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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

EDUARDO NUNEZ,
CDCR #K-22707,

Plaintiff,

vs.

F. RAMIREZ, et al.,

Defendants.

Case No. 09cv0413 GPC (BGS)

**ORDER APPOINTING PRO BONO
COUNSEL PURSUANT TO
28 U.S.C. § 1915(e)(1) AND
S.D. CAL. GEN. ORDER 596**

In this civil rights action, filed pursuant to 42 U.S.C. § 1983, Plaintiff, a former prisoner proceeding in pro se, was granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a) on April 6, 2007 (ECF Doc. No. 3). The only claims remaining before the Court are Plaintiff’s Eighth Amendment excessive force claims against Defendant F. Ramirez, as alleged in his First Amended Complaint (ECF Doc. No. 37).

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

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1 the [Plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues
2 involved.” *Id.* (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)).

3 Applying these standards on May 3, 2010, after his original complaint had already
4 survived a motion to dismiss, Defendant Ramirez filed his Answer, and soon after pretrial case
5 management and discovery cut-off dates had already been established, the Court found Plaintiff
6 was “able to articulate the claims in his case,” and that no “exceptional circumstances” justified
7 the appointment of counsel (ECF Doc. No. 19). However, Plaintiff’s excessive force claims
8 against Defendant Ramirez have since survived summary judgment, and trial is imminent. *See*
9 July 22, 2013 Report and Recommendation (“R&R”) (ECF Doc. No. 74), September 24, 2013
10 Order Adopting R&R (ECF Doc. No. 78); Sept. 30, 2013 Final Scheduling Order (ECF Doc. No.
11 79).

12 General Order 596, which adopted a Plan for the Representation of Pro Bono Litigation
13 in Civil Case filed in the Southern District of California, provides for appointment of pro bono
14 counsel “as a matter of course for purposes of trial in each prisoner civil rights case where
15 summary judgment has been denied.” Thus, because Plaintiff was incarcerated at Centinela
16 State Prison at the time of the incident giving rise to this action,¹ and his excessive force claims
17 have survived summary judgment, the Court has randomly selected volunteer counsel from the
18 Court’s Pro Bono Panel to represent Plaintiff during the course of all further proceedings before
19 this Court. *See* S.D. Cal. General Order No. 596; 28 U.S.C. § 1915(e)(1).

20 **Conclusion and Order**

21 Accordingly, the Court hereby APPOINTS David W. Beaudreau and Kurt David
22 Hermansen, of the Law Office of Kurt David Hermansen, 110 W. “C” Street, Suite 1903, San
23 Diego, California, 92101, as Pro Bono Counsel for Plaintiff.

24 Pursuant to S.D. CAL. CIVLR 83.3(g)(2), Pro Bono Counsel shall file, if possible within
25 fourteen (14) days of this Order, a formal written Notice of Substitution of Attorney signed by
26


27 ¹ Plaintiff remained incarcerated throughout the course of these proceedings, but on July 10,
28 2013, just before Magistrate Judge Skomal issued his R&R related to Defendant Ramirez’s Motion for
Summary Judgment, Plaintiff filed a Notice of Change of Address pursuant to S.D. CAL. CIVLR 83.11(b)
indicating his release from custody and a current address in Palmdale, California (ECF Doc. No. 73).

1 both Plaintiff and his newly appointed counsel. Such substitution shall be considered approved
2 by the Court upon filing, and Pro Bono Counsel shall thereafter be considered attorney of record
3 for Plaintiff for all purposes during further proceedings before this Court. *See* S.D. CAL. CIVLR
4 83.3(g)(1), (2).

5 The Court further DIRECTS the Clerk of the Court to serve Mr. Beaudreau with a copy
6 of this Order at the address listed above upon filing. *See* S.D. CAL. CIVLR 83.3(f).

7 IT IS SO ORDERED.

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9 DATED: October 3, 2013

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11 HON. GONZALO P. CURIEL
12 United States District Judge
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