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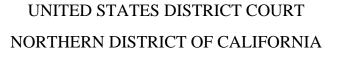
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DENNIS LAMAR JAMES, JR., Plaintiff,

## No. C 13-011 SI (pr) ORDER TO STAY PROCEEDINGS

OAKLAND POLICE DEPT.; et al., Defendants.

v.

In this *pro se* civil rights action, plaintiff has sued several Oakland police officers and the
City of Oakland for the use of excessive force during his arrest on February 19, 2012, and has
sued several doctors for deliberate indifference to his medical needs during his hospital visit after
his arrest.

Plaintiff has requested an extension of the deadline to file his opposition to the motion
 for summary judgment filed by defendant Dr. Liu. Defendant opposes the requested extension.
 Plaintiff also likely will need extended time to file a necessary amended complaint with regard
 to the other health care defendants.

Plaintiff is currently at Napa State Hospital undergoing "psychiatric treatment" and "has
no set date of release." Docket # 37. He was transferred from Santa Rita County Jail to Napa
State Hospital pursuant to an order from the Alameda County Superior Court in or about late
October 2013. See Docket # 26. A state court hearing apparently pertaining to that
hospitalization was scheduled for January 31, 2014, but was continued to August 1, 2014.
See Docket # 37. Plaintiff expects to be released in August, although that is not a certainty.
See id. Plaintiff states that he needs to do additional unspecified discovery to oppose the motion

for summary judgment. Docket # 26. He also requests that an attorney be appointed for him. 1 2 Docket # 37.

Plaintiff has several obligations pending in this action. He needs to file an opposition to Dr. Liu's motion for summary judgment. He also needs to file an amended complaint with regard to the other health care defendants because the court has granted their motion to dismiss for failure to state a claim. See Docket # 35. And, once the law enforcement defendants file a dispositive motion, he will need to file an opposition to that.

8 The circumstances of plaintiff's placement at Napa State Hospital that necessitate a 9 continuance of the deadline for his opposition to the motion for summary judgment also support 10 temporarily halting the other activity in this action. This action can be paused while plaintiff is temporarily at Napa State Hospital, as it would be preferable that the plaintiff's competence not 12 be in question during the course of these proceedings. The best course is to stay this action until 13 plaintiff's release from Napa State Hospital, so that he can pursue his claims after being 14 discharged from the hospital and after presumably being restored to competency. Mindful that 15 the precise length of plaintiff's stay at Napa State Hospital is not within his control and is not 16 certain, the court will hold a case management conference in five months if plaintiff remains at 17 Napa State Hospital. This will enable the court to consider other options if plaintiff is going to 18 be there on a long-term basis, so that the stay will not become a *de facto* dismissal. See 19 generally Davis v. Walker, 745 F.3d 1303, 1306, 1311 (9th Cir. 2014). Also, plaintiff may by 20 that time have more information about the nature and expected length of his hospitalization.

21 Plaintiff has requested that counsel be appointed to represent him in this action. A district 22 court has the discretion under 28 U.S.C. §1915(e)(1) to designate counsel to represent an 23 indigent civil litigant in exceptional circumstances. See Wilborn v. Escalderon, 789 F.2d 1328, 24 1331 (9th Cir. 1986). This requires an evaluation of both the ability of the plaintiff to articulate 25 his claims *pro se* in light of the complexity of the legal issues involved and the likelihood of 26 success on the merits. See id. Neither of these factors is dispositive and both must be viewed 27 together before deciding on a request for counsel under § 1915(e)(1). Plaintiff's hospitalization 28 presents an unusual circumstance. However, plaintiff had no problem articulating his claims in

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this action (including municipal liability), at a time when he presumably had the same mental 1 2 illness he now has. He also has filed several prior actions in which he has ably represented 3 himself. There also appears to be a low likelihood of success on the merits. As to the excessive force claim, the complaint admits that plaintiff was "acting erratic and not responding to 4 5 commands" when police approached him. Docket # 38 at  $3^{1}$  As to the medical care claim, plaintiff has been unable/unwilling to describe just what the medical care defendants did or 6 7 failed to do that he contends amounted to deliberate indifference. See Docket # 35 at 3-4 & n.2. 8 Plaintiff's temporary placement at Napa State Hospital does not overcome these facts that weigh 9 against appointing one of the very few attorneys willing to take on a pro bono prisoner civil 10 rights case. Exceptional circumstances requiring the appointment of counsel are not present in 11 this action.

For the foregoing reasons:

(1) This action is STAYED and the clerk shall administratively CLOSE the
 action. Nothing further will occur in this action until the stay is lifted or until the case
 management conference mentioned below occurs.

(2) A case management conference will be held at 4:00 p.m. on December 11,
2014. No later than November 24, 2014, plaintiff must provide to the court and opposing
counsel a telephone number at which he may be reached for that case management conference.
Counsel for Dr. Liu shall initiate the case management conference call, and connect plaintiff and
counsel for the other defendants before connecting the conference call to the court.

(3) Plaintiff must notify the court and opposing counsel for all defendants
 within ten days of his release from Napa State Hospital, regardless of whether that release is to
 county jail, state prison or elsewhere.

(4) Defendant Liu's motion for summary judgment is DISMISSED without
 prejudice to defendant filing the motion again after the stay is lifted. (Docket # 17.) The
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<sup>&</sup>lt;sup>1</sup>When the complaint was first scanned at the courthouse, page 3 inadvertently was omitted from the scanned document, so the document later was re-scanned with page 3. The complaint missing page 3 is at Docket # 1, and the complaint with page 3 is at Docket # 38.

dismissal of the motion says nothing about its merits and instead is done for scheduling purposes. When the stay is lifted, the court will set deadlines for dispositive motions and for plaintiff to file an amended complaint. Plaintiff's request for counsel is DENIED. (Docket # 37.) (5) IT IS SO ORDERED. airan Elston Dated: July 1, 2014 SUSAN ILLSTON United States District Judge 

United States District Court For the Northern District of California