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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 ADRIAN FRANK ANDRADE,

No. C 11-3528 SI (pr)

8 Plaintiff,

**ORDER ON MISCELLANEOUS
MOTIONS**

9 v.

10 GREG LEWIS, warden; et al.,

11 Defendants.
12 _____/

13 In this action, plaintiff contends that prison officials violated his right to due process
14 when they placed him in the security housing unit for an indefinite term after validating him as
15 a gang associate. The court denied defendants' first motion for summary judgment because of
16 evidentiary problems discussed in the order filed on February 21, 2013. (Docket # 46.) The
17 denial was without prejudice to defendants filing a new motion for summary judgment that took
18 into account the information provided in that order. Defendants have filed a renewed motion
19 for summary judgment. This order addresses several miscellaneous motions that have been filed
20 in connection with the renewed motion for summary judgment.

21 First, defendants' motion to stay discovery pending resolution of the qualified immunity
22 issue raised in their motion for summary judgment is GRANTED. (Docket # 57.) The U.S.
23 Supreme Court has made it abundantly clear that a district court should stay discovery until the
24 threshold question of qualified immunity is settled. *See Crawford-El v. Britton*, 523 U.S. 574,
25 598 (1998); *Anderson v. Creighton*, 483 U.S. 635, 646 n.6 (1987); *Harlow v. Fitzgerald*, 457
26 U.S. 800, 818 (1982). All discovery is STAYED until the court rules on defendants' motion for
27 summary judgment. This ruling means that plaintiff must prepare his opposition to the motion
28 to summary judgment without the benefit of any discovery he has not yet received.

1 Second, defendants' motion to file documents under seal is GRANTED. (Docket # 49.)
2 Defendants have demonstrated that the confidential information in the documents, if disclosed,
3 would create a severe risk to the safety of other prisoners and institutional security. Paragraphs
4 11-15 of the Declaration of J. Silveira dated May 16, 2013 and Exhibits B-F attached thereto will
5 be filed under seal and not available for inspection by the public or plaintiff absent a court order
6 permitting such inspection. The documents shall *remain sealed for seventy-five years or until*
7 *destroyed* in conformance with the normal records destruction policy of the United States Courts,
8 whichever occurs first. As only portions of the Silveira Declaration and exhibits thereto need
9 to be sealed, defendants should do the following: (1) file *under seal* a copy of the Silveira
10 Declaration with all exhibits; (2) file a copy of the Silveira Declaration with paragraphs 11-15
11 redacted, and Exhibits B-F removed for the public record; and (3) serve on plaintiff a copy of
12 the Silveira Declaration with paragraphs 11-15 redacted and Exhibits B-F removed.

13 Third, plaintiff's motion for appointment of counsel is DENIED. (Docket # 61.) A
14 district court has the discretion under 28 U.S.C. §1915(e)(1) to designate counsel to represent
15 an indigent civil litigant in exceptional circumstances. *See Wilborn v. Escalderon*, 789 F.2d
16 1328, 1331 (9th Cir. 1986). This requires an evaluation of both the likelihood of success on the
17 merits and the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of
18 the legal issues involved. *See id.* Neither of these factors is dispositive and both must be viewed
19 together before deciding on a request for counsel under § 1915(e)(1). Here, exceptional
20 circumstances requiring the appointment of counsel are not evident.

21 Fourth, plaintiff's motion for an extension of time to file his opposition to defendants'
22 renewed motion for summary judgment is GRANTED. (Docket # 60.) The court now sets the
23 following new briefing schedule: Plaintiff must file and serve his opposition to the renewed
24 motion for summary judgment no later than **July 26, 2013**. Defendants must file and serve their
25 reply, if any, no later than **August 9, 2013**.

26 IT IS SO ORDERED.

27 Dated: June 13, 2013

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SUSAN ILLSTON
United States District Judge