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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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

RICHARD EDWARD JACKSON III,  
Inmate No. 99130-198,  
  
Plaintiff,  
  
vs.  
  
BONNIE DUMANIS, et al.,  
  
Defendants.

Civil No. 10-2200 WQH (PCL)

**ORDER:**

**(1) GRANTING MOTION TO  
PROCEED *IN FORMA PAUPERIS*  
[Doc. No. 4];**

**(2) DENYING MOTION TO  
APPOINT COUNSEL PURSUANT  
TO 28 U.S.C. § 1915(e)(1)  
[Doc. No. 4]; and**

**(3) GRANTING LEAVE TO FILE A  
FIRST AMENDED COMPLAINT**

Plaintiff, Richard Edward Jackson, III, a former pre-trial detainee, and proceeding pro se, has submitted a civil rights Complaint pursuant to 28 U.S.C. § 1983.

Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a), as well as a Motion for Appointment of Counsel pursuant to 28 U.S.C. § 1915(e)(1) and a Motion to Amend his Complaint [Doc. No. 4].

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1 I.

2 **Motion to Proceed IFP [Doc. No. 4]**

3 All parties instituting any civil action, suit or proceeding in a district court of the United  
4 States, except an application for writ of habeas corpus must pay a filing fee of \$350. *See* 28  
5 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee  
6 only if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See*  
7 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Because it appears that Plaintiff is no  
8 longer incarcerated, he is not subject to the filing fee garnishment found in 28 U.S.C.  
9 § 1915(b)(2).

10 Accordingly, the Court has reviewed Plaintiff's affidavit of assets, just as it would for any  
11 other non-prisoner litigant seeking IFP status, *see* S.D. CAL. CIVLR 3.2(d), finds it is sufficient  
12 to show that Plaintiff is unable to pay the fees or post securities required to maintain this action,  
13 and hereby **GRANTS** Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) [Doc.  
14 No. 4].

15 II.

16 **Motion for Appointment of Counsel [Doc. No. 4]**

17 Plaintiff also requests the appointment of counsel to assist him in prosecuting this civil  
18 action. The Constitution provides no right to appointment of counsel in a civil case, however,  
19 unless an indigent litigant may lose his physical liberty if he loses the litigation. *Lassiter v. Dept.*  
20 *of Social Services*, 452 U.S. 18, 25 (1981). Nonetheless, under 28 U.S.C. § 1915(e)(1), district  
21 courts are granted discretion to appoint counsel for indigent persons. This discretion may be  
22 exercised only under "exceptional circumstances." *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th  
23 Cir. 1991). "A finding of exceptional circumstances requires an evaluation of both the  
24 'likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se  
25 in light of the complexity of the legal issues involved.' Neither of these issues is dispositive and  
26 both must be viewed together before reaching a decision." *Id.* (quoting *Wilborn v. Escalderon*,  
27 789 F.2d 1328, 1331 (9th Cir. 1986)).

1 The Court denies Plaintiff's request without prejudice, as neither the interests of justice  
2 nor exceptional circumstances warrant appointment of counsel at this time. *LaMere v. Risley*,  
3 827 F.2d 622, 626 (9th Cir. 1987); *Terrell*, 935 F.2d at 1017.

4 **III.**

5 **Conclusion and Order**

6 Good cause appearing, **IT IS HEREBY ORDERED** that:

7 1. Plaintiff's Motion for Appointment of Counsel pursuant to 28 U.S.C. § 1915(e)(1)  
8 [Doc. No. 4] is **DENIED**.

9 2. Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) [Doc. No. 4]  
10 is **GRANTED**.

11 **IT IS FURTHER ORDERED** that:

12 3. Plaintiff's Motion to Amend Previous Complaint is **GRANTED** [Doc. No. 4].  
13 Plaintiff is granted thirty (30) days from the date this Order is "Filed" in which to file an  
14 amended. Plaintiff's Amended Complaint must be complete in itself without reference to the  
15 superseded pleading. *See* S.D. CA. CIV.LR. 15.1. Defendants not named and all claims not re-  
16 alleged in the Amended Complaint will be deemed to have been waived. *See King v. Atiyeh*, 814  
17 F.2d 565, 567 (9th Cir. 1987).

18 **IT IS SO ORDERED.**

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20 DATED: 1/18/11

21   
22 HON. WILLIAM Q. HAYES  
23 United States District Judge  
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