



1 access to the jail's "Legal Research Kiosk." He asks that the Court order one of the  
2 following forms of relief: (1) that the action be stayed until his release from jail or for a  
3 period of one year, (2) that he be appointed counsel, (3) that the action be dismissed  
4 without prejudice, or (4) that the Court order other appropriate relief.

## 5 **II. ACCESS TO LEGAL RESOURCES**

6 Plaintiff's right of access to the Courts includes access to a law library and a  
7 reasonable amount of time to use the law library. Lindquist v. Idaho State Bd. of  
8 Corrections, 776 F.2d 851, 858 (9th Cir.1985). The Court suspects that the "Legal  
9 Research Kiosk" referred to in Plaintiff's motion is but one means for jail detainees to  
10 access legal resources. Plaintiff likely has other constitutionally adequate means of  
11 accessing legal resources at the jail. The Court will direct the Clerk's Office to fax a copy  
12 of this order to the Litigation Coordinator at the jail, and hereby requests the  
13 Coordinator's assistance in resolving Plaintiff's concerns.

## 14 **III. REQUEST FOR STAY**

15 Plaintiff seeks a stay of up to one year.

16 "The proponent of the stay bears the burden of establishing its need." Clinton v.  
17 Jones, 520 U.S. 681, 706 (1997). Here, Plaintiff has not established his need for a stay.  
18 As stated, although Plaintiff may not have access to a "Legal Research Kiosk," he likely  
19 has constitutionally adequate access to legal resources at the jail. Absent a further  
20 showing that Plaintiff has attempted to research his claims but was unable to, the Court  
21 is unlikely to entertain a request to stay.

## 22 **IV. APPOINTMENT OF COUNSEL**

23 Plaintiff does not have a constitutional right to appointed counsel in this action,  
24 Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an  
25 attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1), Mallard v. United  
26 States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). In  
27 certain exceptional circumstances the court may request the voluntary assistance of  
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1 counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525. However, without a  
2 reasonable method of securing and compensating counsel, the court will seek volunteer  
3 counsel only in the most serious and exceptional cases. In determining whether  
4 “exceptional circumstances exist, the district court must evaluate both the likelihood of  
5 success of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in  
6 light of the complexity of the legal issues involved.” Id. (internal quotation marks and  
7 citations omitted).

8 In the present case, the court does not find the required exceptional  
9 circumstances. Even if it is assumed that plaintiff is not well versed in the law and that he  
10 has made serious allegations which, if proved, would entitle him to relief, his case is not  
11 exceptional. This court is faced with similar cases almost daily. Further, at this early  
12 stage in the proceedings, the court cannot make a determination that plaintiff is likely to  
13 succeed on the merits, and based on a review of the record in this case, the court does  
14 not find that plaintiff cannot adequately articulate his claims. Id.

15 For the foregoing reasons, plaintiff’s motion for the appointment of counsel will be  
16 denied without prejudice.

17 **V. VOLUNTARY DISMISSAL OF ACTION**

18 Under Federal Rule of Civil Procedure 41(a)(1)(A)(i), a plaintiff may dismiss an  
19 action without a court order by filing a notice of dismissal before the opposing party  
20 serves either an answer or a motion for summary judgment.

21 Here, the Court finds Plaintiff’s somewhat equivocal request to dismiss insufficient  
22 under Rule 41(a)(1)(A)(i). However, if Plaintiff wishes to dismiss this action without  
23 prejudice, he may do so at this time by filing a notice of voluntary dismissal.

24 **VI. EXTENSION OF TIME**

25 In light of the foregoing, the Court will grant Plaintiff an additional thirty days to  
26 either (1) amend his complaint, (2) notify the Court of his willingness to proceed only on  
27 his cognizable claim, or (3) file a notice of voluntary dismissal.

1 **VII. CONCLUSION AND ORDER**

2 Based on the foregoing, it is HEREBY ORDERED that:

- 3 1. Plaintiff's request for stay (ECF No. 13) is DENIED without prejudice;
- 4 2. Plaintiff's request for appointment of counsel (ECF No. 13) is DENIED
- 5 without prejudice;
- 6 3. Plaintiff's request for dismissal (ECF No. 13) is DENIED without prejudice;
- 7 4. Within thirty days of the date of this order, Plaintiff shall either (1) file an
- 8 amended pleading, (2) notify the Court of his willingness to proceed only
- 9 on his cognizable claim, or (3) file a notice of voluntary dismissal;
- 10 5. If Plaintiff fails to respond to this order within thirty days, the action will be
- 11 dismissed, with prejudice, for failure to obey a court order and failure to
- 12 prosecute;
- 13 6. The Clerk's Office is directed to fax a copy of this order to the Litigation
- 14 Coordinator at the Fresno County Jail; and
- 15 7. The Court requests that the Litigation Coordinator assist Plaintiff in
- 16 accessing legal resources that may be available to him at the jail.

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18 IT IS SO ORDERED.

19 Dated: July 13, 2015

20 /s/ Michael J. Seng  
21 UNITED STATES MAGISTRATE JUDGE

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