

1

2

3

4

5

6

7

8

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

9

10

TONY ROBERTS,

CASE NO. 15cv1044-WQH-PCL

11

Plaintiff,

ORDER

12

v.

13

J. BEARD, Secretary of CDCR; D.
PARAMO, Warden of RJDCF; K.
SEIBEL, Warden (Acting) CVSP;
CAPTAIN S. SANCHEZ, Correctional
Captain; D. ARGUILEZ; L.
CIBOROSWKI; A. BUENROSTRO;
C. MEZA; A. PARKER; R. SOLIS; R.
DAVIS; R. SANTIAGO,

14

15

16

17

Defendants.

18

19

20

21

HAYES, Judge:

22

23

24

25

26

27

28

The matters before the Court are the three motions requesting a stay of proceedings and appointment of counsel. (ECF Nos. 68, 78, 80).

On May 8, 2015, Plaintiff Tony Roberts, a prisoner proceeding pro se, initiated this action by filing a complaint pursuant to 42 U.S.C. § 1983 against Defendants J. Beard, D. Paramo, K. Seibel, S. Sanchez, D. Arguilez, L. Ciborowski, A. Buenrostro, C. Meza, A. Parker, R. Soliz, R. Davis, and R. Santiago, alleging violations of his First Amendment and Eighth Amendment rights. (ECF No. 1).

29

30

31

32

33

34

35

36

I. PLAINTIFF'S MOTIONS

On April 28, 2017, Tommy Boyden "appearing as 'next of friend' on behalf of Plaintiff Tony Roberts" filed a Motion for Permission to Act as 'Next of Friend'; Or Alternatively, For Court to Act on Its Own, and Stay All Proceedings Pending Mr.

1 Roberts Discharge From Acute Psychiatric Hospitalization and Treatment. (ECF No.
2 68). The motion requests that the Court stay all proceedings pending Plaintiff's
3 discharge from "acute psychiatric hospitalization" because he is "unable to protect his
4 interest or prosecute his lawsuits before this Court in any meaningful way at this time."
5 *Id.* at 2.

6 On May 3, 2017, Defendants filed a non-opposition to the motion. (ECF No. 69).
7 Defendants "take no position regarding Plaintiff's medical condition, but do not object
8 to a short stay of the proceedings." *Id.* at 2

9 On June 15, 2017, the Court issued an order stating,

10 On June 13, 2017, the Court held a status conference in Plaintiff's case, in
11 which Plaintiff told the Court that he was out of the hospital but was still
12 receiving treatment outpatient. The Court orders Plaintiff to provide an
13 update of his medical status in writing. If Plaintiff requests more time to
14 prosecute his case, he must provide the Court with reasons why a stay or
15 delay is warranted under his present circumstances. The Court will then
16 determine whether Plaintiff has met the burden of establishing a need for
17 a stay or justifying the lengthening the amount of time for prosecuting his
18 case. The Court orders Plaintiff to file an updated report by June 30, 2017.

19 (ECF No. 76).

20 On July 13, 2017, Plaintiff filed an Ex Parte Application for a Stay of All
21 Proceedings. (ECF No. 78). On July 14, 2017, filed a second Ex Parte Application for
22 a Stay of All Proceedings. (ECF No. 80). The two motions (ECF Nos. 78, 80) are
23 identical. Plaintiff requests "a stay of all proceedings in which to allow Mr. Roberts
24 additional time for his medical condition to stabilize to where he is able to prosecute his
25 case, on the basis of exceptional circumstances beyond his control make it impossible
26 to proceed on his own at this time." (ECF Nos. 78 at 1). Plaintiff requests a 150 to 180
27 day stay to allow more time for Plaintiff's mental health to stabilize. *Id.* at 3. Plaintiff
28 contends that there is good cause for the stay because Plaintiff's mental illness is
interfering with his litigation efforts and the parties' time and resources will be wasted
during this time period. *Id.* at 3. Plaintiff asserts that he is receiving the "highest level
of outpatient care provided in cdcr for inmates with serious mental illness at the

1 Enhance Outpatient Care (EOP).”¹ *Id.* at 4.

2 Plaintiff further moves the Court for appointment of counsel pursuant to 28
3 U.S.C. § 1915(e)(1) “for the limited purpose of investigating the extent of Mr. Roberts
4 mental illness, and whether his mental functioning has impinged his ability to function
5 and perform the necessary tasks that normally attend litigation[.]” *Id.* at 1-2. Plaintiff
6 contends that the interests of justice warrant appointment of counsel because Plaintiff
7 “is unable to adequately articulate the basis of his complaint” due to his mental health.
8 *Id.* at 4-5.

9 **II. RULING OF THE COURT**

10 **A. Appointment of Counsel**

11 A plaintiff has no absolute right to appointed counsel in a civil proceeding.
12 *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009); *Hedges v. Resolution Trust Corp.*,
13 32 F.3d 1360, 1363 (9th Cir. 1994). Thus, federal courts do not have the authority “to
14 make coercive appointments of counsel.” *Mallard v. U.S. District Court*, 490 U.S. 296,
15 310 (1989); *see also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569
16 (9th Cir. 1995). District courts have discretion, however, pursuant to 28 U.S.C. §
17 1915(e)(1), to “request” that an attorney represent indigent civil litigants upon a
18 showing of “exceptional circumstances.” *See Agyeman v. Corrs. Corp. of Am.*, 390
19 F.3d 1101, 1103 (9th Cir. 2004). “When determining whether ‘exceptional
20 circumstances’ exist, a court must consider ‘the likelihood of success on the merits as
21 well as the ability of the petitioner to articulate his claims pro se in light of the
22 complexity of the legal issues involved.’” *Palmer*, 560 F.3d 965, 970 (9th Cir. 2009)

23
24
25 ¹ Plaintiff requests that pursuant to Federal Rule of Evidence 201, the Court take
26 judicial notice of an attached motion for stay filed in this case; an attached declaration
27 of Tommy D. Boyden (Exhibit 1); an attached declaration of Tony Roberts (Exhibit 2);
28 email to CCI Jon Ishikawa from Dr. J. Pena (Exhibit 3); and the non-opposition filed
by the Defendants (Exhibit 4). (ECF No. 78 at 11). The Court denies this request on
the grounds that these documents are not the proper subject of judicial notice and that
judicial notice is unnecessary. *See Fed. R. Evid. 201; Asvesta v. Petroutsas*, 580 F.3d
1000, 1010 n.12 (9th Cir. 2009).

1 (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)).

2 The Court has evaluated the likelihood of success of Plaintiff's claims and
3 Plaintiff's ability to articulate his claims in light of the complexity of the legal issues
4 involved. Based on the filings to date, Plaintiff has demonstrated an ability to articulate
5 his claims. Plaintiff is no longer hospitalized and since his release from the hospital,
6 Plaintiff has filed multiple documents with the Court which effectively articulate his
7 legal positions. The Court's discovery deadline recently passed and no dispositive
8 motions are currently pending before the Court. (*See* ECF No. 60). The Court
9 concludes that it is premature to determine that Plaintiff has a likelihood of success on
10 the merits at this stage in the proceedings. The Court concludes that Plaintiff has not
11 demonstrated "exceptional circumstances" supporting the appointment of counsel at this
12 stage in the proceedings. *Palmer*, 560 F.3d at 970. Plaintiff's request for the
13 appointment of counsel is denied without prejudice and with leave to refile.

14 Further, Tommy D. Boyden's request to act as "Next of Friend" (ECF No. 68)
15 is denied. *Johns v. Cnty. of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997) ("While a
16 non-attorney may appear pro se on his own behalf, he has no authority to appear as an
17 attorney for others than himself." (internal quotation marks omitted)).

18 **B. Stay of All Proceedings**

19 A district court has "broad discretion to stay proceedings as an incident to its
20 power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706-07 (1997) (citing
21 *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). "[T]he power to stay
22 proceedings is incidental to the power inherent in every court to control the disposition
23 of the causes on its docket with economy of time and effort for itself, for counsel, and
24 for litigants." *Landis*, 299 U.S. at 254. However, "[t]he proponent of a stay bears the
25 burden of establishing its need." *Clinton*, 520 U.S. at 708. The Supreme Court has
26 "caution[ed] that 'if there is even a fair possibility that the stay . . . will work damage
27 to some one else,' the stay may be inappropriate absent a showing by the moving party
28

1 of ‘hardship or inequity.’” *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498
2 F.3d 1059, 1066 (9th Cir. 2007) (quoting *Landis*, 299 U.S. at 255).

3 The Court concludes that a 150 to 180 day stay is not warranted at this point in
4 the proceedings. While Plaintiff continues to receive outpatient care for mental illness,
5 he is no longer hospitalized and has recently filed multiple documents with the Court
6 which clearly articulate his legal positions. The Court denies Plaintiff’s request for a
7 stay.

8 IT IS HEREBY ORDERED that the Motion for Permission to Act as ‘Next of
9 Friend’; Or Alternatively, For Court to Act on Its Own, and Stay All Proceedings
10 Pending Mr. Roberts Discharge From Acute Psychiatric Hospitalization and Treatment
11 (ECF No. 68) and the Ex Parte Applications for Stay of All Proceedings (ECF Nos. 78,
12 80) are denied without prejudice.

13 DATED: July 19, 2017

14 
15 **WILLIAM Q. HAYES**
16 United States District Judge
17
18
19
20
21
22
23
24
25
26
27
28