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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6
7 JOHN FLOWERS,

8 Plaintiff,

9 vs.

10 ISIDRO BACA et al.,

11 Defendants.

3:14-cv-00366-RCJ-WGC

ORDER

12
13 This is a prisoner civil rights case pursuant to 42 U.S.C. § 1983. In September 2014, the
14 Court dismissed the Complaint on screening. In the first claim, Plaintiff John Flowers (a/k/a
15 Craig Jacobsen, Jr.) alleged he was convicted in state court while being forced to take
16 psychoactive drugs that rendered him incompetent. The Court dismissed that claim, because it
17 sounded in habeas corpus. In the second claim, Flowers alleged that while in prison, Defendants
18 failed to warn him of the risk of developing Type II diabetes from one of those drugs. The Court
19 dismissed that claim, because it was a disagreement over medical treatment that was not
20 cognizable under the Eighth Amendment. In the third claim, Flowers alleged Defendants failed
21 to inform him of a class action against the manufacturer of the unsafe drug. The Court dismissed
22 that claim, because Defendants had no duty to monitor a prisoner's civil legal interests.

23 Flowers appealed as to his second and third claims, and the Ninth Circuit ruled in
24 November 2016 that he must be given leave to amend them. The appellate panel also instructed

1 the Court to appoint counsel for Flowers on remand, due to his “limited ability to articulate his
2 claims *pro se*, the complexity of the legal issues involved, and the possible merit of [his] claims.”
3 (Mem. Op. 4, ECF No. 19.) Accordingly, in January 2017, the Court referred the matter to the
4 Pilot Pro Bono Program for full representation, ordering that the case would proceed on a normal
5 litigation track once counsel was appointed for Flowers. (Order, ECF No. 23.) However, the
6 Court’s pro bono liaison was unable to find an attorney willing to take the case. Ultimately, the
7 Court removed the case from the Pilot Pro Bono Program and referred it for appointment of
8 counsel under the Criminal Justice Act. On August 3, 2018, a CJA attorney was formally
9 designated.

10 Prior to the appointment of counsel, Flowers filed three motions. First, he requested the
11 appointment of a guardian ad litem, alleging that he is being treated with electroshock therapy
12 and psychotropic drugs rendering him incompetent, and that government psychiatrists have
13 stated he is unlikely to regain competence in the future. (ECF No. 25.) His second and third
14 motions, filed in January and May of 2018, seek enforcement of the Ninth Circuit’s order
15 regarding appointment of counsel. (ECF Nos. 26, 32.) Due to the recent appointment of a CJA
16 attorney for Flowers, these latter two motions are moot, and will be denied as such. The Court
17 will also deny the motion for appointment of a guardian at this time, without prejudice to its
18 renewal. The motion was filed before Flowers had an opportunity to confer with his attorney
19 and, like his other two motions, is at least partially directed at urging the Court to make the
20 appointment of counsel ordered by the Ninth Circuit. (*See* Mot. ¶¶ 6–8, ECF No. 25.) Thus, after
21 speaking to his lawyer, Flowers may feel his interests are now adequately represented.
22 Furthermore, under Federal Rule of Civil Procedure 17(c), regarding representation for
23 incompetent persons, a court “may find that [an] incompetent person’s interests would be
24 adequately protected by the appointment of a lawyer.” *Krain v. Smallwood*, 880 F.2d 1119, 1121

1 (9th Cir. 1989); *see also Davis v. Walker*, 745 F.3d 1303, 1311 (9th Cir. 2014) (“Alternatively,
2 the court could have appointed counsel pursuant to 28 U.S.C. § 1915(e)(1), which would have
3 likely been sufficient.”).

4 Therefore, the motions are denied. However, if Flowers or his court-appointed attorney
5 should determine, after adequate consultation, that the appointment of a guardian ad litem is
6 necessary in this case, that motion may then be renewed.

7 The next step in this case is for Flowers to file an amended complaint. Due to the
8 unfortunate delays in appointing an attorney to represent Flowers, the Court will ensure he has
9 sufficient time to file his pleading, setting an initial deadline of sixty days from this order’s entry.

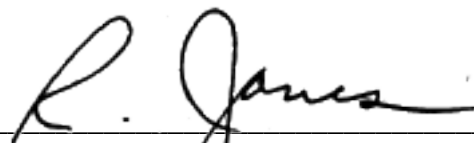
10 **CONCLUSION**

11 IT IS HEREBY ORDERED that the motion for appointment of a guardian ad litem (ECF
12 No. 25) is DENIED without prejudice.

13 IT IS FURTHER ORDERED that the remaining motions (ECF Nos. 26, 32) are DENIED
14 as moot.

15 IT IS FURTHER ORDERED that Flowers shall file an amended complaint within sixty
16 days of this order’s entry.

17 IT IS SO ORDERED.

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20 ROBERT C. JONES
21 United States District Judge
22 August 3, 2018.
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