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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JOHN WESLEY WILLIAMS,) Case No. 1:16-cv-01584-LJO-SAB (PC)
)
Plaintiff,)
)
v.) ORDER GRANTING PLAINTIFF’S FOURTH
) MOTION FOR EXTENSION OF TIME TO FILE
C. BELL, et al.,) AN OPPOSITION TO DEFENDANTS’ MOTION
) FOR SUMMARY JUDGMENT, AND DENYING
Defendants.) MOTION TO STAY AND REQUEST FOR
) APPOINTMENT OF COUNSEL
)
) [ECF No. 104]

Plaintiff John Wesley Williams is appearing pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s fourth motion for an extension of time to file an opposition to Defendants’ motion for summary judgment, filed on October 21, 2019. Plaintiff also requests the Court stay the action and appoint him counsel. Defendants filed a response to November 4, 2019.

Plaintiff continues to claim that he does not have access to his legal property to file a response to Defendants’ pending motion for summary judgment. (ECF No. 104.) Plaintiff submits that he has been without his property since February 2019. (Id.) Most recently, on August 26, 2019, Plaintiff was transferred from the California Medical Facility Psychiatric Inpatient Program (PIP) to the California Health Care Facility PIP where his property went from eight to six boxes. (Williams Decl. ¶ 6, ECF No. 104.) On August 30, 2019, the PIP treatment team placed Plaintiff on the “priority” list to receive

1 property due to legal obligations in this action, however, Plaintiff still has not received his property.

2 (Id.)

3 Defendants submit that the California Health Care Facility (CHCF) has six boxes of Plaintiff's
4 property. (Chen Decl. ¶ 1, ECF No. 108.) Inmates housed on PIP at CHCF generally do not get their
5 property because they are a "treat and return" and are only housed there temporarily. (Chen Decl. ¶
6 2.) Accordingly, Defendants do not oppose a further extension of time for Plaintiff to file an
7 opposition to Defendants' motion for summary judgment while he does not have access to his
8 property. However, Defendants are advised that if Plaintiff does not gain access to his property within
9 the time allotted by this order, they may want to facilitate with the institution for Plaintiff to receive
10 access to his legal property in order to efficiently file an opposition or the Court will entertain a
11 request for issuance of subpoenas.

12 Defendants do oppose a stay of the action and appointment of counsel. "The District
13 Court has broad discretion to stay proceedings as an incident to its power to control its own docket."
14 Clinton v. Jones, 520 U.S. 681, 707 (1997) (citing Landis v. North American Co., 299 U.S. 248, 254
15 (1936)). "The proponent of the stay bears the burden of establishing its need." Id. at 708. The
16 following factors shall be considered when determining if a stay is appropriate: (1) "the possible
17 damage which may result from the granting of a stay"; (2) "the hardship or inequity which a party may
18 suffer in being required to go forward," and (3) "the orderly course of justice, measured in terms of the
19 simplifying or complicating of issues, proof, and questions of law which could be expected to result
20 from a stay." Filtrol Corp. v. Kelleher, 467 F.2d 242, 244 (9th Cir. 1972) (quoting CMAX, Inc. v.
21 Hall, 300 F.2d 268 (9th Cir. 1962). The Court should "balance the length of any stay against the
22 strength of the justification given for it." Young v. I.N.S., 208 F.3d 1116, 1119 (9th Cir. 2000).
23 Plaintiff has failed to demonstrate that a stay is warranted because there is no showing of hardship or
24 inequity in being required to move forward. See Lockyer v. Mirant Corp., 398 F.3d 1098, 1109 (9th
25 Cir. 2005).

26 In addition, the Court cannot appointment counsel in this action. As Plaintiff was previously
27 advised, he does not have a constitutional right to appointed counsel in this action, Rand v. Rowland,
28 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent plaintiff

1 pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District
2 of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the Court may
3 request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.
4 Without a reasonable method of securing and compensating counsel, the Court will seek volunteer
5 counsel only in the most serious and exceptional cases. In determining whether “exceptional
6 circumstances exist, the district court must evaluate both the likelihood of success on the merits [and]
7 the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues
8 involved.” Id. (internal quotation marks and citations omitted).

9 In the present case, the Court does not find the required exceptional circumstances. Even if it
10 assumed that Plaintiff is not well versed in the law and that he has made serious allegations which, if
11 proved, would entitle him to relief, his case is not exceptional. The Court is faced with similar cases
12 almost daily. While the Court recognizes that Plaintiff is at a disadvantage due to his pro se status and
13 his incarceration, the test is not whether Plaintiff would benefit from the appointment of counsel. See
14 Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most actions require development of
15 further facts during litigation and a pro se litigant will seldom be in a position to investigate easily the
16 facts necessary to support the case.”) The test is whether exception circumstances exist and here, they
17 do not. There is insufficient evidence before the Court to determine whether Plaintiff is likely to
18 succeed on the merits. Further, Plaintiff is able to articulate his claim and litigate this action. Plaintiff
19 has filed numerous motions, as well as propounded multiple discovery requests. In addition, Plaintiff
20 has litigated several other prior cases and is currently litigating two pending actions. See Williams v.
21 Riley, Case No. 2:16-cv-03002-JAM-DMC & Williams v. Alfaro, Case No. 1:17-cv-01310-AWI-
22 JLT.) Circumstances common to most prisoners, such as lack of legal education and limited law
23 library access, do not establish exceptional circumstances that would warrant a request for voluntary
24 assistance of counsel. Accordingly, Plaintiff’s motion for the appointment of counsel shall be denied,
25 without prejudice.

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Based on the foregoing, it is HEREBY ORDERED that:

1. Plaintiff's fourth motion for an extension of time to file an opposition is granted;
2. Plaintiff shall file an opposition within **thirty (30)** days from the date of service;
3. Plaintiff's motion to stay the action is denied; and
4. Plaintiff's request for appointment of counsel is denied, without prejudice.

IT IS SO ORDERED.

Dated: November 5, 2019


UNITED STATES MAGISTRATE JUDGE