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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 CEDRIC EUGENE GREEN,
12 Plaintiff,
13 vs.
14 DR. B. THIESSEN, et al.,
15 Defendants.

Case No.: 3:17-cv-01156-JAH-BLM

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

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17 Plaintiff Cedric Eugene Green, proceeding without counsel and *in forma pauperis*,
18 filed a Complaint pursuant to the Civil Rights Act, 42 U.S.C. § 1983, on June 7, 2017,
19 while he was incarcerated. (“Compl.”, ECF No. 1.) He has since been released, but alleges
20 a staff psychologist and two correctional officers at Richard J. Donovan Correctional
21 Facility acted with deliberate indifference to his health and safety in violation of the Eighth
22 Amendment. (*Id.* at 1–10.) Green claims that on July 14, 2016, Defendants either prevented
23 or denied him access to mental health care, and that he attempted suicide by cutting his left
24 wrist with a razor blade as a result. (*Id.* at 2–12.)

25 **I. Procedural History**

26 On March 29, 2023, the Court adopted in part the Magistrate Judge’s Report and
27 Recommendation and granted in part and denied in part Defendants’ Motion for Summary
28 Judgment pursuant to Fed. R. Civ. P. 56. (*See* ECF No. 98.) Specifically, the Court granted

1 summary judgment as to Green’s Eighth Amendment claims on behalf of Defendant Solis,
2 but found genuine disputes of material fact requiring a trial on the merits as to the Eighth
3 Amendment violations he alleges were committed by Defendants Thiessen and Lopez. (*See*
4 *id.* at 10–13, 16.)

5 At a status conference held on May 31, 2023, Green requested that the Court refer
6 his case to its Pro Bono Panel pursuant to S.D. Cal. Gen. Order 596, and appoint volunteer
7 counsel to represent him at trial. (*See* ECF No. 101.)

8 **II. Appointment of Counsel**

9 While there is no right to counsel in a civil action, a court may under “exceptional
10 circumstances” exercise its discretion and “request an attorney to represent any person
11 unable to afford counsel.” 28 U.S.C. § 1915(e)(1); *Palmer v. Valdez*, 560 F.3d 965, 970
12 (9th Cir. 2009). The court must consider both “the likelihood of success on the merits as
13 well as the ability of the [Plaintiff] to articulate his claims *pro se* in light of the complexity
14 of the legal issues involved.” *Id.* (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir.
15 1983)).

16 While Green has so far demonstrated an ability to articulate his claims and to
17 partially survive summary judgment while proceeding without counsel, his likelihood of
18 success on the merits—at least with respect to his remaining Eighth Amendment claims
19 against Defendants Thiessen and Lopez—increased as a result of the Court’s March 29,
20 2023 Order. *Cf. Garcia v. Smith*, 2012 WL 2499003, at *3 (S.D. Cal. 2012) (finding it “too
21 early to determine the likelihood of success on the merits” when it was “not certain whether
22 plaintiff’s complaint would survive [defendant’s pending motion for] summary
23 judgment.”).

24 Thus, in light of the impending trial, the Court has elected to exercise its discretion
25 pursuant to 28 U.S.C. § 1915(e)(1), and requested volunteer pro bono counsel for purposes
26 of representing Green at trial under the provisions of this Court’s “Plan for the
27 Representation of Pro Bono Litigation in Civil Case filed in the Southern District of
28 California,” and General Order 596.

1 The Pro Bono Plan specifically provides for appointment of pro bono counsel “as a
2 matter of course for purposes of trial in each prisoner civil rights case where summary
3 judgment has been denied.” *See* S.D. Cal. Gen. Order 596. While Green is no longer
4 incarcerated, he was a prisoner throughout the course of this litigation, remains indigent
5 now, and has partially overcome Defendants’ efforts to seek entry of summary judgment
6 in their favor. Thus, because the ends of justice would be served by the appointment of pro
7 bono counsel under the circumstances, the Court randomly referred Green’s case to a
8 volunteer attorney on the Court’s Pro Bono Panel, and that volunteer has since graciously
9 agreed to represent Green pro bono during the course of all further proceedings held before
10 this Court in this case. *See* S.D. Cal. Gen. Order 596.

11 **III. Conclusion**

12 For the reasons discussed, the Court **APPOINTS** Daniel A. Kaplan, SBN 179517,
13 of the Law Offices Daniel A. Kaplan of Esq., 555 W Beech Street, Suite 500, San Diego,
14 California 92101-2995, as Pro Bono Counsel for Plaintiff Cedric Eugene Green.

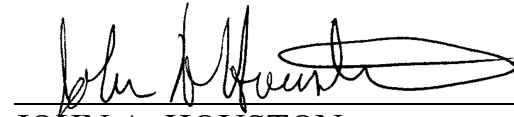
15 Pursuant to S.D. Cal. CivLR 83.3.f.2, Pro Bono Counsel will file, within fourteen
16 (14) days of this Order, if possible, a formal written Notice of Substitution of Attorney
17 signed by both Plaintiff Green and his newly appointed counsel. This Notice of Substitution
18 will be approved by the Court upon filing, and Pro Bono Counsel will thereafter be
19 considered attorney of record for Mr. Green for all purposes *during further proceedings*
20 *before this Court, in this matter only, and at the Court’s specific request. See* S.D. Cal.
21 CivLR 83.3.f.1, 2.¹

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24 ¹ Green is cautioned that the Court’s Pro Bono Panel is a precious and limited resource.
25 The fact that the Court has found this case suitable for appointment at this stage of the
26 proceedings, and has been able to locate an available volunteer attorney does not entitle
27 him to the appointment of counsel in this or any other case. Nor does it permit him an
28 attorney of his choosing, or guarantee any subsequent Pro Bono Panel referral or
appointment. *See Hedges v. Resolution Trust Corp (In re Hedges)*, 32 F.3d 1360, 1363 (9th
Cir. 1994) (“[T]here is no absolute right to counsel in civil proceedings.”) (citation

1 The Court further **DIRECTS** the Clerk of the Court to forward Mr. Kaplan a copy
2 of this Order upon entry in CM/ECF to dkaplan@danielkaplanlaw.com and to also serve
3 Mr. Kaplan with a copy via U.S. Mail at the address listed above upon filing. *See* S.D. Cal.
4 CivLR 83.3.f.2.

5 **IT IS SO ORDERED.**

6 Dated: July 31, 2023

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9 JOHN A. HOUSTON
10 UNITED STATES DISTRICT JUDGE
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27 _____
28 omitted); *United States ex rel Gardner v. Madden*, 352 F.2d 792, 793 (9th Cir. 1965)
(noting that the appointment of counsel in a civil case “is a privilege and not a right.”).