

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Trammel v. Ramos

No. 2:23-cv-01111 KJM AC P (E.D. Cal. Aug. 14, 2025) · No. 2:23-cv-01111 KJM AC P · Decided August 14,
2025

OPINION

(PC) Trammel v. Ramos

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 DEMARION TRAMMEL, No. 2:23-cv-1111 KJM AC P

12 Plaintiff,

13 v. ORDER AND FINDINGS AND

RECOMMENDATIONS

14 A. RAMOS, et al., 15 Defendants. 16 17 Plaintiff is a state prisoner proceeding pro se. Currently, before the court are defendants' 18 motion to stay (ECF No. 43) and plaintiff's motion to appoint counsel (ECF No. 56). 19 I. Procedural History 20 Two days before the deadline to file dispositive motions, defendants filed a motion to stay 21 these proceedings pending the resolution of plaintiff's criminal case (ECF No. 43) and plaintiff 22 opposed the motion (ECF No. 44).1 On May 13, 2025, the undersigned recommended the denial 23 of defendants' motion for a stay pursuant to Railroad Commission of Texas v. Pullman Co., 312 24 U.S. 496 (1941). ECF No. 51. In so recommending, the undersigned also sua sponte considered 25 whether abstention was appropriate under Younger v. Harris, 401 U.S. 37 (1971), and found that 26 it was not. ECF No. 51 at 4-6. It was further noted that, for the same reasons Younger abstention 27 1 Plaintiff also filed an unauthorized sur-reply (ECF No. 47), which the court disregarded 28 because it added nothing of substance to his opposition. ECF No. 51. 1 was not appropriate, defendants' cursory argument that plaintiff's claims would be barred by 2 Heck v. Humphrey, 512 U.S. 477 (1994), was also unconvincing. ECF No. 51 at 5 n.3. 3 Defendants filed objections to the findings and recommendations in which they argued, 4 for the first time, that Younger abstention was appropriate and expanded upon their Heck bar 5 argument. ECF No. 52. In the interest of judicial economy, the May 13, 2025 findings and 6 recommendations were vacated and defendants were given an opportunity to provide 7 supplemental briefing on whether Younger abstention was appropriate and why this case would 8 be Heck barred if plaintiff is convicted in state court. ECF No. 54. In response to the order, 9 plaintiff filed a supplemental brief (ECF No. 57), as did

defendants (ECF No. 58), and plaintiff's 10 time to file a supplemental opposition has now passed. 11 II. Plaintiff's Allegations 12 This case proceeds on the original complaint, which was screened and found to state 13 cognizable claims against defendants Ramos, Ortiz-Zamora, and Ortiz-Garcia for violations of the 14 Eighth Amendment. ECF No. 14 at 3. Plaintiff alleges that Ramos, Ortiz-Zamora, and Ortiz- 15 Garcia used excessive force against him during an incident on April 27, 2023, when they entered 16 his cell and beat him with a baton and closed fists. ECF No. 1 at 2. 17 III. Request for Judicial Notice 18 Defendants' objections to the May 13, 2025 findings and recommendations were 19 accompanied by a request for judicial notice of the preliminary hearing transcript from plaintiff's 20 state court criminal proceedings. ECF No. 52-1. "The court may judicially notice a fact that is 21 not subject to reasonable dispute because it: (1) is generally known . . . or (2) can be accurately 22 and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R.

23 Evid. 201(b). Because the transcript is a matter of public record and not subject to reasonable 24 dispute, the request for judicial notice will be granted.2 25 //// 26 //// 27 2 The court previously granted the request for judicial notice which accompanied the motion to 28 stay. ECF No. 51. 1 IV. Motion to Stay 2 A. Motion 3 Defendants seek a stay of these proceedings under the Pullman abstention doctrine, see 4 Pullman, 312 U.S. 496 (1941), pending plaintiff's prosecution in state court. ECF No. 43 at 1. 5 Plaintiff has been criminally charged with two counts of felony battery by a prisoner on a non- 6 prisoner (Cal. Pen. Code § 4501.5) in Solano County Superior Court Case Number F23-01661. 7 Id.; ECF No. 43-1 at 10-12. Those charges arise out of the same incident providing the factual 8 basis for plaintiff's claims in this case. ECF No. 43 at 2; ECF No. 43-1 at 11. Defendants argue 9 that a stay pending the outcome of plaintiff's criminal case is appropriate because a conviction 10 might moot the constitutional issues raised in this case. ECF No. 43 at 2-3. According to 11 defendants' most recent status report, plaintiff was scheduled to be arraigned in state court on

12 July 2, 2025.3 ECF No. 49.

13 B. Opposition 14 Plaintiff opposes defendants' motion to stay, arguing that he is ready to proceed, that a 15 stay would be an unnecessary waste of time, and that proceeding in this case would be in the 16 interest of civil justice. ECF Nos. 44, 45. 17 C. Reply 18 In their reply, defendants assert that plaintiff offers only conclusory arguments without 19 legal authority and fails to address any of the Pullman factors. ECF No. 46 at 1. They then 20 reiterate that the Pullman abstention doctrine should apply in this matter because all the elements 21 of the doctrine are satisfied. Id. at 1-2. 22 D. Supplemental Briefing 23 After defendants were ordered to file a supplemental brief, plaintiff filed a supplemental 24 brief in which he reiterates that he was assaulted by defendants and argues that the excessive use 25 3 At the time defendants filed their motion to stay, plaintiff had a preliminary examination 26 scheduled for January 15, 2025. ECF No. 43 at 1; ECF No. 43-1 at 14. That hearing was ultimately continued to April 9, 2025, and plaintiff's arraignment on the information was set for

27 July 2, 2025. ECF No. 49. Review of the Solano County Superior Court’s docket indicates that at the July 2, 2025 hearing the case was continued to October 14, 2025, for reassignment and trial 28 setting. 1 of force overruled defendants’ Younger and Heck arguments. ECF No. 57. In their supplemental 2 brief, defendants argue that Younger abstention is appropriate, that success on the merits in this 3 case would undermine the factual basis of the pending criminal charges, and that a criminal 4 conviction would likely bar plaintiff’s claims in this case. ECF No. 58. 5 E. Analysis 6 i. Pullman Abstention 7 “Pullman abstention is an equitable doctrine that allows federal courts to refrain from 8 deciding sensitive federal constitutional questions when state law issues may moot or narrow the 9 constitutional questions.” *San Remo Hotel v. City and County of San Francisco*, 145 F.3d 1095, 10 1104 (9th Cir. 1998). 11 Pullman abstention is appropriate where: 12 (1) The complaint touches a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its 13 adjudication is open. 14 (2) Such constitutional adjudication plainly can be avoided if a definitive ruling on the state issue would terminate the controversy. 15 (3) The possibly determinative issue of state law is doubtful.

16 17 *Sinclair Oil Corp. v. County of Santa Barbara*, 96 F.3d 401, 409 (9th Cir. 1996) (quoting Pearl 18 *Inv. Co. v. City and County of San Francisco*, 774 F.2d 1460, 1463 (9th Cir. 1985). 19 In this case, it appears that defendants have equated ongoing state criminal proceedings 20 with a “determinative issue of state law.” ECF No. 43 at 3. However, while state court criminal 21 proceedings unquestionably “implicate important state interests,” *Lazarus v. Baca*, 389 F. App’x 22 700, 700 (9th Cir. 2010) (citing *Kelly v. Robinson*, 479 U.S. 36, 49 (1986); *Rose v. Mitchell*, 443 23 U.S. 545, 585 (1979); *Younger*, 401 U.S. at 43-44), and are of course “issues of state law” in the 24 general meaning of the phrase, they do not necessarily constitute “issues of state law” for 25 purposes of Pullman. 26 Pullman addresses the concern 27 that a federal court will be forced to interpret state law without the benefit of state-court consideration and therefore under 28 circumstances where a constitutional determination is predicated on 1 a reading of the statute that is not binding on state courts and may be discredited at any time—thus essentially rendering the federal-court 2 decision advisory and the litigation underlying it meaningless. 3 *Moore v. Sims*, 442 U.S. 415, 428 (1979) (citations omitted). In other words, Pullman applies 4 where there is a question regarding the interpretation of state law that could moot the federal 5 constitutional issue. 6 While plaintiff’s guilt of the state charges remains uncertain until the criminal proceedings 7 come to a final resolution, there is no indication that the clarity of the statute he is charged with 8 violating is uncertain, making Pullman abstention inappropriate. See *Peridot Tree, Inc. v. City of 9 Sacramento*, 94 F.4th 916, 929 (9th Cir. 2024) (Pullman requirements not met where the 10 ordinance in question was clear); *Kusper v. Pontikes*, 414 U.S. 51, 54 (1973) (abstention is 11 appropriate “where the challenged state statute is susceptible of a construction by the state 12 judiciary that would avoid or modify the necessity of reaching a federal constitutional question”). 13 ii. Heck Bar 14 “[A] state prisoner’s claim for damages is not cognizable under 42 U.S.C. § 1983 if ‘a 15 judgment in favor of the plaintiff would necessarily imply the invalidity of his

conviction or 16 sentence,’ unless the prisoner can demonstrate that the conviction or sentence has previously been 17 invalidated.” *Edwards v. Balisok*, 520 U.S. 641, 643 (1997) (quoting *Heck*, 512 U.S. at 487). 18 “[I]f the district court determines that the plaintiff’s action, even if successful, will not 19 demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action 20 should be allowed to proceed.” *Heck*, 512 U.S. at 487 (emphasis in original). 21 In this case, plaintiff is charged with battery by a prisoner on a non-confined person in 22 violation of Penal Code § 4501.5. ECF No. 43 at 1; ECF No. 43-1 at 10-12. Section 4501.5 23 provides that “[e]very person confined in a state prison of this state who commits a battery upon 24 the person of any individual who is not himself a person confined therein shall be guilty of a 25 felony,” while Penal Code § 242 defines battery as “any willful and unlawful use of force or 26 violence upon the person of another.” The undersigned previously recommended that the motion 27 to stay be denied because, unlike other forms of battery which require an officer to be acting 28 lawfully, there was no indication from the elements of the offense that the jury would be required 1 to make any factual findings related to the lawfulness of defendants’ conduct or the 2 appropriateness of their use of force. ECF No. 51 at 5 & n.2. 3 In their supplemental brief, defendants assert the factual basis of plaintiff’s claims in this 4 case directly contradicts the factual basis for the criminal charges against him. ECF No. 58. At 5 the preliminary hearing, defendant Ramos testified that he responded to plaintiff’s cell because 6 plaintiff had covered the windows and was not responding to attempts to make contact. ECF No. 7 52-1 (preliminary hearing transcript) at 8-9. When defendants entered the cell, plaintiff ignored 8 commands to get down and instead ran at defendant Ortiz-Zamora and began punching the shield 9 he was holding. *Id.* at 10-11. Plaintiff then began punching Ramos in the upper torso before 10 wrapping his arms around Ramos and ignored commands to let go. *Id.* at 12-13. Plaintiff and 11 Ramos both fell to the floor when Ramos tried to take him down and leading Ramos to strike 12 plaintiff in the face with his hand to try and get plaintiff to release him. *Id.* at 13. When plaintiff 13 continued to strike Ramos in the torso, Ramos struck plaintiff with his baton. *Id.* at 13-14. 14 Although Ramos was aiming for plaintiff’s left shoulder, he ended up striking plaintiff in the head 15 because plaintiff was moving around erratically, and defendants were able to detain plaintiff at 16 some point after that. *Id.* at 14-15. Defendants argue that this factual basis is irreconcilable with 17 plaintiff’s allegations in this action, that success in this court would therefore implicitly invalidate 18 any state court conviction “regardless of the victims’ status or their conduct,” and that the specific 19 charged offense “is entirely irrelevant to the Heck analysis.” *Id.* at 4, 7. 20 Contrary to defendants’ assertion, the offense for which plaintiff has been charged is 21 highly relevant to the analysis required by Heck. “In evaluating whether claims are barred by 22 Heck, an important touchstone is whether a § 1983 plaintiff could prevail only by negating ‘an 23 element of the offense of which he has been convicted.’” *Cunningham v. Gates*, 312 F.3d 1148, 24 1153-54 (9th Cir. 2002) (quoting *Heck*, 512 U.S. at 487 n.6). “To decide whether success on a 25 section 1983 claim would necessarily imply the invalidity of a conviction, [the court] must 26 determine which acts

formed the basis for the conviction.” *Lemos v. County of Sonoma*, 40 F.4th 27 1002, 1006 (9th Cir. 2022). When the conviction is based on a jury verdict, “a court must look at 28 1 the record of the criminal case—including the jury instructions—to determine which facts the 2 jury necessarily found.” *Id.* (citations omitted). 3 Defendants’ argument that plaintiff’s excessive force claim and criminal charges are 4 irreconcilable is based in part on their contention that even if Penal Code § 4501.5 does not 5 require a finding that defendants were acting lawfully, it requires a finding that plaintiff was not 6 acting in self-defense. ECF No. 58 at 6. To support this proposition, defendants cite CALCRIM

7 No. 2723. *Id.* However, CALCRIM No. 2723 requires an instruction regarding self-defense only 8 if the issue of self-defense is raised by the evidence. If plaintiff does not assert or present 9 evidence of self-defense and instead asserts, for example, that he did not strike defendants at all, 10 the jury will not have to make a determination regarding self-defense and in doing so decide the 11 lawfulness of defendants’ use of force. Moreover, even if plaintiff is found guilty of battery, a 12 jury in this case could find that defendants responded to the battery with excessive force, which 13 would not negate any of the facts necessarily found by the jury. See, e.g., *Rodriguez v. City of 14 Modesto*, 535 F. App’x 643, 645 (9th Cir. 2013) (Heck does not bar claim that officers “though 15 having a right to use reasonable force . . . responded with excessive force” (citing *Hooper v. 16 County of San Diego*, 629 F.3d 1127, 1132 (9th Cir. 2011); *Yount v. City of Sacramento*, 43 Cal. 17 4th 885, 898-99 (2008)). 18 In an attempt to establish that Heck would bar this action because the factual basis of 19 plaintiff’s claims are irreconcilable with the factual basis of his criminal charges, defendants offer 20 four cases which they assert support their argument that irreconcilable factual bases require 21 finding that Heck bars the claims. ECF No. 58 at 3-6. The cases presented are distinguishable. 22 In *Cunningham*, the first case cited by defendants, the plaintiff alleged excessive use of 23 force after he was shot in a gun battle with the police. 312 F.3d at 1151. As a result of the shoot- 24 out, *Cunningham* was “convicted of, among other things, murdering [his accomplice] by 25 26 4 Based on the filings in this case, it appears likely that plaintiff may present such a defense. Although the complaint does not indicate what plaintiff was doing during the alleged assault, two 27 of plaintiff’s subsequent filings allege that he was “bald [sic] up on the floor” and “tryed [sic] to cuff up” while he was being hit with batons and closed fists, indicating that he was offering no 28 resistance. ECF Nos. 37, 55. 1 provoking the police to shoot.” *Id.* The Ninth Circuit found that this conviction “required the 2 jury to find that he intentionally provoked the deadly police response, . . . that he did not act in 3 self-defense,” and “that the police response was a natural consequence of *Cunningham*’s 4 provocative act,” barring his claim under both a theory that he did not provoke the firestorm and a 5 broader danger creation theory. *Id.* at 1154-55. Under the danger creation theory, *Cunningham* 6 argued that the officers used “excessive force to deliberately create a situation that provoked him 7 into firing.” *Id.* at 1154. However, he was also convicted of attempted murder, which required 8 that the jury find “he knew or should have known that they were police officers acting within the 9

scope of their duties,” and a finding of excessive force “would necessarily imply they were not 10 acting within the scope of their duties.” Id. at 1154-55. 11 In *Rodriguez v. Mendoza*, the plaintiff was convicted of violating Penal Code § 69 based 12 on assaulting the defendant by grabbing his arm and trying to take his pepper spray can. No. 13 1:21-cv-0410 JLT BAM, 2024 WL 4345760, at *1, 2024 U.S. Dist. LEXIS 177018, at *2 (E.D. 14 Cal. Sept. 30, 2024). A person violates Penal Code § 69 if they “attempt[], by means of any 15 threat or violence, to deter or prevent an executive officer from performing any duty imposed 16 upon the officer by law, or . . . knowingly resist[], by the use of force or violence, the officer, in 17 the performance of his or her duty.” Rodriguez alleged that he was pepper sprayed twice, that his 18 conviction involved only the first use of pepper spray by the defendants, and that the second use 19 of pepper spray was for no reason, constituting excessive force. 2024 WL 4345760, at *4, 2024 20 U.S. Dist. LEXIS 177018, at *11. However, the court found that the factual basis of plaintiff’s 21 plea clearly included the second use of pepper spray and accepting plaintiff’s version of events 22 would therefore necessarily imply the invalidity of the conviction. 2024 WL 4345760, at *4, 23 2024 U.S. Dist. LEXIS 177018, at *12. Rodriguez is distinguishable from this case because the 24 offense for which the plaintiff was convicted included a requirement that the officer be in the 25 performance of his duties and therefore acting lawfully. See *People v. Cruz*, 44 Cal. 4th 636, 673 26 (2008) (where statute makes it a crime to commit act against peace officer engaged in 27 performance of their duties, officer was necessarily acting lawfully at the time (citation omitted)). 28 1 Finding that the defendant used excessive force would have invalidated an element of the offense 2 for which plaintiff was convicted. 3 Defendants next cite *Felder v. Macias*, No. 2:20-cv-0266 WBS DMC, 2024 WL 3413561, 4 2024 U.S. Dist. LEXIS 124064 (E.D. Cal. July 15, 2024), and argue that the court in that case 5 found the plaintiff’s excessive force claims were barred by Heck. ECF No. 58. However, the 6 court in *Felder* made no such finding. Instead, the court found that the plaintiff’s procedural due 7 process claim with respect to his disciplinary conviction was barred by Heck because the 8 disciplinary had not been overturned. 2024 WL 3413561, at *12-13, 2024 U.S. Dist. LEXIS 9 124064, *34-35. *Felder* is therefore entirely inapplicable to the instant case. 10 Finally, defendants cite *Mora v. DeSimone*, No. 2:23-cv-0155 DJC DMC, 2025 WL 11 347282, 2025 U.S. Dist. LEXIS 17159 (E.D. Cal. Jan. 30, 2025). In *Mora*, like Rodriguez, the 12 plaintiff was convicted of violating Penal Code § 69. 2025 WL 347282, at *4, 2025 U.S. Dist. 13 LEXIS 17159, at *11. The plaintiff alleged that the continued use of force after he was on the 14 ground was excessive because he had stopped resisting. 2025 WL 347282, at *3, 2025 U.S. Dist. 15 LEXIS 17159, at *8-9. However, the court found that the evidence showed “that Plaintiff 16 continued to resist once on the ground because dismissed Defendant Overby only responded once 17 Plaintiff was already on the ground and the lawfulness of dismissed Defendant Overby’s actions 18 was necessarily an element of Plaintiff’s conviction.” 2025 WL 347282, at *7, 2025 U.S. Dist. 19 LEXIS 17159, at *18. The court further found that if plaintiff prevailed against the remaining 20 defendants on his claim that their use of force was excessive because he was no

longer resisting, 21 it would have invalidated his conviction because Overby's use of force (striking plaintiff three 22 times with a baton) would have been unlawful on an unresisting inmate. 2025 WL 347282, at *4, 24 There is nothing in the instant case to suggest that provoking an officer response is an 25 element of the offense plaintiff was charged with, that a jury will be required to find that 26 defendants were acting within the scope of their duties, or that plaintiff could not be both guilty of 27 the offense and subject to excessive force. For these reasons, defendants have not shown that this 28 1 case would necessarily be barred by Heck if plaintiff is found guilty of battery, and a stay is not 2 warranted on this basis. 3 iii. Younger Abstension 4 "Younger abstention is a jurisprudential doctrine rooted in overlapping principles of 5 equity, comity, and federalism." San Jose Silicon Valley Chamber of Com. Pol. Action Comm. 6 v. City of San Jose, 546 F.3d 1087, 1091-92 (9th Cir. 2008) (citations and footnote omitted). 7 Specifically, Younger abstention is appropriate when: (1) there is "an ongoing state judicial proceeding"; (2) the proceeding "implicate[s] 8 important state interests"; (3) there is "an adequate opportunity in the state proceedings to raise constitutional challenges"; and (4) the 9 requested relief "seek[s] to enjoin" or has "the practical effect of enjoining" the ongoing state judicial proceeding. 10 11 Arevalo v. Hennessy, 882 F.3d 763, 765 (9th Cir. 2018) (alteration in original) (quoting 12 ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund, 754 F.3d 754, 758 (9th Cir. 2014)). 13 "[W]hen damages are at issue rather than discretionary relief, deference—rather than dismissal— 14 is the proper restraint." Gilbertson v. Albright, 381 F.3d 965, 984 (9th Cir. 2004) (en banc). 15 In this case, the first two Younger requirements are clearly met since plaintiff's state court 16 criminal proceedings are still on-going and, as noted above, state criminal proceedings "implicate 17 important state interests." With respect to the requirement that plaintiff have an adequate 18 opportunity to raise his constitutional claims in state court, "the burden on this point rests on the 19 federal plaintiff to show 'that state procedural law barred presentation of [its] claims.'" Pennzoil 20 Co. v. Texaco, Inc., 481 U.S. 1, 14 (1987) (alteration in original) (quoting Moore v. Sims, 442 21 U.S. 415, 432 (1979)). Defendants have argued that plaintiff is free to raise his claim that they 22 used excessive force against him as part of his defense, ECF No. 58 at 7-8, and plaintiff has not 23 disputed this argument. This leaves only the fourth requirement—that the requested relief would 24 have "the practical effect of enjoining the ongoing state judicial proceeding"—for consideration.⁵ 25 In their supplemental brief addressing Younger, defendant's discussion of the fourth 26 requirement reprises their argument that a conviction is likely to bar plaintiff's claims under 27 28 5 Plaintiff does not seek to actually enjoin his state court proceedings. 1 Heck. ECF No. 58 at 2-8. Though the issues are not identical, they have substantial overlap, and 2 defendants' failure to show that a conviction will bar the claims in this case also fails to 3 demonstrate that relief in this case would practically enjoin the state proceedings. As discussed 4 above, the charge that plaintiff battered defendants is not mutually exclusive to his claim of 5 excessive force, and defendants have failed to show that a verdict in plaintiff's favor would 6 dictate the results of plaintiff's criminal proceedings. On the record

before the court, a 7 determination that defendants used excessive force against plaintiff would not preclude a 8 determination that plaintiff was guilty of battery or otherwise act to effectively enjoin the state 9 court proceedings. 10 For these reasons, a stay under Younger is also not appropriate in this case. 11 F. Conclusion 12 For the reasons set forth above, defendants have not met their burden in demonstrating 13 that a stay is warranted and the motion to stay the case should be denied. 14 V. Motion to Appoint Counsel 15 Plaintiff has requested the appointment of counsel. ECF No. 56. The United States 16 Supreme Court has ruled that district courts lack authority to require counsel to represent indigent 17 prisoners in § 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In 18 certain exceptional circumstances, the district court may request the voluntary assistance of 19 counsel pursuant to 28 U.S.C. § 1915(e)(1). *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 20 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). 21 “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the 22 likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his claims 23 pro se in light of the complexity of the legal issues involved.’” *Palmer v. Valdez*, 560 F.3d 965, 24 970 (9th Cir. 2009) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). The burden 25 of demonstrating exceptional circumstances is on the plaintiff. *Id.* Circumstances common to 26 most prisoners, such as lack of legal education and limited law library access, do not establish 27 exceptional circumstances that would warrant a request for voluntary assistance of counsel. 28 Plaintiff requests appointment of counsel on the grounds that he requires counsel to ensure 1 | a fair trial and that he receive civil justice, and because he is not educated in law and defendants 2 | are falsifying unspecified documents. ECF No. 56. It has not yet been determined whether this 3 || case will proceed to trial, and any request for counsel based on the need for representation at trial 4 | is therefore premature. Additionally, plaintiff's lack of legal education is a circumstance common 5 || to most prisoners and not an extraordinary circumstance warranting the appointment of counsel. 6 || Plaintiff's conclusory and unsupported allegation that defendants are falsifying documents is also 7 || insufficient to support the appointment of counsel. For these reasons, plaintiff has not shown the 8 || existence of extraordinary circumstances warranting the appointment of counsel and the motion 9 || will be denied. 10 Accordingly, IT IS HEREBY ORDERED that: 11 1. Defendants’ request for judicial notice (ECF No. 52-1) is GRANTED; and 12 2. Plaintiff's motion for counsel (ECF No. 56) is DENIED. 13 IT IS FURTHER RECOMMENDED that: 14 1. Defendants’ motion to stay (ECF No. 43) be DENIED; and 15 2. The parties be given thirty days to file dispositive motions. 16 These findings and recommendations are submitted to the United States District Judge 17 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 18 | after being served with these findings and recommendations, any party may file written 19 || objections with the court and serve a copy on all parties. Such a document should be captioned 20 || “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the 21 || objections shall be served and filed within fourteen days after service of the objections. The 22 ||

parties are advised that failure to file objections within the specified time may waive the right to
23 || appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). 24 |
DATED: August 14, 2025 ~ 25 Hhthter— Chane
ALLISON CLAIRE
26 UNITED STATES MAGISTRATE JUDGE
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