

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

4
5 AGUSTIN ZARATE,
6 Plaintiff,
7 v.
8 PLAZA HOME MORTGAGE, INC., et al.,
9 Defendants.

Case No. [16-cv-04275-BLF](#)

ORDER OF DISMISSAL

United States District Court
Northern District of California

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11 Plaintiff Agustin Zarate filed this lawsuit against Defendants on July 28, 2016. ECF 1. On
12 December 2, 2016, the Court issued an Order to Show Cause (“OSC”) why Defendants should not
13 be dismissed from this action for Plaintiff’s failure to serve the summons and complaint within 90
14 days after the complaint was filed. ECF 9. In response to the OSC, Mr. Zarate asked the Court
15 for an extension of time within which to serve Defendants, which the Court granted. *See* ECF 10,
16 13. In its order discharging the OSC, the Court ordered Mr. Zarate to file a valid proof of service
17 for each Defendant on or before March 6, 2017. ECF 13. On March 3, 2017, Mr. Zarate filed an
18 “application for petition and complaint and otherwise notice of voluntary dismissal.” ECF 14.
19 The Court was unable to provide Mr. Zarate with the relief he has requested because the examples
20 provided were fee arrangements that can only be directed to an attorney. ECF 15. Moreover,
21 although Mr. Zarate requested voluntary dismissal if the Court were to deny his request, the Court
22 indicated that it would “refrain from acting upon [his] request until April 3, 2017, unless Plaintiff
23 communicates his desire to withdraw the request for voluntary dismissal or asks the Court to
24 dismiss the case sooner.” *Id.* The Court also extended the deadline for Mr. Zarate to serve
25 Defendants to April 3, 2017, and suggested that Plaintiff may wish to contact the Federal Pro Se
26 Program. *Id.*

27 The Court is now in receipt of Plaintiff’s “application and request to al[l]ow this plaintiff
28 in pro-se to be represented by an attorney of his choice in heari[ngs] as his special appearance

1 attorney.” ECF 16. In this application, Mr. Zarate asks the Court to issue an order containing the
2 following:

- 3 1- Plaintiff in pro-se is granted to hire an attorney of his choice for
4 court appearances as if it applies for special appearance attorney
5 obligations.
- 6 2- Plaintiff in pro-se is the fully responsible party of the case as the
7 Plaintiff Obligation.
- 8 3- Plaintiff in pro-se must meet and confer with his attorney and
9 make and authorize all decisions and defenses to be spoken by
10 his special appearance attorney at the hearing.
- 11 4- Plaintiff must be present in all hearings and must be allowed to
12 meet and confer with his special appearance attorney at the time
13 of the hearing in reference to all those matters not discussed
14 before or that need further discussion or clarification and
15 authorization from the plaintiff for all to speak, or for spoken
16 matters on his behalf by his special appearance attorney.
- 17 5- Attorney of the Plaintiff is to speak in good faith on Plaintiff’s
18 behalf as authorized [b]y him without the legal representation
19 and liability standards to his client.
- 20 6- Plaintiff must have an attorney present for all hearings unless it
21 is not required and permitted by the court, so that the plaintiff
22 may save money on the litigation costs, at plaintiff’s own risk
23 and liability.

24 Proposed Order, ECF 17. As best the Court can tell, Mr. Zarate seeks to have the Court endorse a
25 limited representative arrangement between Mr. Zarate and an attorney in light of the cost of
26 retaining an attorney. *See generally* ECF 16.

27 As with Mr. Zarate’s previous request, the Court is unable to provide Mr. Zarate with the
28 relief he has requested. Although attorneys may engage in limited representations under the rules
of professional conduct, the Court cannot force an attorney to accept such an engagement. While
the Court understands Mr. Zarate’s circumstances, it cannot get involved in matters such as these.

Alternatively, if Mr. Zarate is requesting the Court to appoint counsel to represent him in a
limited manner in this action, the Court DENIES that request. “[T]he appointment of counsel in a
civil case is . . . a privilege and not a right.” *Gardner v. Madden*, 352 F.2d 792, 793 (9th Cir.
1965); *see also Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (stating that “[g]enerally, a
person has no right to counsel in civil actions”). The Court “may under ‘exceptional
circumstances’ appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1).”
Palmer, 560 F.3d at 970 (citation omitted). Here, however, Mr. Zarate is not proceeding *in forma
pauperis* pursuant to 28 U.S.C. § 1915, and therefore, has not shown that he is indigent.

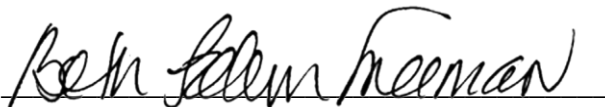
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Moreover, to determine whether “exceptional circumstances” are present, the “court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.” *Weyandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). Plaintiff has not demonstrated a likelihood of success on the merits or that this failure is due to either his difficulty articulating claims as a *pro se* litigant or the complexity of the legal issues involved. Therefore, this request is DENIED

For the foregoing reasons, and because Mr. Zarate has neither withdrawn his request for voluntary dismissal nor filed a valid proof of service for each Defendant as directed in the Court’s prior order, the Court hereby DISMISSES the above-titled action. The Clerk is directed to close the file.

IT IS SO ORDERED.

Dated: April 4, 2017


BETH LABSON FREEMAN
United States District Judge