

1 District Judge Janis Sammartino denied in part Plaintiff's motion for partial summary
2 judgment. (Dkt. No. 26.) On October 9, 2012, the case was transferred to the
3 undersigned judge. (Dkt. No. 37.) On October 10, 2012, the Court granted Plaintiff
4 counsel's motion to withdraw as attorney. (Dkt. No. 38.) In that order, Plaintiff was
5 granted a sixty-day stay of the proceedings to permit her to obtain alternate counsel and
6 the Court set a status hearing on December 14, 2012. (Id.) The Court granted
7 Plaintiff's *ex parte* motion to continue the status hearing to March 15, 2013. (Dkt. No.
8 41.) At the status hearing, Plaintiff indicated she had not yet obtained counsel and
9 requested additional time. (Dkt. No. 42.) At another status hearing on May 17, 2013,
10 the Court stayed the case pending Plaintiff's evaluation of her disability. (Dkt. No. 48.)
11 On September 13, 2013, another status hearing was held where the Court lifted the stay
12 and referred the case to the Magistrate Judge for settlement. (Dkt. No. 51.) On
13 September 13, 2013, Plaintiff filed a motion to appoint counsel which the Court denied.
14 (Dkt. Nos. 52, 53.) On April 1, 2014, a mandatory settlement conference was held and
15 the case did not settle. (Dkt. No. 65.) The Court continued the pretrial conference
16 from January 17, 2014 to April 18, 2014 due to the mandatory settlement conference,
17 and then again to July 25, 2014. (Dkt. Nos. 62, 66.)

18 On May 12, 2014, the Court appointed Stephen P. White as Pro Bono Counsel
19 for Plaintiff pursuant to 28 U.S.C. § 1915(e)(1) and S.D. Cal. General Order 596. (Dkt.
20 No. 71.) On June 25, 2014, White filed a motion to withdraw as pro bono counsel for
21 Plaintiff. (Dkt. No. 72.) At the hearing on July 16, 2014, the Court granted Mr.
22 White's motion to be relieved as pro bono counsel and set a final pretrial conference
23 on August 29, 2014. (Dkt. No. 74.)

24 On July 17, 2014, in light of the fact that Plaintiff is proceeding *pro se*, the Court
25 continued dates in the case and continued the pretrial conference to August 29, 2014
26 with a schedule to comply with pretrial disclosure requirements under Federal Rule of
27 Civil Procedure 26(a)(3). (Dkt. No. 79.) The Court also advised Plaintiff to cooperate
28 with defense counsel and to comply with the pretrial requirements which are required

1 to prosecute her case. (Id.)

2 On August 15, 2014, Plaintiff filed an *ex parte* motion to appoint another pro
3 bono counsel and motion to stay due to her medical condition. (Dkt. No. 83.) In
4 response, the Court noted that in its prior order appointing pro bono counsel, the Court
5 assumed that Plaintiff had met the indigent standard required to appoint counsel under
6 28 U.S.C. § 1915(e)(1).¹ (Dkt. No. 84.) Since the docket did not reflect that Plaintiff
7 was indigent, the Court directed Plaintiff, by September 5, 2014, to file a sworn
8 financial affidavit which the Clerk of Court attached to the Court's order. (Id.)
9 Plaintiff did not file a financial affidavit by the deadline. Therefore, on September 26,
10 2014, the Court denied Plaintiff's motion to appoint counsel for failing to demonstrate
11 she is indigent pursuant to 28 U.S.C. § 1915(e)(1) by submitting a financial affidavit
12 form. (Dkt. No. 87.) However, in the order, the Court granted Plaintiff's motion to
13 stay for four months due to her claim of a medical condition which was supported by
14 a doctor's letter recommending a four month stay.² (Id. at 3)

15 The stay expired on January 23, 2015. On January 23, 2015, Plaintiff filed a
16 motion to recuse the undersigned judge which was denied. (Dkt. Nos. 89, 90.) She
17 also filed the instant motion to appoint counsel and motion for stay arguing that the
18 financial affidavit form is too burdensome due to her poor eyesight. (Dkt. No. 93.)
19 Instead, Plaintiff asks the Court to consider the state court fee waiver request that was
20 granted in her case in 2012. (Id. at 22-23.)

21 She seeks appointment of counsel without complying with the provisions of 28

22
23 ¹The Court notes that this was overlooked due to the fact that Plaintiff had
24 retained counsel when she initially filed the complaint. As such, Plaintiff did not file
a motion for *in forma pauperis* when the complaint was filed as is the case with most
pro se plaintiffs seeking appointment of counsel in civil rights cases.

25 ²In the Court's order, it noted that the doctor's letter only provided general
26 statements as to her medical condition without specific details about how her medical
27 condition is affecting her ability to prosecute this case. (Dkt. No. 87 at 3.) Once the
28 stay expires and Plaintiff is still unable to proceed, Plaintiff "shall also provide a
doctor's note specifically stating her medical condition, including any medical findings
or tests to support her condition, any specific doctor's orders or treatment plan that
need to take place, and the doctor's prognosis as to when Plaintiff would be able to
prosecute her case." (Id.)

1 U.S.C. § 1915(e)(1) requiring that she demonstrate she is indigent by filing a financial
2 affidavit. A grant of a state court fee waiver request in 2012 is not recent and provides
3 no indication whether she is currently indigent. Moreover, the Court does not find her
4 assertions, that the financial affidavit is too burdensome due to her poor eyesight,
5 credible as she was able to draft the instant well-written 23 page motion which includes
6 a legal brief containing supporting case law and citations to the facts with supporting
7 documentation. Contrary to Plaintiff’s claim that the form is burdensome, the financial
8 affidavit is a simple, straight-forward, self- explanatory three page form, with many
9 questions just requiring a check mark, that is easy to fill out. Accordingly, since
10 Plaintiff has not demonstrated she is indigent as required under 28 U.S.C. § 1915(e)(1),
11 the Court DENIES her motion to appoint counsel.

12 Plaintiff, as she stated in her previous motion to appoint counsel, asserts that the
13 firms of Jones Day and Procopio Cory indicated they would take the case if the Court
14 appointed them. As the Court previously stated in its order of September 26, 2014, the
15 appointment of counsel by the Court is not required for these firms to represent
16 Plaintiff. However, once Plaintiff has provided the required financial affidavit, the
17 Court is willing to contact the attorneys at Jones Day and Procopio Cory and inquire
18 whether they are prepared to represent Plaintiff. If Plaintiff seeks the Court’s
19 assistance, Plaintiff shall provide to the Court the names of these attorneys who are
20 willing to take the case by **February 6, 2015.**

21 **B. Motion for a Stay**

22 Plaintiff also seeks a stay of the proceedings due to her medical condition and
23 attaches a doctor’s note. (Dkt. No. 94 (filed under seal).)

24 “The District Court has broad discretion to stay proceedings as an incident to its
25 power to control its own docket.” Clinton v. Jones, 520 U.S. 681, 706 (1997) (citing
26 Landis v. N. Am.Co., 299 U.S. 248, 254 (1936)). In determining whether to grant a
27 motion to stay, “the competing interests which will be affected by the granting or
28 refusal to grant a stay must be weighed.” Lockyer v. Mirant Corp., 398 F.3d 1098,

1 1110 (9th Cir. 2005). These interests include: (1) the possible damage which may
2 result from the granting of a stay, (2) the hardship or inequity which a party may suffer
3 in being required to go forward, and (3) the orderly course of justice measured in terms
4 of the simplifying or complicating of issues, proof, and questions of law which could
5 be expected to result from a stay. Id.

6 In balancing the competing interests of the parties, the Court concludes that a
7 stay is not warranted. While the doctor's note states the medical condition of Plaintiff,
8 it does not include "any medical findings or tests to support her condition, any specific
9 doctor's orders or treatment plan that need to take place, and the doctor's prognosis as
10 to when Plaintiff would be able to prosecute her case" as Plaintiff was directed to
11 provide after the stay expired. (See Dkt. No. 87 at 3.) The listed medical conditions
12 of Plaintiff do not demonstrate that she is unable to prosecute her case. While she may
13 have some physical limitations, her ability to prosecute her case, such as drafting briefs
14 or proposed orders, and orally presenting her case, is not limited. Despite her
15 condition, she has been able to prosecute her case as demonstrated by the numerous
16 motions and responses she has filed, *pro se*, over the past couple of years. On the other
17 hand, Defendants have been waiting over four years to have this case prosecuted and
18 as time passes, memories can fade and witnesses may become unavailable.
19 Accordingly, in balancing the competing interests, the Court DENIES Plaintiff's
20 motion to stay the proceedings.

21 **Conclusion**

22 Based on the above, the Court DENIES Plaintiff's motion to appoint counsel and
23 motion for a stay.

24 IT IS SO ORDERED.

25
26 DATED: January 29, 2015

27 
28 HON. GONZALO P. CURIEL
United States District Judge