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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANDRE WELLS,)	1:11-cv-1550-LJO-BAM (PC)
)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF’S
	)	MOTION TO STAY ACTION
v.	)	(ECF No. 81)
)	
T. CAGLE, et al.,	)	ORDER DENYING PLAINTIFF’S
	)	MOTIONS FOR THE APPOINTMENT OF
Defendants.	)	COUNSEL WITHOUT PREJUDICE
	)	(ECF Nos. 96, 98)
)	
	)	ORDER DENYING DEFENDANTS’
	)	MOTIONS TO COMPEL AND MOTIONS
	)	TO MODIFY THE DISCOVERY AND
	)	SCHEDULING ORDER WITHOUT
	)	PREJUDICE
	)	(ECF Nos. 75, 77, 90)
)	
	)	ORDER DENYING PLAINTIFF’S MOTION
	)	FOR AN EXTENSION OF TIME TO REPLY
	)	AS MOOT (ECF No. 94)
)	
)	
)	

I. Procedural Background

Plaintiff Andre Wells (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to [42 U.S.C. § 1983](#) on July 29, 2011. This action proceeds on Plaintiff’s claims against Defendants T. Cagle and R. Perez for violations of the Eighth Amendment.

On June 18, 2014, Plaintiff filed a motion for the appointment of counsel. (ECF No. 73.)

1 On July 3, 2014, Defendants filed a motion to compel Plaintiff's responses to
2 Defendants' Interrogatories, Set One. (ECF No. 75.) On July 8, 2014, Defendants filed a motion
3 to modify the scheduling order to extend the deadlines for discovery and dispositive motions by
4 120 days. (ECF No. 77.)

5 On August 1, 2014, the Court denied Plaintiff's motion for appointment of counsel
6 without prejudice and directed Plaintiff to file a response to Defendants' pending motions to
7 compel discovery responses and to modify the scheduling order. (ECF No. 80.)

8 On August 8, 2014, Plaintiff filed a motion requesting a stay of this action or, in the
9 alternative, appointment of counsel. Plaintiff explained that he was at the Department of Mental
10 Health and would be transferred to an intermediate care facility ("ICF"). Plaintiff also reported
11 that he did not have access to a law library and he had received only a crayon for writing. He
12 asked the Court to put this case on hold for the year he will be at the ICF or to appoint him
13 counsel. (ECF No. 81.)

14 On August 12, 2014, the Court directed Defendants to file a response to Plaintiff's
15 motion for stay or appointment of counsel. (ECF No. 82.)

16 Following an extension of time, Defendants filed an opposition to the motion to stay.
17 Defendants argued that Plaintiff's claim that his status as an inmate-patient prevented him from
18 litigating this case lacked merit. Defendants reported that Plaintiff had been placed in a mental
19 health crisis bed on or about June 1, 2014, and released from crisis bed on June 4, 2014. Plaintiff
20 again was admitted to a crisis bed on June 21, 2014, and on June 30, 2014, he was referred to
21 DSH-Vacaville. Plaintiff was admitted to DSH-Vacaville on July 16, 2014, and placed in the
22 Acute Psychiatric Program. At DSH-Vacaville, Plaintiff had access to pen fillers for writing in
23 the dayroom, could obtain law library materials through the paging system and could request
24 assistance from a correctional counselor with respect to obtaining access to his legal materials.
25 (ECF No. 87.)

26 On September 18, 2014, Defendants filed a motion to compel Plaintiff's deposition and
27 for sanctions. Defendants asserted that Plaintiff appeared at his deposition on July 21, 2014, but
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1 was not cooperative, claiming that he did not have his legal papers and was not prepared to
2 proceed with his deposition. Defendants also asserted that Plaintiff refused to appear for his
3 rescheduled deposition on August 27, 2014. (ECF No. 90.)

4 On November 7, 2014, Plaintiff filed a motion requesting an extension of time to file a
5 reply to Defendants' reply. (ECF No. 94.)

6 On November 20, 2014, Plaintiff filed a renewed motion for the appointment of counsel.
7 Plaintiff reported that he had been transferred to an ICF in Stockton, California, but that his
8 situation had worsened. Plaintiff again asserted a lack of law library access and a lack of
9 supplies. Plaintiff also claimed that he had not been provided with documents. Plaintiff further
10 asserted that he had been unable to focus on treatment, felt hopeless and overwhelmed, thought
11 of suicide, and experienced symptoms of a bipolar disorder. (ECF No. 96.)

12 On November 25, 2014, Plaintiff filed a motion requesting a ruling on his motion for the
13 appointment of counsel. Plaintiff asserted that he was in a worse condition, but provided no
14 supporting information. (ECF No. 97.)

15 **II. Plaintiff's Motion for Stay**

16 Plaintiff has requested a stay of this action or, in the alternative, the appointment of
17 counsel. The district court "has broad discretion to stay proceedings as an incident to its power
18 to control its own docket." Clinton v. Jones, 520 U.S. 681, 706 (1997) (citing Landis v. North
19 American Co., 299 U.S. 248, 254 (1936)). The party seeking the stay bears the burden of
20 establishing the need to stay the action. Clinton, 520 U.S. at 708.

21 Although Plaintiff's reported difficulties in obtaining law library access, pens and other
22 supplies are not sufficient to warrant either a stay or the appointment of counsel, Plaintiff has had
23 documented mental health issues since at least June 2014. The serious nature of Plaintiff's
24 mental health issues, which have been reported by Defendants to include repeated placement in a
25 crisis bed and placement in an Acute Psychiatric Program, support a stay. Further, Plaintiff's
26 mental health has hampered discovery and delayed prosecution of this action. The Court finds a
27 short-term stay of ninety (90) days will allow Plaintiff an opportunity to gather materials, secure
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1 his legal documents, and marshal evidence of his mental status if he intends to renew his motion
2 for the appointment of counsel. The brief stay will not prejudice Defendants as this action
3 cannot move forward with Plaintiff's mental status at issue. At the end of the ninety-day period,
4 the parties will be required to submit written status reports regarding Plaintiff's mental health
5 and ability to prosecute this action. To that end, Plaintiff shall submit information regarding his
6 efforts to obtain his needed legal materials during the ninety-day period.

7 **III. Pending Motions**

8 In light of the stay, Plaintiff's pending motions for the appointment of counsel shall be
9 denied without prejudice. As necessary and appropriate, Plaintiff may renew his motion for the
10 appointment of counsel at the conclusion of the ninety-day stay. Any such motion must be
11 supported by documented evidence of Plaintiff's current mental status and functioning.

12 Due to the stay, Defendants' pending motions to compel and motion to modify the
13 scheduling order also shall be denied without prejudice. Following the submission of status
14 reports, the Court will issue an amended scheduling order setting forth deadlines for the
15 completion of discovery and the filing of dispositive motions. If needed, Defendants may renew
16 their motions to compel. As a final matter, Plaintiff's requested an extension of time to file a
17 reply to Defendants' reply shall be denied. This request is now moot.

18 **IV. Conclusion and Order**

19 For the reasons stated, it is HEREBY ORDERED as follows:

- 20 1. Plaintiff's motion for a stay of this action, filed on August 8, 2014, is GRANTED;
- 21 2. This action is stayed for a period of ninety (90) days from the date of this order;
- 22 3. On or before March 20, 2015, the parties shall filed status reports regarding Plaintiff's
23 mental health status and ability to prosecute this action. Additionally, Plaintiff shall
24 provide information regarding his efforts to secure necessary legal materials;
- 25 4. Plaintiff's motions for the appointment of counsel are DENIED WITHOUT
26 PREJUDICE. Plaintiff may renew his motion for the appointment of counsel, with
27 evidentiary support, at the conclusion of the ninety (90) day stay;

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- 5. Defendants’ motions to compel discovery and motion to modify the scheduling order are DENIED WITHOUT PREJUDICE; and
- 6. Plaintiff’s motion for an extension of time to file a reply to Defendants’ reply is DENIED AS MOOT.

IT IS SO ORDERED.

Dated: December 19, 2014

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE