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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MAURO PADILLA,

Plaintiff,

v.

SCOTT KERNAN, et al.,

Defendant.

Case No.: 3:16-cv-02339-BAS-PCL

**ORDER DENYING PLAINTIFF’S
MOTION FOR APPOINTMENT OF
COUNSEL**

I. INTRODUCTION

Before this Court now is Plaintiff Mauro Padilla (“Plaintiff”), a state prisoner at Centinela State Prison, proceeding *pro se* and *in forma pauperis*. Plaintiff has filed a motion for appointment of counsel, requesting the Court appoint counsel to represent Plaintiff in this matter. (Doc. 46 at 1.) This request is based on 28 U.S.C. § 1915(e)(1) which states “the court may request an attorney to represent any person unable to afford counsel.” *Id.*

Plaintiff filed the instant suit based on Centinela Prison staff’s denial of Plaintiff’s request to participate in the Jewish Kosher Diet Plan (“JKDP”). (*See generally* Doc. 1.) While at this point in time, Plaintiff has been reinstated in the JKDP, Plaintiff alleges his suit is still proper and his injuries are not yet moot because he has suffered damages which were not fully remedied by Centinela’s reinstating Plaintiff in the JKDP.

1 Specifically, Plaintiff alleges he spent over \$1,600¹ purchasing kosher food from the
2 commissary, and as a result of Plaintiff's limited funds to do so, Plaintiff lost 39 pounds
3 between March 26, 2015 and January 12, 2016. (Doc. 1 at 9, 115-139.)

4 Petitioner has filed a motion for appointment of counsel previously in this case.
5 (Doc. 2.) This original motion was filed concurrently with the complaint, but was denied
6 by the Court on procedural grounds as well as the Court finding Plaintiff's ability to
7 "articulate the factual bases for his claims" adequate to proceed *pro se*. (Doc. 3 at 4.)

8 **II. LEGAL STANDARD**

9 Generally, a person has no right to counsel in civil actions. *See Storseth v.*
10 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). However, a court may under "exceptional
11 circumstances" appoint counsel for indigent civil litigants pursuant to 28 U.S.C. §
12 1915(e)(1). *Agyeman v. Corrs. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004), *cert.*
13 *denied sub nom. Gerber v. Agyeman*, 545 U.S. 1128 (2005). When determining whether
14 "exceptional circumstances" exist, a court must consider "the likelihood of success on the
15 merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the
16 complexity of the legal issues involved." *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir.
17 1983). Neither of these considerations is dispositive but instead must be viewed together.
18 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

19 Only "rarely" will a federal court find a case to be so complex that it is appropriate
20 to appoint counsel for a civil litigant who faces no loss of liberty in the controversy at
21 hand. *See Dotson v. Doctor*, 2014 U.S. Dist. LEXIS 72791 *1 n.1 (E.D. Cal. May 28,
22 2014) ("Counsel is appointed in civil cases such as this only rarely, if exceptional
23 circumstances exist"); *United States v. Melluzzo*, 2010 U.S. Dist. LEXIS 53053 *3 (D.
24 Ariz. May 3, 2010) ("[A]ppointment of counsel in a civil case is rarely invoked . . .");
25

26
27 ¹ Plaintiff provided this amount in his complaint. (Doc. 1 at 9.) However, per the Court's calculations,
28 the actual amount spent by Plaintiff, as provided in his receipts attached as Exhibit U was \$1,404.27. (*Id.*
at 95-110.)

1 *see also Schwartzmiller v. Roberts*, 1994 U.S. Dist. LEXIS 1620 *3 n.1 (D. Or. Feb. 11,
2 1994) (“It is extremely rare that indigent civil defendants are appointed counsel in
3 judicial proceedings”).

4 **III. DISCUSSION**

5 In this case, Plaintiff has alleged that when Centinela Prison staff denied Plaintiff
6 from the JKDP, Plaintiff was deprived of his First, Fourth, Eighth, and Fourteenth
7 Amendment rights. (Doc. 1 at 8, 15.) In Plaintiff’s motion for appointment of counsel,
8 Plaintiff does not put forth arguments which show any of these claims are likely to
9 succeed on the merits. *See Hill v. Oakley*, 2014 U.S. Dist. LEXIS 193595 (D. Nev. May
10 9, 2014) (denying motion because Plaintiff failed to put forth any facts showing his
11 claims were likely to succeed). Instead, Plaintiff simply cites to the strain his
12 imprisonment imposes upon his ability to litigate his claim. (Doc. 46 at 1.) Additionally,
13 Plaintiff claims the issues he has raised are “complex, and will require significant
14 research and investigation.” (*Id.*) Finally, Plaintiff argues an attorney would be better able
15 to present evidence and cross examine witnesses, especially in the event conflicting
16 testimony is introduced. (*Id.* at 2.)

17 In listing these reasons as the only grounds for the Court to appoint counsel to
18 assist Plaintiff, Plaintiff has not only failed to meet the first requirement to show this case
19 includes “exceptional circumstances,” but also failed to show the claims are so complex
20 that Plaintiff cannot adequately represent himself. While Plaintiff has not shown his
21 claim is likely to succeed at trial, Plaintiff has not discussed his claim at all in his motion.
22 Thus, this motion cannot succeed without such a showing.

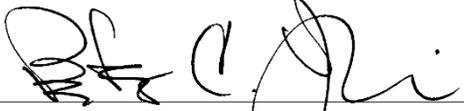
23 Similarly, Plaintiff seems well able to represent himself in this case. Apart from the
24 complaint filed in this Court in the current case, Plaintiff has also filed a petition for writ
25 of habeas corpus in the Superior Court of California, alleging the claims made herein. (*Id.*
26 at 69.) In doing so, Plaintiff seemingly presented valid and coherent arguments, as the
27 Superior Court requested an informal response to questions posed by Plaintiff. (*Id.*) A
28 prisoner incapable of representing himself likely would not have been able to receive

1 such treatment of his petition. Additionally, Plaintiff has filed numerous motions in this
2 case and successfully defended a motion to dismiss. (*See, e.g.*, Doc. 41.)

3 Because Plaintiff has not shown his claims are likely to succeed, nor has Plaintiff
4 shown he is incapable of adequately representing himself on complex claims, the Court
5 cannot find reason to appoint counsel to assist Plaintiff. Accordingly, Plaintiff's motion
6 for appointment of counsel is **DENIED**.

7 IT IS SO ORDERED.

8 Dated: February 13, 2018

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10 Hon. Peter C. Lewis
11 United States Magistrate Judge
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