

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DAVID WEBB, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 OLIVE GARDEN RESTAURANTS, et al., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Case No.: C 08-04913 PVT

**Order Denying Plaintiff’s Request for Limited Appointment of Counsel Without Prejudice to Renewed Motion on Further Showing; Order Denying Plaintiff’s Motion for Sanctions**

Plaintiff David Webb requests a limited appointment of counsel “to assist in drafting an adequately plead complaint.” *See* Request for Limited Appointment of Counsel filed on June 4, 2009. In addition, plaintiff Webb moves for sanctions pursuant to Rule 26(a) and Civ. L.R. 3-16. *See* Docket No. 61. Based on the file herein,

IT IS HEREBY ORDERED that plaintiff Webb’s request for limited appointment of counsel is denied without prejudice to a renewed motion in the event plaintiff can make an adequate showing that he qualifies for a limited appointment of counsel.<sup>1</sup>

As stated before, pursuant to 28 U.S.C.A. §1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford counsel.” However, “[t]here is no automatic right to the appointment of counsel; and in a civil case, a federal court has considerable discretion in

<sup>1</sup> The holding of this court is limited to the facts and the particular circumstances underlying the present request and motion.

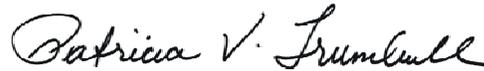
1 determining whether to appoint counsel.” *See, e.g., L.C. Hall v. Trisun*, Not Reported in F. Supp.2d,  
2 2005 WL3348956 (W.D. Tex.). Absent specific statutory authorization, an appointment of counsel  
3 may be made in “extraordinary circumstances.” *Id.* (internal citations omitted). A finding of  
4 “extraordinary circumstances” generally turns on two factors: (1) the type and complexity of the  
5 case; and (2) the abilities of the individual bringing the action. *Id.*

6 In the instant case, plaintiff Webb alleges that certain employees at the Olive Garden  
7 restaurant committed various acts of assault against him and further defamed him. He further  
8 alleges claims for intentional infliction of emotional distress and negligent supervision. Aside from  
9 showing financial need (based on his IFP) and his numerous and unsuccessful efforts to engage  
10 counsel, plaintiff Webb has not demonstrated any “extraordinary circumstances” that would warrant  
11 an appointment of counsel here.

12 IT IS FURTHER ORDERED that this order is without prejudice to a renewed motion for  
13 appointment of counsel in the event defendant is later able to present extraordinary circumstances  
14 that warrant further review.

15 IT IS FURTHER ORDERED that plaintiff Webb’s motion for sanctions is denied.

16 Dated: September 3, 2009



17  
18 PATRICIA V. TRUMBULL  
United States Magistrate Judge

1 copies mailed on September 3, 2009 to:

2 David Webb  
3 PO Box 312  
4 Clearfield, Utah 84089

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