

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

STEVE KASSAB,

Plaintiff,

vs.

SAN DIEGO POLICE
DEPARTMENT, a municipal
corporation, et al.,

Defendants.

CASE NO. 07cv1071 GPC
(WMC)

ORDER
**(1) GRANTING MOTION TO
WITHDRAW AS ATTORNEY**
**(2) DENYING MOTION FOR
APPOINTMENT OF
COUNSEL**
**(3) GRANTING MOTION
FOR TO STAY
PROCEEDINGS**

[DKT. NOS. 193, 194, 203]

Pending before the Court is Attorney Harold Dickens’ motion to withdraw as counsel, Plaintiff’s motion for appointment of counsel, and Plaintiff’s motion to stay the action. (Dkt. Nos. 203, 193, 194.) For the reasons set out below, the Court **GRANTS** the motion to withdraw as counsel, **DENIES** Plaintiff’s motion for appointment of counsel, and **GRANTS** Plaintiff’s motion to stay the action until June 6, 2014.

1 **BACKGROUND**

2 Plaintiff Steve Kassab’s (“Plaintiff”) amended complaint alleged several
3 §1983 claims against Defendants San Diego Police Department and others
4 (“Defendants”), including false arrest and false imprisonment, assault and
5 intimidation, and excessive force and battery. (Dkt. No. 49.) Plaintiff also alleged
6 state law civil rights violations and intentional infliction of emotional distress. (Id.)
7 On September 9, 2009, the Court granted Defendants’ motion for summary
8 judgment as to all of Plaintiff’s federal claims and declined to exercise supplemental
9 jurisdiction over Plaintiff’s state law claims. (Dkt. No. 123.) Mr. Kassab appealed
10 the Court’s ruling to the United States Court of Appeals for the Ninth Circuit. Upon
11 review, the Ninth Circuit affirmed in part, reversed in part, and remanded. Kassab v.
12 San Diego Police Department, 453 F. App’x 747, 748 (9th Cir. 2011). The Ninth
13 Circuit reversed summary judgment on only one issue - Kassab’s excessive force
14 claim that “he was detained in a police car for more than four hours, with the
15 windows rolled up, no air conditioning, and an interior temperature of 115 degrees.”
16 Id.

17 On January 11, 2013, the Court granted Defendants’ motion to dismiss parties
18 and limit the issues to be tried. (Dkt. No. 181.) In that order, the Court dismissed all
19 but two Defendants, San Diego Police Officers Skinner and Hernandez and held the
20 only issue to be presented at trial would be the one excessive force count that was
21 reversed and remanded pursuant to the aforementioned Ninth Circuit ruling.

22 On April 17, 2013, the Court denied Plaintiff’s motion for reconsideration of
23 the Court Order Dismissing Defendants and Limiting Issues at Trial. (Dkt. No. 184.)
24 Plaintiff appealed the Court’s Order to the U.S. Court of Appeals for the Ninth
25 Circuit. (Dkt. No. 186.) On May 28, 2013, the Ninth Circuit dismissed the appeal
26 for lack of jurisdiction. (Dkt. No.190.)

27 On June 4, 2013, Plaintiff filed a motion to continue the case and a motion to
28 appointment counsel. (Dkt. Nos. 193, 194.)

1 On June 7, 2013, Defendants filed an opposition to Plaintiff's motions. (Dkt.
2 No. 196.) On June 26, 2013, Plaintiff filed a reply. (Dkt. No. 201.)

3 On June 7, 2013, Judge McCurine instructed Plaintiff's attorney Harold
4 Dickens to show cause why he failed to appear for an in-person status conference on
5 that same date. (Dkt. No. 195.) At the OSC hearing held on June 26, 2013, counsel
6 Harold Dickens, Esq., appeared on behalf of Plaintiff.

7 On July 1, 2013, counsel Harold Dickens filed a motion to withdraw as
8 attorney for Plaintiff. (Dkt. No. 203.) Defendants filed a statement of non-
9 opposition. (Dkt. No. 205.)

10 DISCUSSION

11 I. Motion to Withdraw as Counsel

12 Harold Dickens' filed a motion to withdraw as counsel of record for Plaintiff
13 Steve Kassab on the ground that irreconcilable differences had arisen between
14 Dickens and Plaintiff. (Dkt. No. 203 at 2.) Mr. Dickens also filed a declaration of
15 service, verifying service upon opposing counsel and Plaintiff Kassab. (Id.)

16 An attorney may not withdraw as counsel leaving the client in propria
17 persona except by leave of court. See L. Civ. R. 83.3(g)(3); Darby v. City of
18 Torrance, 810 F.Supp. 275, 276 (C.D.Cal.1992). "The decision to grant or deny
19 counsel's motion to withdraw is committed to the discretion of the trial court." Irwin
20 v. Mascott, No. 97-4737, 2004 U.S. Dist. LEXIS 28264, at *3-4 (N.D.Cal. Dec. 1,
21 2004) (citing Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th
22 Cir.1982)). Local Civil Rule 83.3(g)(3) provides:

23 Withdrawal. (a) A notice of motion to withdraw as attorney of record must be
24 served on the adverse party and on the moving attorney's client. (b) A
25 declaration pertaining to such service must be filed. Failure to make service
as required by this section or to file the required declaration of service will
result in a denial of the motion.

26 Here, counsel states in a supporting declaration that he has irreconcilable
27 differences with his client. He also attaches an email from Mr. Kassab to Mr.
28 Dickens dated January 31, 2013. The email states in part, "I am requesting that you

1 provide copies of the essential information in order to go forward with my case . . . I
2 must seek to terminate your employment . . .” (Dkt. No. 203-2 at 1.) Additionally,
3 Plaintiff has a filed a motion for the Court to appoint counsel, suggesting that
4 Plaintiff has no attorney representation. Given these facts, and as the Defendants do
5 not oppose, the Court **GRANTS** the motion to withdraw as counsel.

6 **II. Motion to Appoint Counsel**

7 Plaintiff requests the appointment of counsel to assist him in prosecuting this
8 civil action. Generally, a person has no right to counsel in civil actions. See Storseth
9 v. Spellman, 654 F.2d 1349, 1353 (9th Cir. 1981). However, a court may under
10 “exceptional circumstances” appoint counsel for indigent civil litigants pursuant to
11 28 U.S.C. § 1915(e)(1). Agyeman v. Corrs. Corp. Of Am., 390 F.3d 1101, 1103 (9th
12 Cir. 2004), cert. denied sub nom. Gerber v. Agyeman, 545 U.S. 1128 (2005). When
13 determining whether “exceptional circumstances” exist, a court must consider “the
14 likelihood of success on the merits as well as the ability of the petitioner to
15 articulate his claims pro se in light of the complexity view together. Wilborn v.
16 Escalderson, 789 F.2d 1328, 1331 (9th Cir. 1986). Neither of these factors are
17 dispositive and both must be viewed together before reaching a decision.” Id. at
18 1331.

19 Plaintiff alleges that he is unable to represent himself due to his current
20 incarceration. (Dkt. No. 149 at 4.) Plaintiff states that he is indigent, and points to
21 the Court’s order granting Plaintiff’s motion to proceed in forma pauperis as proof
22 of his indigence. (Id.; see also Dkt. No. 3.) Plaintiff further asserts that due to his
23 incarceration, he is unable to research legal issues to adequately represent himself.

24 Plaintiff has not sufficiently shown that “exceptional circumstances” exist to
25 warrant appointment of counsel in this case. First, Plaintiff has not shown that he is
26 likely to succeed on the merits. Second, the record shows that Plaintiff has been able
27 to articulately represent himself at various points during this litigation.

28 Furthermore, Plaintiff has also had the ability to pay for counsel representation

1 during this litigation. Under these circumstances the Court **DENIES** Plaintiff's
2 motion for appointment of counsel.

3 **III. Motion to Stay**

4 A district court has the “power to stay proceedings” as part of its inherent
5 power to “control the disposition of the causes on its docket with economy of time
6 and effort for itself, for counsel, and for litigants.” Landis v. N. Am. Co., 299 U.S.
7 248, 254 (1936). In determining whether to stay an action, courts must weigh
8 competing interests that will be affected by the granting of or refusal to grant a stay.
9 CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir.1962). Among these competing
10 interests are (1) the possible damage which may result from the granting of a stay;
11 (2) the hardship or inequity which a party may suffer in being required to go
12 forward; and (3) the orderly course of justice measured in terms of simplifying or
13 complicating of issues, proof, and questions of law which could be expected to
14 result from a stay. Id. (citing Landis, 299 U.S. at 254–55).

15 “The proponent of a stay bears the burden of establishing its need.” Clinton v.
16 Jones, 520 U.S. 681, 708 (1997) (citing Landis, 299 U.S. at 255). “[I]f there is even
17 a fair possibility that the stay ... will work damage to someone else[,]” the party
18 seeking the stay “must make out a clear case of hardship or inequity.” Landis, 299
19 U.S. at 255. The Ninth Circuit has held that “[t]he district court's indefinite stay of
20 all proceedings is tantamount to a denial of due process. Simply because a person is
21 incarcerated does not mean that he is stripped of free access to the courts and the
22 use of legal process to remedy civil wrongs.” Wimberly v. Rogers, 557 F.2d 671,
23 673 (9th Cir.1997). In considering whether a stay should be ordered, the court
24 should “balance the length of the stay against the strength of the justification given
25 for it.” Young v. I.N.S., 208 F.3d 1116, 1119 (9th Cir.2000).

26 Plaintiff requests the Court stay or continue this case until he is released from
27 prison on June 6, 2014. (Dkt. No. 193 at 4.) Aside from several arguments
28 contesting his current incarceration as unlawful, Plaintiff asserts he is unable to

1 represent himself during incarceration because he has no access to legal resources to
2 litigate his case. (Id. at 5.) Plaintiff also asserts that he cannot adequately respond to
3 the Defendants' motions. (Id.)

4 Defendants oppose Plaintiff's motion for a stay. (Dkt. No. 196.) Defendants
5 lay out the lengthy procedural history of this case, in which Plaintiff has created
6 extensive delays. (Dkt. No. 196 at 2-8.) Defendants argue that Plaintiff has
7 demonstrated he is able to file documents from his current location, and has
8 represented himself for the majority of the proceedings in this matter. (Id. at 8.)
9 Defendants argue his incarceration status should not impede this case from moving
10 forward. (Id.)

11 Consideration of the Landis factors weigh in favor of a stay. First, Plaintiff
12 would suffer hardship if the litigation were to move forward without a stay. There
13 is one triable issue of excessive force that the Ninth Circuit remanded to this Court.
14 As Defendants accurately state, Plaintiff has sufficiently represented himself for a
15 majority of these proceedings. However, most of that *pro se* representation was not
16 during Plaintiff's period of incarceration. To require Plaintiff to conduct pre-trial
17 conferences, prepare for trial and represent himself during trial while he is
18 incarcerated would likely cause Plaintiff to suffer hardship. Furthermore,
19 Defendants have not stated a compelling reason that a tenth-month stay of the
20 proceedings would cause them damage. Simply because the litigation has been
21 ongoing for several years does not mean Defendants will be harmed by a ten-month
22 delay. Indeed, the Court views the delay as a minor set-back given the lengthy
23 proceedings. Moreover, as the stay is for a limited period, Defendants are in no
24 danger of being denied their procedural due process rights. Lastly, the
25 administration of justice would be facilitated by the stay. As Plaintiff has
26 represented himself for a majority of this case, his *pro se* representation will be key
27 to finalizing the remaining claim in this litigation. On balance, the equities favor a
28 temporary stay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

For the reasons stated above, the Court hereby
(1) **GRANTS** counsel Dickens' motion to withdraw as counsel;
(2) **DENIES** Plaintiff's motion for appointment of counsel;
(3) **GRANTS** Plaintiff's motion to stay the proceedings until June 6, 2014.
Accordingly, the Court hereby **VACATES** the hearing date on the motion to
withdraw as counsel currently set for Friday, August 9, 2013.

IT IS SO ORDERED.

DATED: August 6, 2013


HON. GONZALO P. CURIEL
United States District Judge