

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

4 CHRIS FERRERA,

No. C 11-00019 SBA (PR)

5 Plaintiff,

**ORDER GRANTING IN FORMA PAUPERIS
STATUS; DENYING MOTION FOR
APPOINTMENT OF COUNSEL; AND
DENYING MOTION TO CERTIFY CASE AS
A CLASS ACTION**

6 v.

7 G. D. LEWIS, et al.,

8 Defendants.
9 _____/

10 Before the Court are Plaintiff's motion for leave to proceed in forma pauperis, motion for
11 appointment of counsel and his "Request for a Class Action."

12 Plaintiff's application for in forma pauperis status (docket no. 2) is GRANTED. The total
13 filing fee due is \$350.00. The initial partial filing fee due for Plaintiff at this time is \$0.00. A copy
14 of this Order and the attached instruction sheet will be sent to Plaintiff, the Prison Trust Account
15 Office and the Court's Financial Office.

16 There is no constitutional right to counsel in a civil case unless an indigent litigant may lose
17 his physical liberty if he loses the litigation. See Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 25
18 (1981); Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (no constitutional right to counsel in
19 § 1983 action), withdrawn in part on other grounds on reh'g en banc, 154 F.3d 952 (9th Cir. 1998)
20 (en banc). The court may ask counsel to represent an indigent litigant under 28 U.S.C. § 1915 only
21 in "exceptional circumstances," the determination of which requires an evaluation of both (1) the
22 likelihood of success on the merits, and (2) the ability of the plaintiff to articulate his claims pro se
23 in light of the complexity of the legal issues involved. See id. at 1525; Terrell v. Brewer, 935 F.2d
24 1015, 1017 (9th Cir. 1991); Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of
25 these factors must be viewed together before reaching a decision on a request for counsel under
26 § 1915. See id.

27 The Court is unable to assess at this time whether exceptional circumstances exist which
28 would warrant seeking volunteer counsel to accept a pro bono appointment. The proceedings are at

1 an early stage and it is premature for the Court to determine Plaintiff's likelihood of success on the
2 merits. Moreover, Plaintiff has been able to articulate his claims adequately pro se in light of the
3 complexity of the issues involved. See Agyeman v. Corrs. Corp. of Am., 390 F.3d 1101, 1103 (9th
4 Cir. 2004). Accordingly, the request for appointment of counsel (docket no. 3) at this time is
5 DENIED. This does not mean, however, that the Court will not consider appointment of counsel at
6 a later juncture in the proceedings; that is, after Defendants have filed their dispositive motion such
7 that the Court will be in a better position to consider the procedural and substantive matters at issue.
8 Therefore, Plaintiff may file a renewed motion for the appointment of counsel after Defendants'
9 dispositive motion has been filed. If the Court decides that appointment of counsel is warranted at
10 that time, it will seek volunteer counsel to agree to represent Plaintiff pro bono.

11 Finally, Plaintiff purports to bring this case as a class action. However, pro se plaintiffs are
12 not adequate class representatives able to fairly represent and adequately protect the interests of the
13 class. Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975); see also Russell v. United States,
14 308 F.2d 78, 79 (9th Cir. 1962) ("a litigant appearing in propria persona has no authority to represent
15 anyone other than himself"). Accordingly, Plaintiff's "Request for a Class Action" (docket no. 4) is
16 DENIED, and the Court will not certify a class.

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

18 This Order terminates Docket nos. 2, 3 and 4.

19 IT IS SO ORDERED.

20 DATED: 2/28/11


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

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

CHRIS FERRERA,

Plaintiff,

v.

G.D. LEWIS et al,

Defendant.

Case Number: CV11-00019 SBA

CERTIFICATE OF SERVICE

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

That on February 28, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Chirs C. Ferrera E-30526
Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95530

Dated: February 28, 2011

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