prison trust account office should forward the available funds, and carry the balance forward each month until the amount is fully paid.

If the prisoner has filed more than one complaint, (s)he is required to pay a filing fee for each case. The trust account office should make the monthly calculations and payments for each case in which it receives an order granting in forma pauperis and these instructions.

The prisoner's name and case number must be noted on each remittance. The initial partial filing fee is due within thirty days of the date of the attached order. Checks should be made payable to Clerk, U.S. District Court and sent to Prisoner Accounts Receivable, U.S. District Court, 450 Golden Gate Avenue, Box 36060, San Francisco, CA 94102.

cc: Plaintiff/Petitioner
Finance Office

1 UNITED STATES DISTRICT COURT
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4 JAMES EVANS JR.,

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7 / et al,

8 Defendant.

Case Number: CV10-00588 SBA

CERTIFICATE OF SERVICE

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

11 That on June 22, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 James Evans F-06497
16 California State Prison - Corcoran
17 P.O. Box 8800
18 Corcoran, CA 93212-8309

19 INMATE TRUST ACCOUNT OFFICE
20 California State Prison - Corcoran
21 P.O. Box 8800
22 Corcoran, CA 93212-8309

23 Dated: June 22, 2010

24 Richard W. Wieking, Clerk
25 By: LISA R CLARK, Deputy Clerk
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