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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

KEITH STAMPS,
Plaintiff,
v.
RANDY GROUNDS,
Defendant.

Case No. [12-cv-05753-BLF](#)

**ORDER DENYING PETITIONER'S
MOTION FOR APPOINTMENT OF
COUNSEL WITHOUT PREJUDICE**

[Re: ECF 26-1]

Petitioner has appealed the Court's Order of Dismissal and Judgment to the Ninth Circuit. ECF 26. Before the Court is Petitioner's Motion for Appointment of Counsel on appeal. ECF 26-1. While counsel of record appears on the Court's docket, Petitioner represents in his Motion that his counsel has effectively abandoned him. Therefore, the Court considers this Motion as though Petitioner were proceeding *pro se*.

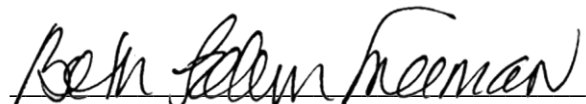
The Sixth Amendment's right to counsel does not apply in habeas corpus actions. *See Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). However, 18 U.S.C. § 3006A(a)(2)(B) authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require" and such person is financially unable to obtain representation. The decision to appoint counsel is within the discretion of the district court. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986); *Knaubert*, 791 F.2d at 728; *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made appointment of counsel the exception rather than the rule by limiting it to: (1) capital cases; (2) cases that turn on substantial and complex procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or mentally or physically impaired petitioners; (4) cases likely to require the assistance of experts either in framing or in trying the claims; (5) cases in which petitioner is in no position to

1 investigate crucial facts; and (6) factually complex cases. *See generally* 1 J. Liebman & R. Hertz,
2 Federal Habeas Corpus Practice and Procedure § 12.3b at 383-86 (2d ed. 1994). Appointment is
3 mandatory only when the circumstances of a particular case indicate that appointed counsel is
4 necessary to prevent due process violations. *See Chaney*, 801 F.2d at 1196; *Eskridge v. Rhay*, 345
5 F.2d 778, 782 (9th Cir. 1965).

6 Here, Petitioner, a non-capital inmate, is appealing this Court's order of dismissal for
7 failure to prosecute. This issue is not complex, does not require the assistance of experts or
8 investigation into crucial facts, and Petitioner has not asserted that he is uneducated or physically
9 impaired. Furthermore, his notice of appeal, filed in *pro se*, is clearly presented. Accordingly,
10 Petitioner's circumstances do not warrant appointment of counsel on appeal. *See Chaney*, 801 F.2d
11 at 1196. His motion is therefore DENIED.

12 **IT IS SO ORDERED.**

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14 Dated: April 6, 2016

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16 BETH LABSON FREEMAN
17 United States District Judge
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