

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 RAUL ARELLANO,

Plaintiff,

Case No.: 16-cv-2412-CAB (RNB)

12  
13 v.

14 BLAHNIK,

Defendant.

**ORDER**

**DENYING PLAINTIFF’S MOTION  
FOR COUNSEL AND FOR  
PERMISSION TO APPEAL [ECF  
NO. 74]**

**GRANTING PLAINTIFF’S MOTION  
FOR EXTENSION OF TIME [ECF  
NO. 76]**

**DENYING PLAINTIFF’S MOTION  
FOR COPIES [ECF NO. 78]**

15  
16  
17  
18  
19  
20  
21  
22 On August 14, 2018, Plaintiff Raul Arellano (“Plaintiff”) filed three motions *nunc*  
23 *pro tunc* to August 9, 2018. (See ECF Nos. 74, 76, 78.) On August 17, 2018, defendant  
24 filed opposition to plaintiff’s three motions.

25  
26 **Motion for Counsel Due to [Inability] to Meet Deadline of 8-29-18 (ECF No. 74)**

27 As the Court previously has advised plaintiff, “there is no absolute right to counsel  
28 in civil proceedings.” *Hedges v. Resolution Trust Corp. (In re Hedges)*, 32 F.3d 1360,

1 1363 (9th Cir. 1994) (citation omitted). Thus, federal courts do not have the authority “to  
2 make coercive appointments of counsel.” *Mallard v. United States District Court*, 490  
3 U.S. 296, 310 (1989); *see also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564,  
4 569 (9th Cir. 1995). Districts courts have discretion, however, pursuant to 28 U.S.C. §  
5 1915(e)(1), to “request” that an attorney represent indigent civil litigants upon a showing  
6 of exceptional circumstances. *See Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991);  
7 *Burns v. County of King*, 883 F.2d 819, 823 (9th Cir. 1989). “A finding of exceptional  
8 circumstances requires an evaluation of both the ‘likelihood of success on the merits and  
9 the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the  
10 legal issues involved.’ Neither of these issues is dispositive and both must be viewed  
11 together before reaching a decision.” *Id.* (quoting *Wilborn v. Escalderon*, 789 F.2d 1328,  
12 1331 (9th Cir. 1986)).

13 Plaintiff now is contending that, as a result of his alleged vision impairment, he will  
14 be prejudiced in in his ability to respond to interrogatories and document requests  
15 propounded by defendant if counsel is not appointed. For example, he contends that he  
16 has to review up to 2,000 pages of medical records in order to determine which records are  
17 responsive. However, a *pro se* litigant’s difficulty conducting discovery is insufficient to  
18 satisfy the exceptional circumstances standard. *See Wilborn*, 789 F.2d at 1331. Here, once  
19 again, plaintiff has not even purported to demonstrate a likelihood of success on the merits.  
20 Thus, the Court still is unable to make the requisite determination whether or not plaintiff  
21 is likely to succeed on the merits of his claims. *See Bailey v. Lawford*, 835 F. Supp. 550,  
22 552 (S.D. Cal. 1993); *see also Garcia v. Smith*, 2012 WL 249003, at \*3 (S.D. Cal. June 27,  
23 2012) (denying motion to appoint counsel because it was too early to determine whether  
24 any of the plaintiff’s claims would be successful). Moreover, plaintiff has not even  
25 purported to make a showing that he is experiencing any difficulty in attempting to litigate  
26 his case as a result of the complexity of his claims. Two other considerations militating  
27 against granting plaintiff’s motion are (a) the Ninth Circuit’s recent denial of plaintiff’s  
28 motion for appointment of counsel based on his alleged vision impairment, and (b)

1 defendant's willingness to extend the deadline to complete discovery and other deadlines  
2 as an accommodation to plaintiff's claimed medical condition.

3 Plaintiff's motion for counsel therefore is again **DENIED**.

4 To the extent plaintiff's is requesting permission to appeal to the Ninth Circuit the  
5 Court's denial of his motion for appointment of counsel, his request is denied. In *Wilborn*,  
6 789 F.2d at 1330, the Ninth Circuit held that the denial of a § 1983 plaintiff's request for  
7 counsel was not immediately appealable as a "collateral order" exception to the final  
8 judgment rule of 28 U.S.C. § 1291. The Court further finds that this Order denying  
9 plaintiff's motion for appointment of counsel does not involve a controlling question of  
10 law as to which there is substantial ground for difference of opinion and that an immediate  
11 appeal from this Order would not materially advance the ultimate termination of this case,  
12 for purposes of the Order qualifying as an appealable interlocutory order under 28 U.S.C.  
13 § 1292(b). However, nothing precludes plaintiff from serving and filing objections to this  
14 Order with the District Judge within 14 days after being served with a copy. *See* Fed. R.  
15 Civ. P. 72(a).

16  
17 **Motion for Extension of Time to All Deadlines of Discovery, Etc. (ECF No. 76)**

18 Plaintiff's motion for an extension of all discovery deadlines is **GRANTED**. The  
19 new deadlines are set forth as follows. The Court will extend the deadline for plaintiff to  
20 respond to defendant's written discovery to November 23, 2018. Defendant shall  
21 reschedule plaintiff's deposition for a date in December and extend the discovery cut-off  
22 date to March 22, 2019. All pretrial motions including those addressing Daubert issues  
23 must be filed by August 12, 2019. A Mandatory Settlement Conference shall be conducted  
24 on October 28, 2019 in the chambers of the magistrate judge. Counsel shall submit  
25 settlement statements **directly** to the magistrate judge's chambers by October 21, 2019.  
26 Counsel shall comply with the pre-trial disclosure requirements of Fed. R. Civ. P. 26(a)(3)  
27 by November 11, 2019. Defendant's counsel shall meet plaintiff and take the action  
28 required by Local Rule 16.1(f)(4) by November 18, 2019. Counsel for Defendants will be

1 responsible for preparing the pretrial order and arranging the meetings with plaintiff  
2 pursuant to Civil Local Rule 16.1(f). By November 25, 2019, Defendant’s counsel must  
3 provide plaintiff with the proposed pretrial order for review and approval. The Proposed  
4 Final Pretrial Conference Order, including objections to any other parties’ Fed. R. Civ. P.  
5 26(a)(3) Pretrial Disclosures shall be prepared, served and lodged with the assigned district  
6 judge by December 2, 2019, and shall be in the form prescribed in and comply with Local  
7 Rule 16.1(f)(6). The final Pretrial Conference is scheduled on the calendar of the  
8 Honorable Cathy Ann Bencivengo on December 9, 2019 at 2:00 p.m. All other instructions  
9 set forth in the Court’s initial scheduling order remain in effect.

10 Plaintiff’s request for a copy of this motion is **DENIED** for the reasons set forth in  
11 the following section.

12  
13 **Motion for Copies of Certain Documents (ECF No. 78)**

14 Plaintiff’s third motion seeks copies of certain documents filed in this case that  
15 plaintiff contends he now is missing. However, an inmate has no right to free copies of  
16 pleadings. *See In Re Richard*, 914 F.2d 1526, 127 (6th Cir. 1990) (*per curiam*) (28 U.S.C.  
17 § 1915 “**does not give a litigant a right to have documents copied and returned to him**  
18 **at government expense**”). Further, “[t]he Supreme Court has declared that ‘the  
19 expenditure of public funds [on behalf of an indigent litigant] is proper only when  
20 authorized by Congress....’ ” *Tedder v. Odel*, 890 F.2d 210, 211-12 (9th Cir. 1989) (quoting  
21 *United States v. MacCollom*, 426 U.S. 317, 321 (1976)). The *in forma pauperis* statute, 28  
22 U.S.C. § 1915, authorizes the Court to pay for service of process on behalf of an indigent  
23 litigant and, in certain cases, to pay the costs of printing the record on appeal and preparing  
24 a transcript of proceedings, but the statute does not authorize the Court to pay the costs for  
25 an indigent litigant's general copy requests. *See Davidson v. Sullivan*, 2018 WL 2837472,  
26 at \*42 (S.D. Cal. June 8, 2018); *Mendoza v. United States*, 2015 WL 13332991, at \*1 (D.  
27 Ariz. May 29, 2015). Plaintiff’s motion for copies of documents therefore is **DENIED**.

28 To the extent plaintiff is requesting the appointment of counsel as part of this motion,

1 that request is **DENIED** for the same reasons stated above. Plaintiff has not even purported  
2 to make the requisite showing of exceptional circumstances.

3  
4 Dated: August 15, 2018



---

5 ROBERT N. BLOCK  
6 United States Magistrate Judge

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28