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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT BENYAMINI,

Plaintiff,

No. 2:09-cv-0528-MCE-JFM (PC)

vs.

DR. ALEX LIOU, et al.,

Defendants.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. This matter is before the court on plaintiff’s motions to stay this action and for appointment of counsel.

Plaintiff filed this action on February 24, 2009. By order filed August 12, 2009, this court found that plaintiff’s complaint stated a cognizable claim for relief against six defendants and ordered plaintiff to return, within thirty days, forms necessary for service of process. On August 28, 2009, plaintiff filed the motions now before the court. Plaintiff’s motion for stay is predicated on his assertion that he is presently “highly medicated” under an order for involuntary psychiatric medication, that he suffers from claustrophobia and cannot sit in the cages in the law library because they are too small, that he cannot read competently, that he is awaiting surgery, and that he has carpal tunnel syndrome. Good cause appearing, this court will

1 recommend that plaintiff's motion to stay this action be granted. The court will further
2 recommend that this action be administratively closed and that plaintiff be advised that the court
3 will not proceed further unless and until he files a request to lift the stay.

4 Plaintiff has also filed a motion for the appointment of counsel. The United States
5 Supreme Court has ruled that district courts lack authority to require counsel to represent
6 indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298
7 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of
8 counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
9 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the
10 court does not find the required exceptional circumstances. Plaintiff's motion for the
11 appointment of counsel will therefore be denied.

12 In accordance with the above, IT IS HEREBY ORDERED that plaintiff's August
13 28, 2009 motion for appointment of counsel is denied; and

14 IT IS HEREBY RECOMMENDED that:

- 15 1. Plaintiff's August 28, 2009 motion to stay this action be granted;
- 16 2. The Clerk of the Court be directed to administratively close this case; and
- 17 3. Plaintiff be advised that the action will not proceed further unless and until he
18 files a request to lift any stay imposed by order of the district court.

19 These findings and recommendations are submitted to the United States District
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
21 days after being served with these findings and recommendations, any party may file written
22 objections with the court and serve a copy on all parties. Such a document should be captioned
23 "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that

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1 failure to file objections within the specified time may waive the right to appeal the District
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: October 13, 2009.

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6 UNITED STATES MAGISTRATE JUDGE

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8 beny0528.stay

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