

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

DAVID WEBB,)	CIVIL NO. 08-00487 DAE-LEK
)	
Plaintiff,)	
)	
vs.)	
)	
JOANNE SUMIE ONIZUKA, ET AL.,)	
)	
Defendants.)	
_____)	

**ORDER DENYING PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL
FOR CLASS ACTION STATUS AGAINST DEFENDANTS
CARFAX INC, POLK CARFAX, INC & SHELLY EUROCARS, LLC/BMWH**

Before the Court, pursuant to a designation by United States District Judge David Alan Ezra, is pro se Plaintiff David Webb's ("Plaintiff") Motion for Appointment of Counsel for Class Action Status Against Defendants Carfax Inc., Polk Carfax, Inc. & Shelly Eurocars, LLC/BMWH ("Motion"), filed on June 4, 2009. Defendant Shelly Eurocars, LLC ("Shelly") filed a memorandum in opposition to the Motion on June 9, 2009. The Court finds this matter suitable for disposition without a hearing pursuant to Rule LR7.2(d) of the Local Rules of Practice of the United States District Court for the District of Hawaii. After careful consideration of the Motion and the relevant legal authority, Plaintiff's Motion is HEREBY DENIED for the reasons set forth below.

BACKGROUND

Plaintiff filed the instant action on October 28, 2008.

He filed a First Amended Complaint on January 27, 2009. On April 8, 2009, the district judge issued an order dismissing Plaintiff's First Amended Complaint. The district judge, however, gave Plaintiff thirty days to amend his complaint according the terms of the order. The district judge cautioned that the failure to file an amended complaint meeting the requirements in the order would result in the dismissal of the entire action with prejudice.

Neither the original Complaint nor the First Amended Complaint purported to allege a class action. On March 27, 2009, Plaintiff filed a document titled "Advisement to the Court for Class Action Status Against Defendants Carfax Inc./Polk Carfax, Inc. & Shelly Eurocars, Inc./BMW - FRCP Rule 23(g)(3)". The district judge ruled that the matter was moot in light of the dismissal of the First Amended Complaint. Plaintiff filed his Second Amended Complaint on April 30, 2009, purporting to allege a class action against Defendants Carfax, Inc., Polk Carfax, Inc., and Shelly Eurocars, LLC/BMWH. He states that he "alleges all similarly situated plaintiffs' claims against Defendant CARFAX in Hawaii and 21 other States the District of Columbia (sic)". [Second Amended Complaint at 1.] Plaintiff also filed a supplemental Second Amended Complaint on May 4, 2009.

In the instant Motion, Plaintiff seeks the appointment of class counsel pursuant to Federal Rule of Civil Procedure 23(g)(3). In its memorandum in opposition, Shelly argues that

the Motion is premature because there are pending motions to dismiss the Second Amended Complaint and Plaintiff's purported class has yet to be certified. Shelly also argues that Rule 23(g)(3) is inapplicable because Plaintiff has chosen to represent himself.

DISCUSSION

Once a court certifies a class, the court must appoint class counsel. See Fed. R. Civ. P. 23(g)(1). Rule 23(g)(3) states: "The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action." Where a pro se plaintiff attempts to allege a class action, the court arguably has the discretion to appoint counsel to represent the class. See, e.g., Hickson v. Burkhardt, 110 F.R.D. 177, 178 n.1 (S.D.W. Va. 1986). This Court, however, finds that Plaintiff's Motion is premature because there are pending motions to dismiss, one of which argues that, even if Plaintiff alleges a class action, the district court does not have diversity jurisdiction over the action. [Defs. Carfax, Inc. and Polk Carfax, Inc.'s Motion to Dismiss Second Amended Complaint and Supplemental "Second Amended" Complaint, filed 6/4/09 (dkt. no. 169), Mem. in Supp. of Motion at 5.] Further, the district judge has stated that he would dismiss the action with prejudice if Plaintiff did not amend his complaint pursuant to the terms set forth in the order dismissing the First Amended Complaint.

CONCLUSION

On the basis of the foregoing, Plaintiff's Motion for Appointment of Counsel for Class Action Status Against Defendants Carfax Inc., Polk Carfax, Inc. & Shelly Eurocars, LLC/BMWH, filed June 4, 2009, is HEREBY DENIED WITHOUT PREJUDICE.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, June 15, 2009.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States Magistrate Judge

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