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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 JAMES JOHNSON,

12 Plaintiff,

13 v.

14 MARTIN O'MALLEY, Commissioner,  
15 Social Security Administration; ERIC V.  
16 BENHAM, Administrative Law Judge;  
17 LAURA MIDDLETON, Administrative  
18 Appeals Judge; MS. KAWANO (full  
19 name and title to be ascertained); and  
20 DOES 4 to 100,

21 Defendants.

Case No.: 23-CV-481 JLS (AHG)

**ORDER DENYING *EX PARTE*  
EMERGENCY MOTION TO STAY  
PROCEEDINGS AND APPOINT  
COUNSEL**

(ECF No. 85)

21 Presently before the Court is a motion submitted by Plaintiff James Johnson  
22 (“Plaintiff”) captioned “Emergency Ex Parte Motion to: 1) Stay Proceedings; 2) Compel  
23 Wardships to Appear and Provide Legal Counsel to Ward” (“Mot.,” ECF No. 85). Plaintiff  
24 requests the “immediate issuance and service of subpoenas requiring hearing and  
25 appearances of Plaintiff’s Financial Wardships”—identified as United States Social  
26 Security Administration Commissioner, Martin O’Malley, and California Health and  
27 Human Services Agency Secretary, Mark Ghaly—with the purpose of said hearing to  
28 “consider a court Order compelling” either one or both “Financial Wardships” to pay all

1 costs and fees required for securing and maintaining a qualified legal representative for  
2 Plaintiff in this instant case. Mot. at 2. Plaintiff also requests the “immediate stay of all  
3 proceedings, [and] rulings in this case for 60-days pending the completion of this motion  
4 and respective order/s[.]” *Id.* The Court construes this as a motion to appoint counsel and  
5 for a stay. Having carefully considered Plaintiff’s arguments and the law, the Court  
6 **DENIES** Plaintiff’s Motion.

7 The Court has previously denied several of Plaintiff’s requests for the appointment  
8 of counsel. *See* ECF Nos. 32, 39, 45. In the present Motion, Plaintiff contends he does not  
9 seek direct assistance “from the court’s ‘for profit’ pro bono fund reserved only for winning  
10 cases but demands assistance from the wardships.” Mot. at 7. Plaintiff argues Martin  
11 O’Malley and Mark Ghaly must be compelled to provide him with proper legal  
12 representation because “a) they are in absolute control of Plaintiff’s benefits, hence his  
13 ability to not only survive but to hire legal counsel, and b) the government has violated  
14 Plaintiff’s Rights, the continuation of which will result in the permanent loss of benefits,  
15 hence Plaintiff’s survival.” Mot. at 19. However, Plaintiff’s cited cases referencing  
16 wardships of American Indians, seamen, children, mentally incompetent individuals, and  
17 institutionalized individuals, *id.* at 19–22, do not establish, and Plaintiff does not otherwise  
18 support, his contention that he is entitled to an order granting a mistrial and compelling  
19 Martin O’Malley and Mark Ghaly to “immediately pay a start retainer of \$20,000 to cover  
20 the cost of the Ward Plaintiff’s legal counsel who will be paid a court-approved hourly,  
21 service fee, plus costs, as supervised by the court[.]” *Id.* at 24. Instead, as far as the Court  
22 can ascertain, Plaintiff’s Motion reasserts the same arguments from his prior motions for  
23 counsel in that he is not able to adequately represent himself because he lacks legal training  
24 and suffers from disabilities.

25 There is no constitutional right to counsel in a civil case. *Lassiter v. Dep’t of Soc.*  
26 *Servs.*, 452 U.S. 18, 25 (1981). Under 28 U.S.C. § 1915(e)(1), district courts have some  
27 limited discretion to “request” that an attorney represent an indigent civil litigant, which  
28 may only be exercised in “exceptional circumstances.” *Agyeman v. Corr. Corp. of Am.*,

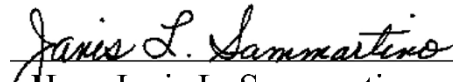
1 390 F.3d 1101, 1103 (9th Cir. 2004); *see also Terrell v. Brewer*, 935 F.2d 1015, 1017  
2 (9th Cir. 1991). A finding of exceptional circumstances requires “an evaluation of the  
3 likelihood of the plaintiff’s success on the merits and an evaluation of the plaintiff’s ability  
4 to articulate his claims ‘in light of the complexity of the legal issues involved.’” *Agyeman*,  
5 390 F.3d at 1103 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).  
6 “Neither of these issues is dispositive and both must be viewed together before reaching a  
7 decision.” *Terrell*, 935 F.2d at 1017.

8 Here, all but one claim in Plaintiff’s SAC have been dismissed without prejudice  
9 and without leave to amend. *See* ECF No. 51. While the Court found Plaintiff sufficiently  
10 pled a § 405(g) claim, the Court notes the main substantive motions at issue, Plaintiff’s  
11 Motion for Bifurcation (ECF No. 63) and Defendant Martin O’Malley’s Motion to Remand  
12 (ECF No. 61), are not particularly complex and have already been briefed by Plaintiff.  
13 Accordingly, the Court does not find exceptional circumstances require appointment of  
14 counsel.

15 The Court understands Plaintiff’s request for a stay to be a request to halt  
16 proceedings until this Motion is granted and subsequent orders provide him with counsel.  
17 However, as this instant Motion with respect to Plaintiff’s request for appointment of  
18 counsel is **DENIED** as explained above, the Court **DENIES AS MOOT** Plaintiff’s request  
19 for stay. Accordingly, Plaintiff’s *Ex Parte* Emergency Motion is **DENIED**.

20 **IT IS SO ORDERED.**

21 Dated: August 29, 2024

  
22 Hon. Janis L. Sammartino  
23 United States District Judge  
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