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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JEROME WHITE,

12 Plaintiff,

13 vs.

14 PATEL, et al.,

15 Defendants.
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1:11-cv-00047-AWI-GSA-PC

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL AND/OR
MOTION FOR STAY
(Doc. 22.)

ORDER DENYING REQUEST FOR
TELECONFERENCE

ORDER GRANTING EXTENSION OF
TIME TO FILE OPPOSITION TO
MOTION TO DISMISS

DEADLINE FOR PLAINTIFF TO FILE
OPPOSITION TO MOTION TO DISMISS:
NOVEMBER 4, 2013

21 **I. BACKGROUND**

22 Jerome White ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in
23 this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing
24 this action on January 11, 2011. (Doc. 1.) This case now proceeds on the First Amended
25 Complaint, filed by Plaintiff on March 12, 2012, against defendants Chen, Patel, Ramon, and
26 Thompson, for inadequate medical care under the Eighth Amendment. (Doc. 14.)

27 On August 22, 2013, defendants Chen and Patel filed a motion to dismiss this action for
28 failure to exhaust administrative remedies. (Doc. 26.) On September 5, 2013, Plaintiff filed a

1 motion for appointment of counsel and/or motion for stay, and a request for a telephonic
2 conference. (Doc. 27.)

3 **II. MOTION FOR APPOINTMENT OF COUNSEL**

4 Plaintiff requests appointment of counsel because on July 11, 2013, he was admitted to
5 a state hospital for mentally disabled inmates, where an adequate law library is not provided.

6 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.
7 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an attorney to
8 represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court
9 for the Southern District of Iowa, 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However,
10 in certain exceptional circumstances the court may request the voluntary assistance of counsel
11 pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

12 Without a reasonable method of securing and compensating counsel, the court will seek
13 volunteer counsel only in the most serious and exceptional cases. In determining whether
14 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
15 of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the
16 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

17 In the present case, the court does not find the required exceptional circumstances. At
18 this stage of the proceedings, the court cannot make a determination that Plaintiff is likely to
19 succeed on the merits. Defendants have filed a motion to dismiss for failure to exhaust
20 remedies, which is pending. This issue is not complex, and based on the record in this action, it
21 appears that Plaintiff is able to adequately articulate his claims and respond to court orders. Id.
22 Therefore, Plaintiff’s motion for appointment of counsel shall be denied, without prejudice to
23 renewal of the motion at a later stage of the proceedings.

24 **II. MOTION FOR STAY OF PROCEEDINGS**

25 In the alternative, Plaintiff requests a stay of the proceedings in this action until after he
26 has been discharged from the mental health program.

27 The Court does not lightly stay litigation, due to the possibility of prejudice to
28 defendants. Although the Court recognizes that Plaintiff is challenged by his health concerns

1 and hospitalization, Plaintiff's only remedy is not a stay of this action. In the alternative,
2 Plaintiff shall be granted an extension of time to respond to the motion to dismiss. Plaintiff
3 claims that he has documentation showing he exhausted his remedies, and he expects to receive
4 postal materials within the next twenty-one days. Research at the law library should not be
5 necessary to respond to the motion to dismiss. Therefore, good cause appearing, Plaintiff shall
6 be granted an extension of time in which to file an opposition to the motion to dismiss. Should
7 Plaintiff require a further extension of time, he should file a motion before the current deadline
8 expires. Thus, Plaintiff's motion for stay shall be denied.

9 **III. REQUEST FOR TELECONFERENCE**

10 Plaintiff requests the court to schedule a teleconference with all of the parties to this
11 action, to discuss his present situation and find a solution. The court finds no good cause to
12 schedule a conference at this juncture. By this order, Plaintiff's immediate need for an
13 extension of time in this action has been resolved. Therefore, Plaintiff's request for a
14 teleconference shall be denied.

15 **IV. CONCLUSION**

16 Based on the foregoing, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff's motion for appointment of counsel is DENIED;
- 18 2. Plaintiff's motion for stay of the proceeding in this action is DENIED;
- 19 3. Plaintiff's request for a teleconference is DENIED; and
- 20 4. Plaintiff is granted an extension of time **until November 4, 2013**, to file an
21 opposition to defendants' motion to dismiss of August 22, 2013.

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25 IT IS SO ORDERED.

26 Dated: **September 15, 2013**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE