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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DONALD PATTON,  
Plaintiff,  
v.  
LONNIE THOMAS, dba FIRST  
LIGHT PROPERTY  
MANAGEMENT, INC.; DARLENE  
THOMAS, dba FIRST LIGHT  
PROPERTY MANAGEMENT, INC.;  
FIRST LIGHT PROPERTY  
MANAGEMENT, INC.; AND JALEH  
HANASSAB,  
Defendants.

Civil No.14cv1489 AJB (WVG)  
ORDER:  
(1) GRANTING MOTION TO  
PROCEED IN FORMA PAUPERIS,  
(Doc. No. 2); and  
(2) DENYING MOTION FOR  
APPOINTMENT OF COUNSEL,  
(Doc. No. 3)

Plaintiff Donald Patton (“Plaintiff”), a nonprisoner proceeding pro se, has submitted a Complaint alleging housing discrimination on account of his ethnicity and/or medical conditions.<sup>1</sup> (Doc. No.1.) Plaintiff has not paid the \$450 civil filing fee required to commence this action, but rather, has filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). (Doc. No. 2.) Plaintiff has also filed a motion for appointment of counsel under the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(f)(1). (Doc. No. 3.) For the reasons set forth below, the Court GRANTS Plaintiff’s request to

<sup>1</sup> The Complaint did not specify the statutory and/or constitutional basis for the claim.

1 proceed in forma pauperis, (Doc. No. 2), and DENIES without prejudice his motion for  
2 appointment of counsel, (Doc. No. 3).

### 3 BACKGROUND

#### 4 **I. Factual Background**

5 Plaintiff is a Native American (Oglala Sioux Tribe) and was diagnosed with  
6 Schizophrenia and alcoholism in 2004. (Doc. No. 1 at 1.)<sup>2</sup> Beginning in or around  
7 October 25, 2007, Plaintiff began receiving federally-funded low-income housing  
8 assistance through the United States Department of Housing and Urban Development  
9 (“HUD”) program known as Section 8. (*Id.* at 2.) In or around November 8, 2007, with  
10 the assistance of Shanda Lewis, a Housing Specialist for the Community Research  
11 Foundation and the Downtown Impact Program, Plaintiff signed a residential lease with  
12 First La Jolla Financial/Afshin Realty and Nobel and Nobel Property Management.

13 Soon thereafter, Plaintiff moved into the Sapphire Apartment Complex, located at  
14 1440 Lincoln Avenue #10, San Diego, California 92103-2617. (*Id.*) There are twenty-  
15 eight (28) units within Sapphire Apartment Complex, four (4) of which are set aside for  
16 Section 8 tenants. (*Id.*) Plaintiff alleges that he is the only Native American Section 8  
17 tenant and that the other three Section 8 tenants are Caucasian. (*Id.*) On June 15, 2011,  
18 Plaintiff received an official announcement, hand delivered by Defendant Lonnie  
19 Thomas, notifying Plaintiff that Defendant First Light Property Management would be  
20 the new property managers, and that Defendant Jaleh Hanassab would be the new  
21 landlord. (*Id.*) Plaintiff alleges that since Defendants took over control of Sapphire  
22 Apartment Complex, he has not received a new or modified rental agreement or lease.  
23 (*Id.* at 2–3.)

24 Plaintiff has resided at Sapphire Apartment Complex since at least November 28,  
25 2007, and continues to reside at the Sapphire Apartment Complex despite countless  
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<sup>2</sup> The Complaint does not contain page or line numbers.

1 eviction attempts by Defendants.<sup>3</sup> (*Id.* at 2–8.) Plaintiff further alleges that the three  
2 Caucasian tenants who reside in the remaining Section 8 units have not been subject to  
3 eviction proceedings or the harassment and discrimination he has been subject to since at  
4 least Spring 2012. (*Id.*)

## 5 DISCUSSION

### 6 **I. Motion to Proceed In Forma Pauperis**

7 Pursuant to 28 U.S.C. § 1915(a), a court may authorize the commencement of a  
8 suit without prepayment of fees if the plaintiff submits an affidavit, including a statement  
9 of all his assets, showing he is unable to pay filing fees. *See* 28 U.S.C. § 1915(a).  
10 However, even if a court finds the plaintiff has submitted adequate documentation  
11 detailing his inability to pay, before granting IFP status, the court must conduct a *sua*  
12 *sponte* review of the complaint to determine if the complaint is frivolous, malicious, fails  
13 to state a claim upon which relief may be granted, or seeks monetary relief from a  
14 defendant immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254  
15 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not  
16 limited to prisoners.”).

17 Here, Plaintiff has submitted an affidavit that sufficiently details his inability to  
18 pay the filing fees in this matter. (Doc. No. 2.) Plaintiff is not currently employed, does  
19 not own an automobile or any other motor vehicle, does not have a savings, IRA, or  
20 money market account, and only has \$1.29 in his checking account. (*Id.*) Plaintiff’s only  
21 form of compensation comes from social security disability benefits in the amount of  
22 \$877.40 per month. (*Id.*) Moreover, Plaintiff’s complaint is sufficient to survive the *sua*  
23 *sponte* provisions of Section 1915(e)(2). The complaint provides detailed allegations  
24 regarding the date the alleged unlawful behavior occurred, and provides adequate factual  
25 support—at this stage in the proceedings—to support Plaintiff’s allegations. Accord-  
26 ingly, the Court GRANTS Plaintiff’s motion to proceed in forma pauperis.

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28 <sup>3</sup> The Complaint states that Defendants filed an unlawful detainer action against Plaintiff after he refused to quit the premises as of February 24, 2014. The status of that state court action is unclear.

1 **II. Motion for Appointment of Counsel**

2 Plaintiff also seeks appointment of counsel under the Civil Rights Act of 1964, 42  
3 U.S.C. § 2000e-5(f)(1). (Doc. No. 3.) Section 2000e-5(f)(1) authorizes the appointment  
4 of counsel in “such circumstances as the court may deem just.” However, there is no  
5 constitutional right to appointment of counsel under Section 2000e-5(f)(1). *See Ivey v.*  
6 *Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982). To determine  
7 whether to appoint counsel, a court should consider three factors: (1) the plaintiff’s  
8 financial resources; (2) the efforts made by the plaintiff to secure counsel on his own; and  
9 (3) the meritoriousness of plaintiff’s claim. *Bradshaw v. Zoological Soc. of San Diego*,  
10 662 F.2d 1301, 1318 (9th Cir. 1981). In cases where the particular facts warrant, other  
11 factors may also be taken into account, “so long as they are treated in a manner consistent  
12 with the policy of the statutory provision.” *Bradshaw*, 662 F.2d at 1318 n.43. This  
13 includes a determination of whether the plaintiff has the capacity to present and prepare  
14 the case without the assistance of retained counsel. *See, e.g., Castner v. Colo. Springs*  
15 *Cablevision*, 979 F.2d 1417, 1421 (10th Cir. 1992). The determination of whether to  
16 appoint counsel “is left to the sound discretion of the district court.” *Johnson v. U.S.*  
17 *Dep’t of Treasury*, 939 F.2d 820, 824 (9th Cir. 1991).

18 Here, Plaintiff has clearly satisfied the financial requisites for appointment of  
19 counsel.<sup>4</sup> Plaintiff’s declaration also reveals that Plaintiff has been unable to secure  
20 counsel. He contacted at least three attorneys, each of which refused to represent him in  
21 this instant action. However, at this stage in the proceeding, the Plaintiff has not ade-  
22 quately demonstrated that he is likely to succeed on the merits. *See DeJesus Rodriguez v.*  
23 *Anderson*, No. S-05-2572 MCEJFMPS, 2006 WL 2684358, at \*2 (E.D. Cal. Sept. 19,  
24 2006) (“However, the third factor, whether the complaint has merit, cannot be discerned  
25 this early in the litigation.”). Although it is possible that Plaintiff’s claims have merit, the  
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28 <sup>4</sup> A motion to proceed in forma pauperis requires a greater “showing of indigence  
then is required for appointment of counsel.” *Ivey*, 673 F.2d at 269.

1 conclusory allegations do not support appointment of counsel at this time, nor has the  
2 Complaint clearly stated the federal statute and or constitutional provision under which  
3 he seeks relief. *See Bailey v. Lawford*, 835 F. Supp. 550, 552 (S.D. Cal. 1993) (denying  
4 appointment of counsel because plaintiff offered no evidence other than his own asser-  
5 tions to support his claims).

6 Even construing Plaintiff's request as a motion for appointment of counsel under  
7 28 U.S.C. § 1915(d), Plaintiff's motion would be denied.<sup>5</sup> Plaintiff has not demonstrated  
8 "exceptional circumstances" warranting such an appointment at this stage in the proceed-  
9 ings, nor has he shown an inability to prepare and present his case without the aid of  
10 appointed counsel. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).  
11 Therefore, Plaintiff request for appointment of counsel is DENIED. This ruling does not  
12 prohibit Plaintiff from filing a renewed motion for appointment of counsel at a later date.

### 13 CONCLUSION

14 Accordingly, the Court GRANTS Plaintiff's Motion to Proceed In Forma Pauperis,  
15 (Doc. No. 2) and DENIES Plaintiff's motion for Appointment of Counsel without  
16 prejudice, (Doc. No. 3). The Court hereby ORDERS as follows:

17 1. The United States Marshal shall serve a copy of the Complaint, summons,  
18 and this Order upon Defendants as directed by plaintiff on U.S. Marshal Form 285. All  
19 costs of service shall be advanced by the United States.

20 2. Plaintiff shall serve upon Defendants or, if appearance has been entered by  
21 counsel, upon Defendant's counsel, a copy of every further pleading or other document  
22 submitted for consideration of the Court. Plaintiff shall include with the original paper to  
23 be filed with the Clerk of the Court a certificate stating the manner in which a true and  
24 correct copy of any document was served on the Defendants or counsel of Defendants  
25 and the date of service. Any paper received by a District Judge or Magistrate Judge  
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27 <sup>5</sup> Because Plaintiff is not alleging employment discrimination, his motion for  
28 appointment of counsel should have been brought under 28 U.S.C. § 1915(d).

1 which has not been filed with the Clerk or which fails to include a Certificate of Service  
2 will be disregarded.


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4 IT IS SO ORDERED.

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6 DATED: June 23, 2014

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Hon. Anthony J. Battaglia  
U.S. District Judge

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