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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Robert William Dutcher,
10 Plaintiff,

11 v.

12 Charles L Ryan, et al.,
13 Defendants.
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No. CV-15-01079-PHX-ROS (ESW)

ORDER

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16 The following sets forth the Court's rulings on (i) Defendant Corizon Health Inc.'s
17 "Motion to Stay Discovery, as to Corizon Only, Pending Resolution of Motion to
18 Dismiss [Doc. 69]" (Doc. 70) (ii) Defendant Stowe's "Motion to Stay Discovery" (Doc.
19 73); (iii) Plaintiff's "Motion for Appointment of Counsel" (Doc. 80); and (iv) Plaintiff's
20 "Motion for Stay of Proceedings" (Doc. 81).
21

I. DISCUSSION

22 **A. Defendant Corizon Health Inc.'s "Motion to Stay Discovery, as to Corizon**
23 **Only, Pending Resolution of Motion to Dismiss [Doc. 69]" (Doc. 70)**

24 Defendant Corizon Health Inc. ("Corizon") has moved to stay discovery pending
25 resolution of its Motion to Dismiss (Doc. 69), which argues that the deliberate
26 indifference claims against Corizon should be dismissed with prejudice because the
27 applicable statute of limitations has run. Plaintiff's Response (Doc. 76) to Corizon's
28 Motion to Stay (Doc. 70) does not articulate a persuasive reason why the Court should

1 deny the requested stay. Instead, Plaintiff states only that he requests that “the
2 Defendant’s Motion be denied as the Defendants Motion to Dismiss (Doc. 69) is without
3 merit and is little more than a belated Motion to Reconsider.” (Doc. 76 at 1). For good
4 cause shown, the Court will grant Corizon’s Motion to Stay (Doc. 70).

5 **B. Defendant Stowe’s “Motion to Stay Discovery” (Doc. 73)**

6 On November 21, 2016, Defendant Stowe moved to stay discovery in this matter
7 pending resolution of Defendant Stowe’s Motion for Summary Judgment (Doc. 71),
8 which is based on Plaintiff’s alleged failure to properly exhaust his administrative
9 remedies as to his retaliation claim against Defendant Stowe before initiating this action.
10 Plaintiff has not responded to Defendant Stowe’s “Motion to Stay Discovery” (Doc. 73).
11 *See* LRCiv 7.2(i) (court may deem failure to file response to a motion as consent to the
12 denial or granting of the motion and the Court may summarily dispose the motion). For
13 good cause shown, the Court will grant Defendant Stowe’s “Motion to Stay Discovery”
14 (Doc. 73).

15 **C. Plaintiff’s “Motion for Appointment of Counsel” (Doc. 80)**

16 As previously explained to Plaintiff (Doc. 36 at 16), there is no
17 constitutional right to the appointment of counsel in a civil case. *See Johnson v. U.S.*
18 *Dep’t of Treasury*, 939 F.2d 820, 824 (9th Cir. 1991); *Ivey v. Bd of Regents of the Univ.*
19 *of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982). In pro se and *in forma*
20 *pauperis* proceedings, district courts do not have the authority “to make coercive
21 appointments of counsel.” *Mallard v. United States District Court*, 490 U.S. 296, 310
22 (1989). District courts, however, do have the discretion to request that an attorney represent
23 an indigent civil litigant upon a showing of “exceptional circumstances.” 28 U.S.C. §
24 1915(e)(1); *Agyeman v. Corrections Corp. Of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).

25 On September 28, 2015, Plaintiff filed a “Motion for Appointment of Counsel”
26 (Doc. 28). The Court denied the Motion (Doc. 28) in its January 14, 2016 Order, finding
27 that this case did not present exceptional circumstances warranting the appointment of
28 counsel. (Doc. 36 at 16, 19). On December 12, 2016, Plaintiff filed a second “Motion

1 for Appointment of Counsel” (Doc. 80). Plaintiff states that he is legally blind and that
2 “[d]ue to job changes and hours of work the help Plaintiff had to assist him is no longer
3 able to assist him.” (*Id.* at 1). However, Plaintiff’s January 3, 2017 and January 10, 2017
4 filings (Docs. 86, 87, 90) indicate that Plaintiff has obtained the assistance of another
5 inmate. Although Plaintiff may have to rely on others to prepare documents, he has
6 demonstrated a satisfactory ability to articulate his claims, none of which are complex.
7 The Court will deny Plaintiff’s second request for court-appointed counsel (Doc. 80).¹

8 **D. Plaintiff’s “Motion for Stay of Proceedings” (Doc. 81)**

9 On December 12, 2016, Plaintiff filed a “Motion for Stay of Proceedings” (Doc.
10 81). Defendant Stowe responded (Doc. 85) in opposition. In his Reply (Doc. 90),
11 Plaintiff clarified that he “was not asking for an indefinite stay,” but was asking for a stay
12 until the Court rules on Plaintiff’s “Motion for Appointment of Counsel” (Doc. 80). In
13 light of the Court’s ruling on Plaintiff’s “Motion for Appointment of Counsel” (Doc. 80),
14 Plaintiff’s “Motion for Stay of Proceedings” (Doc. 81) will be denied as moot.²

15 **II. CONCLUSION**

16 **IT IS ORDERED** granting Defendant Corizon Health Inc.’s “Motion to Stay
17 Discovery, as to Corizon Only, Pending Resolution of Motion to Dismiss [Doc. 69]”
18 (Doc. 70)

19 **IT IS ORDERED** granting Defendant Stowe’s “Motion to Stay Discovery” (Doc.
20 73).

21 **IT IS FURTHER ORDERED** denying Plaintiff’s “Motion for Appointment of
22

23 ¹ The inmate who prepared Plaintiff’s “Reply to Defendants Response to Plaintiffs
24 Motion for Appointment of Counsel” wrote the following statement: “I have prepared
25 [sic] this document I am an aide for Building 5 dealing with 50 inmates and cannot
26 do this for him all the time.” (Doc. 87 at 2). Plaintiff has responded to all of Defendants’
27 dispositive motions (Docs. 69, 71). Plaintiff is not precluded from renewing his request
for counsel if one or both of the dispositive motions are resolved in Plaintiff’s favor and
circumstances change with respect to the availability of inmate assistance. The Court,
however, reiterates that it can only request counsel for Plaintiff and cannot “make
coercive appointments of counsel.” *Mallard*, 490 U.S. at 310.

28 ² Moreover, the Court notes that the dispositive motions filed in this case (Docs.
69, 71) are now fully briefed.

1 Counsel” (Doc. 80) without prejudice.

2 **IT IS FURTHER ORDERED** denying as moot Plaintiff’s “Motion for Stay of
3 Proceedings” (Doc. 81).

4 Dated this 31st day of January, 2017.



Eileen S. Willett
United States Magistrate Judge

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