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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 AUSTIN LAZAR,

9 Plaintiff,

10 v.

11 DON BOURBON, SHELBY WILCOX,
12 PIERCE COUNTY SHERIFF'S DEPT.,
13 BOOKING DEPT,

Defendants.

CASE NO. 3:18-CV-05175-RBL-DWC

ORDER

14 Plaintiff Austin Lazar, proceeding *pro se* and *in forma pauperis*, initiated this civil rights
15 Complaint pursuant to 42 U.S.C. § 1983. *See* Dkt. 1. Currently before the Court are Plaintiff's
16 Motion to Compel Discovery ("Motion to Compel") and Motion to Appoint Attorneys on
17 Contingency Fee Basis From the Court ("Motion for Counsel") and Defendant Pierce County's
18 Response to Plaintiff's Motion to Compel Discovery and Cross-Motion to Stay Discovery
19 ("Motion to Stay"). Dkt. 22, 24, 25.¹ After consideration of the record and the Motions, the
20 Motion to Compel (Dkt. 22), the Motion for Counsel (Dkt. 24), and the Motion to Stay (Dkt. 25)
21 are denied.

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23 ¹ Also pending in this action are Defendant Pierce County's Motion to Dismiss, Defendants Don Bourbon
24 and Shelby Wilcox's Motion to Dismiss, and Plaintiff's Motion to Stay Civil Proceedings. Dkt. 26, 28, 32. The
Motions to Dismiss are ready for the Court's consideration on September 7, 2018 and the Motion to Stay Civil
Proceedings is ready for the Court's consideration on September 14, 2018.

1 **I. Motion to Compel (Dkt. 22)**

2 On July 26, 2018, Plaintiff filed the Motion to Compel, wherein Plaintiff requests the
3 production of documents. Dkt. 22. After review of the Motion to Compel, the Court concludes
4 Plaintiff is not attempting to compel discovery; rather, Plaintiff is attempting to serve discovery
5 requests on Defendants.

6 Under Federal Rule of Civil Procedure 34(a)(1), “[a] party may serve on any other party a
7 request . . . to produce[.]” Plaintiff may not serve discovery requests through the Court. *See*
8 Local Civil Rule (“LCR”) 5 (“discovery requests and responses must not be filed until they are
9 used in the proceedings or the court orders filing”). Plaintiff must mail discovery requests to
10 Defendants’ counsel. Further, to the extent Plaintiff is seeking a Court-order compelling
11 Defendants to provide discovery responses, he has failed to comply with Local and Federal
12 Rules. Plaintiff failed to certify he conferred or attempted to confer with Defendants’ counsel
13 regarding the discovery dispute. *See* Dkt. 22; Fed. R. Civ. P. 37(a)(1); LCR 37(a)(1).

14 Accordingly, Plaintiff’s Motion to Compel (Dkt. 22) is denied.

15 **II. Motion for Counsel (Dkt. 24)**

16 On August 3, 2018, Plaintiff filed the Motion for Counsel, requesting Court-appointed
17 counsel and co-counsel. Dkt. 24. No constitutional right to appointed counsel exists in a § 1983
18 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see United States v.*
19 *\$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel
20 under this section is discretionary, not mandatory”). However, in “exceptional circumstances,” a
21 district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1)
22 (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113F.3d 1520, 1525 (9th Cir. 1997), *overruled*
23 *on other grounds*, 154 F.3d 952 (9th Cir. 1998). To decide whether exceptional circumstances
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1 exist, the Court must evaluate both “the likelihood of success on the merits [and] the ability of
2 the [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues
3 involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v.*
4 *Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts showing he has an
5 insufficient grasp of his case or the legal issues involved and an inadequate ability to articulate
6 the factual basis of his claims. *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103
7 (9th Cir. 2004).

8 In the Motion for Counsel, Plaintiff states he needs appointed counsel because he is
9 incarcerated, he lacks access to necessary public records and sensitive information, his case
10 requires an expert, and attorneys are better equipped to litigate his case. Dkt. 24. Plaintiff has not
11 shown, nor does the Court find, this case involves complex facts or law. Plaintiff has also not
12 shown an inability to articulate the factual basis of his claims in a fashion understandable to the
13 Court, nor has he shown he is likely to succeed on the merits of this case. Additionally,
14 “Plaintiff’s incarceration and limited access to legal materials are not exceptional factors
15 constituting exceptional circumstances that warrant the appointment of counsel. Rather, they are
16 the type of difficulties encountered by many *pro se* litigants.” *Dancer v. Jeske*, 2009 WL
17 1110432, *1 (W.D. Wash. Apr. 24, 2009). As such, the Court finds Plaintiff has failed to show
18 the appointment of counsel is appropriate at this time. Therefore, Plaintiff’s Motion for Counsel
19 (Dkt. 24) is denied without prejudice.

20 **III. Motion to Stay (Dkt. 25)**

21 On August 7, 2018, Defendant Pierce County filed the Motion to Stay, requesting the
22 Court stay all discovery in this matter pending resolution of its pending Motion to Dismiss. Dkt.
23 25. The Court has broad discretionary powers to control discovery. *Little v. City of Seattle*, 863
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1 F.2d 681, 685 (9th Cir. 1988). A court may relieve a party of the burdens of discovery while a
2 dispositive motion is pending. *DiMartini v. Ferrin*, 889 F.2d 922 (9th Cir. 1989), *amended at*
3 906 F.2d 465 (9th Cir. 1990) *Rae v. Union Bank*, 725 F.2d 478 (9th Cir. 1984); *see also*
4 *Ministerio Roca Solida v. U.S. Dep't of Fish & Wildlife*, 288 F.R.D. 500, 506 (D. Nev. 2013)
5 (permitting a stay of discovery where a pending dispositive motion is (1) “potentially dispositive
6 of the entire case or at least dispositive of the issue on which discovery is sought” and (2) can be
7 decided without additional discovery).

8 Here, Defendant Pierce County has moved to dismiss the claims alleged against it under
9 Federal Rule of Civil Procedure 12(b)(6) because Plaintiff has failed to state a claim upon which
10 relief can be granted. *See* Dkt. 26. Defendant Pierce County also asserts Plaintiff failed to
11 exhaust his administrative remedies. *See id.* While Defendant Pierce County did not attach
12 grievances to the Motion to Dismiss, Plaintiff may need to conduct discovery to respond to
13 Defendant Pierce County’s assertion that he failed to exhaust the administrative remedies
14 available to him. Therefore, the Court finds Defendant Pierce County has not shown a stay of
15 discovery is warranted at this time. Accordingly, the Motion to Stay (Dkt. 25) is denied without
16 prejudice.

17 **IV. Conclusion**

18 For the above stated reasons, the Motion to Compel (Dkt. 22), the Motion for Counsel
19 (Dkt. 24), and the Motion to Stay (Dkt. 25) are denied.

20 Dated this 29th day of August, 2018.

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23 David W. Christel
24 United States Magistrate Judge