

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ECHOTA C. WOLFCLAN,  
a/k/a Justin Allen Davey,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES, *et al.*,

Defendants.

Case No. C23-5399-TSZ-SKV

ORDER GRANTING REQUEST FOR  
APPOINTMENT OF COUNSEL AND  
DIRECTING THE PRO BONO  
COORDINATOR TO IDENTIFY PRO  
BONO COUNSEL

This is a prisoner civil rights action proceeding under 42 U.S.C. § 1983. Plaintiff Echota Wolfclan<sup>1</sup> submitted his civil rights complaint to the Court for filing on May 2, 2023. Dkt. 1-1. Plaintiff alleged in his complaint violations of his constitutional rights related to plumbing and sewer issues in his living unit at the Pierce County Jail (“the Jail”) that resulted in unhealthy living conditions. *See id.* Plaintiff included in his complaint a request for certification as a class

---

<sup>1</sup> Plaintiff has thus far in this action been referred to as Justin Davey. However, Plaintiff identified himself as Echota Wolfclan in his original submissions (*see* Dkt. 1) and that appears to be his preferred name. The Court will therefore refer to Plaintiff as Mr. Wolfclan going forward.

1 action, and he identified several fellow Pierce County Jail inmates as class members.<sup>2</sup> *See id.*  
 2 Plaintiff also submitted with his complaint an application to proceed *in form pauperis* (“IFP”)  
 3 and a request for appointment of counsel. *See* Dkts. 1, 1-3.

4 Because of deficiencies in Mr. Wolfclan’s IFP application, and the failure of any of the  
 5 other proposed Plaintiffs to submit IFP applications, deficiency notices were issued by the  
 6 Clerk’s Office directing that the deficiencies be corrected by a specified deadline. *See* Dkts. 3,  
 7 5-17. Mr. Wolfclan corrected his IFP application as did some, but not all, of the proposed  
 8 additional Plaintiffs. *See* Dkts. 20, 24, 27, 29. Mr. Wolfclan thereafter submitted a number of  
 9 proposed motions seeking to add Plaintiffs to this action. *See* Dkts. 30, 33-35. On July 10, 2023,  
 10 an Order was issued directing the proposed Plaintiffs to show cause why all but Mr. Wolfclan  
 11 should not be dismissed from this action without prejudice to the institution of new, separate  
 12 lawsuits by the individual Plaintiffs. Dkt. 40. Only Mr. Wolfclan and one other proposed  
 13 Plaintiff responded to the Court’s Order. Dkts. 42, 48-49. Mr. Wolfclan agreed that severance  
 14 was appropriate, explaining that he could not “help support a Multi-Person Complaint.” *See* Dkt.  
 15 42 at 1.

---

16  
 17 <sup>2</sup> Mr. Wolfclan filed a previous action in this Court raising similar issues and that action settled  
 18 earlier this year. *See Davey v. Pierce County*, C21-5068-LK. Not only has Mr. Wolfclan now filed a  
 19 second action on behalf of himself and other Jail inmates concerning plumbing and sewer issues at the  
 20 Jail, but the earlier action appears to have further prompted a number of other Jail inmates to file separate  
 21 actions raising the same issues. *See e.g., Sevasin v. Pierce County Council, et al.*, C23-5372-TSZ-SKV;  
 22 *Starkgraf v. Pierce County Council, et al.*, C23-5390-TSZ-SKV; *Obenchain v. Washington State DSHS,*  
 23 *et al.*, C23-5419-JLR-TLF; *Larson v. Pierce County Council, et al.*, C23-5483-TSZ-SKV; *Abdalibbarri v.*  
*Washington State DSHS, et al.*, C23-5485-TSZ-SKV; *Elliott v. Pierce County Council, et al.*, C23-5486-  
 TSZ-SKV; *Poland v. Troyer, et al.*, C23-5536-TSZ-SKV; *Ruffin v. Pierce County Council, et al.*, C23-  
 5541-TSZ-SKV; *Han v. Pierce County, et al.*, C23-5613-TSZ-SKV; *Reed v. Pierce County, et al.*, C23-  
 5660-TL-MLP; *Cardey v. Pierce County, et al.*, C23-5701-TL-BAT; *Stacy v. Pierce County, et al.*, C23-  
 5718-JHC-GJL; *Widland v. Pierce County, et al.*, C23-5719-TSZ-SKV; *Bonds v. Pierce County, et al.*,  
 C23-5720-TSZ-SKV; *Rozier v. Pierce County, et al.*, C23-5724-BJR-BAT; *LeAir v. Pierce County, et al.*,  
 C23-5738-RAJ-BAT; *Estes v. Pierce County, et al.*, C23-5749-RAJ-GJL; *Yerly v. Pierce County, et al.*,  
 C23-5752-JCC-TLF.

1 On August 21, 2023, a Report and Recommendation was issued recommending that Mr.  
2 Wolfclan be permitted to proceed with this action, upon submission of an amended complaint  
3 pertaining only to him, and that all other proposed Plaintiffs be dismissed without prejudice to  
4 them instituting new, separate lawsuits. Dkt. 52. Upon further consideration of the record in this  
5 action, and review of the multiple individual cases raising similar issues filed by other Jail  
6 inmates, this Court has determined that it is appropriate at this juncture to withdraw the pending  
7 Report and Recommendation and to allow this case to proceed as filed, albeit with the  
8 appointment of counsel. The Court addresses Mr. Wolfclan's request for appointment of counsel  
9 below.

10 Generally, the decision to appoint pro bono counsel rests within "the sound discretion of  
11 the trial court and is granted only in exceptional circumstances." *Agyeman v. Corrections Corp.*  
12 *of America*, 390 F.3d 1101, 1103 (9th Cir. 2004). A finding of exceptional circumstances  
13 requires an evaluation of both the likelihood of success on the merits and the ability of the  
14 plaintiff to articulate his or her claims *pro se* in light of the complexity of the legal issues  
15 involved. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991) (citations omitted). Neither of  
16 these factors is dispositive, and the factors must be viewed together before reaching a decision  
17 regarding appointment of counsel. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

18 Plaintiff's request for appointment of counsel is somewhat sparse. Dkt. 1-3. He cites to  
19 mental health issues and the manner in which they are being addressed at the Jail, he claims that  
20 Pierce County is abusing inmates, and he references the prior civil rights action in which he was  
21 appointed counsel and obtained a settlement. *See id.* However, the seriousness of Plaintiff's  
22 underlying claims regarding the conditions of confinement at the Jail, and the number of inmates  
23 who have purportedly been impacted by the alleged unconstitutional conditions, highlight the

1 complexities, or potential complexities, of this case. In addition, though the Court cannot, at this  
2 time, determine with any degree of certainty the likelihood that Mr. Wolfclan or any of the other  
3 proposed Plaintiffs will succeed on the merits of the claims asserted in this action, the fact that  
4 similar claims asserted by Mr. Wolfclan in his prior action were resolved favorably to him  
5 suggests the claims may have merit.<sup>3</sup>

6 Based on the foregoing, this Court hereby ORDERS as follows:

7 (1) The Report and Recommendation issued by the Honorable Grady J. Leupold on  
8 August 21, 2023 (Dkt. 52) is WITHDRAWN.

9 (2) Mr. Wolfclan's request for appointment of counsel (Dkt. 1-3) is GRANTED,  
10 contingent on identification of counsel willing to represent Plaintiffs in this matter. The Western  
11 District of Washington's pro bono coordinator is directed to identify counsel to represent  
12 Plaintiffs, in accordance with the Court's General Order 16-20 ("In re: Amended Plan for the  
13 Representation of Pro Se Litigants in Civil Rights Actions"), section 4. Once it has been  
14 determined whether the Court will be able to appoint an attorney to represent Plaintiffs, the Court  
15 will issue appropriate orders.

16 //

17 //

18 //

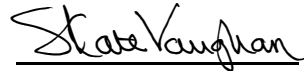
19 //

---

20 <sup>3</sup> The Court observes that since it has determined it is appropriate to allow this action to proceed  
21 with multiple Plaintiffs appointment of counsel is, in fact, necessary as the Ninth Circuit has made clear  
22 that a *pro se* litigant such as Mr. Wolfclan has no authority to appear as an attorney for others. *See C.E.*  
23 *Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987) (citing *Russell v. United States*, 308  
F.2d 78, 79 (9th Cir. 1962)); *McShane v. United States*, 366 F.2d 286, 288 (9th Cir. 1966). However, the  
other factors cited herein also weigh in favor of appointment of counsel.

1 (3) The Clerk is directed to send copies of this Order to Plaintiffs, to the pro bono  
2 coordinator, and to the Honorable Thomas S. Zilly.

3 DATED this 1st day of September, 2023.

4 

5 S. KATE VAUGHAN  
6 United States Magistrate Judge  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23