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8	UNITED STATES DISTRICT COURT	
9	EASTERN DISTRICT OF CALIFORNIA	
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11	WONDIYRAD KABEDE,	Case No. 1:15-cv-00635-BAM (PC)
12	Plaintiff,	ORDER DISCHARGING ORDER TO SHOW CAUSE
13	V.	(ECF No. 35)
14	MULE CREEK PRISON WARDEN, et al.,	ORDER DENYING PLAINTIFF'S MOTION TO STAY PROCEEDINGS AND TO APPOINT COUNSEL (ECF No. 36)
15	Defendants.	
16		THIRTY (30) DAY DEADLINE
17	Disintiff Wondigged Kahada ("Disinti	f ^o) is a state mission on proceeding process and in
18	Plaintiff Wondiyrad Kabede ("Plaintiff") is a state prisoner proceeding pro se and in	
19 20	forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this	
20	action on August 13, 2013, in the Northern District of California. On April 24, 2015, the action	
21	was transferred to this Court. (ECF No. 13.) Plaintiff has consented to magistrate judge	
22	jurisdiction. (ECF No. 19.)	
23	On May 3, 2017, the Court dismissed Plaintiff's second amended complaint with leave to	
24	amend within thirty (30) days. (ECF No. 34.) Plaintiff failed to timely file an amended	
25	complaint. On June 12, 2017, the Court issued an order to show cause why this action should not	
26	be dismissed for failure to state a claim, failure to obey a court order, and failure to prosecute.	
27	(ECF No. 35.)	
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I

On June 26, 2017, Plaintiff filed the instant motion, addressed to the Clerk of the Court, requesting a stay of proceedings or the appointment of counsel. (ECF No. 36.) Plaintiff states that he is not in a healthy condition to file and prepare court documents, as he has recently gotten a pacer implanted. Plaintiff states that due to swelling in his feet and legs, he is in pain 24 hours a day and is confined to a wheelchair. Plaintiff seeks a "pause" in this action until his condition improves, or the appointment of counsel due to his medical conditions. Plaintiff states that he is currently housed at California Health Care Facility. (<u>Id.</u>)

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I.

Stay of Proceedings

9 The district court "has broad discretion to stay proceedings as an incident to its power to
10 control its own docket." <u>Clinton v. Jones</u>, 520 U.S. 681, 706 (1997) (citing <u>Landis v. N. Amer.</u>
11 <u>Co.</u>, 299 U.S. 248, 254 (1936)). The party seeking the stay bears the burden of establishing the
12 need to stay the action. <u>Clinton</u>, 520 U.S. at 708.

Plaintiff has not met his burden of establishing the need to stay this action. Plaintiff has
not provided any indication of the extent of the requested stay, including the anticipated length of
his recovery. However, the Court finds good cause for an extension of time to amend the
complaint. If Plaintiff requires additional time following the extension granted here, the Court
will consider a renewed motion for stay presenting evidence and information regarding the need
for and extent of a stay, or further motions for extension of time setting forth good cause.

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II. Appointment of Counsel

As Plaintiff was previously informed, he does not have a constitutional right to appointed
counsel in this action, <u>Rand v. Rowland</u>, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court
cannot require an attorney to represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). <u>Mallard v.</u>
<u>U.S. Dist. Ct. for the S. Dist. of Iowa</u>, 490 U.S. 296, 298 (1989). However, in certain exceptional
circumstances the Court may request the voluntary assistance of counsel pursuant to § 1915(e)(1).
<u>Rand</u>, 113 F.3d at 1525.

Without a reasonable method of securing and compensating counsel, the Court will seek
volunteer counsel only in the most serious and exceptional cases. In determining whether
"exceptional circumstances exist, the district court must evaluate both the likelihood of success of

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1	the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the		
2	complexity of the legal issues involved." <u>Id.</u> (internal quotation marks and citations omitted).		
3	The Court has considered Plaintiff's renewed request for the appointment of counsel, but		
4	does not find the required exceptional circumstances here. Generally, a plaintiff that shows at		
5	least some ability to articulate his claims is not entitled to appointment of counsel, regardless of		
6	whether he has mental and physical health problems or is incarcerated. See, e.g., Warren v.		
7	Harrison, 244 Fed. Appx. 831, 832 (9th Cir. 2007) (holding that an inmate plaintiff who had		
8	alleged mental illness did not qualify for appointment of counsel because he competently		
9	presented his claims and attached three pertinent exhibits). In this case, despite Plaintiff's		
10	allegations that he has had a pacer implanted, is in constant pain, and is confined to a wheelchair,		
11	he was able to draft and submit the instant motion articulating his position. Furthermore, at this		
12	early stage in the proceedings, the Court cannot make a determination that Plaintiff is likely to		
13	succeed on the merits.		
14	Accordingly, it is HEREBY ORDERED that:		
15	1. The order to show cause issued on June 12, 2017 (ECF No. 35), is DISCHARGED;		
16	2. Plaintiff's motion requesting a stay of proceedings and to appoint counsel (ECF No.		
17	36) is DENIED without prejudice;		
18	3. Within thirty (30) days from the date of service of this order, Plaintiff shall file a third		
19	amended complaint or a notice of voluntary dismissal; and		
20	4. If Plaintiff fails to file an amended complaint in compliance with this order, the		
21	Court will dismiss this action, with prejudice, for failure to state a claim and to		
22	<u>obey a court order</u> .		
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24	IT IS SO ORDERED.		
25	Dated: June 30, 2017 /s/ Barbara A. McAuliffe		
26	UNITED STATES MAGISTRATE JUDGE		
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