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> 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF CALIFORNIA 10 11 NELSON C. BURNS, CASE NO. 07-CV-1984 JLS (WMc) 12 Plaintiff, 13 ORDER APPOINTING PRO BONO VS. COUNSEL PURSUANT TO 14 28 U.S.C. § 1915(e)(1) DECARR, CROOK, VISTA DETENTION 15 FACILITY, VISTA SHERIFF'S DEPARTMENT, 16 17 Defendants. 18 19 20 Plaintiff, a state prisoner currently incarcerated at Corcoran State Prison in Corcoran, California, 21 filed this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has been proceeding in pro se and has been granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a). (ECF No. 6.) 22 23

While there is no right to counsel in a civil action, a court may under "exceptional circumstances" exercise its discretion and "request an attorney to represent any person unable to afford counsel." 28 U.S.C. § 1915(e)(1); Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009). The court must consider both "the likelihood of success on the merits as well as the ability of the [Plaintiff] to articulate his claims pro se in light of the complexity of the legal issues involved." Id. (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)).

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When he first initiated this case, Plaintiff requested, but was denied appointment of counsel. (ECF No. 5.) On July 18, 2011, the Court denied Plaintiff's second motion for appointment of counsel, noting that he had adequately articulated both the factual and legal basis of his claims sufficient to defeat Defendants' Motion for Summary Judgment. (ECF No. 70.)

However, on August 3, 2011, the Southern District of California adopted, pursuant to General Order No. 596 and 28 U.S.C. § 1915(e)(1), a Plan for the Representation of *Pro Se* Litigants in Civil Cases. The Court has since exercised its discretion pursuant to 28 U.S.C. § 1915(e)(1) to identify this case as appropriate for pro bono representation under the Plan, and has randomly selected a volunteer attorney from the Court's Pro Bono Panel.

Conclusion and Order

Accordingly, the Court hereby **APPOINTS** Robert H. Rexrode, 427 "C" Street, Suite 310, San Diego, California 92101, as Pro Bono Counsel for Plaintiff.

Pursuant to S.D. CAL. CIVLR 83.3(g)(2), Pro Bono Counsel shall file, within fourteen (14) days of this Order, a formal written Notice of Substitution of Attorney signed by both Plaintiff and his newly appointed counsel. Such substitution shall be considered approved by the Court upon filing, and Pro Bono Counsel shall thereafter be considered attorney of record for Plaintiff for all purposes during further proceedings before this Court. See S.D. CAL. CIVLR 83.3(g)(1), (2).

IT IS FURTHERED ORDERED that the Clerk of Court shall serve Mr. Rexrode with a copy of the Order at the address listed above upon filing. See S.D. CAL. CIVLR 83.3(f)(2).

DATED: October 12, 2011

United States District Judge

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