APPENDIX A

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHNATHAN SAMUEL WILLIAMS, No. 2:11-CV-2526-WBS-CMK-P

Plaintiff,

vs. ORDER

KURK, et al.,

Defendants.

_____/

Plaintiff, a prisoner proceeding pro se, brought this civil rights action pursuant to 42 U.S.C. § 1983. Final judgement was entered on September 11, 2015, and the Ninth Circuit Court of Appeals has affirmed (see Doc. 78).

In the court's September 11, 2015, order adopting the Magistrate Judge's findings and recommendations, granting defendants' motion to dismiss, and directing entry of judgement, the court stated that all other pending motions are denied as moot. The Clerk of the Court will, pursuant to this order, be directed to terminate the motions at Docket entries 30 and 56 as pending motions. The Clerk of the Court will also be directed to terminate Docket entry 34 as pending findings and recommendations because the underlying motion (Doc. 30) was denied as moot in the court's September 11, 2015, final order. Finally, because the court's judgment has

been affirmed on appeal, the Clerk of the Court will be directed to terminate the motions at Docket entries 63 and 65 as pending motions.

Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court is directed to terminate the matters at Docket entries 30, 34, 56, 63, and 65 as matter pending before the court.

DATED: August 7, 2018

Craig M. Kellison

CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE

APPENDIX B

Williams v. Kurk

United States Court of Appeals for the Ninth Circuit

July 10, 2018*, Submitted; July 13, 2018, Filed

No. 15-17402

* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Reporter
730 Fed. Appx. 516 *; 2018 U.S. App. LEXIS 19325 **; 2018 WL 3407469

JOHNATHAN S. WILLIAMS, AKA Jonathan Samuel Williams, Plaintiff-Appellant, v. KURK, Dr.; et al., Defendants-Appellees.

Notice: PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Subsequent History: Rehearing denied by, Rehearing, en banc, denied by Williams v. Kurk, 2018 U.S. App. LEXIS 31173 (9th Cir. Cal., Nov. 2, 2018)

Prior History: **[**1]** Appeal from the United States District Court for the Eastern District of California. D.C. No. 2:11-cv-02526-WBS-CMK. William B. Shubb, District Judge, Presiding.

Williams v. Cal. Dep't of Corr. & Rehab., 2015 U.S. Dist. LEXIS 148335 (E.D. Cal., Oct. 30, 2015)

Williams v. Kurk, 2015 U.S. Dist. LEXIS 149823 (E.D. Cal., Sept. 10, 2015)

Disposition: AFFIRMED.

Core Terms

res judicata, prior action, district court, preliminary injunctive relief, moot

Counsel: Johnathan S. Williams, AKA: Jonathan Samuel Williams, Plaintiff - Appellant, Pro se, Soledad, CA.

For KURK, Dr., MCINTYRE, Dr., WOOD, Dr., Defendant - Appellee: Vickie P. Whitney, AGCA-Office of the California Attorney General, Sacramento, CA.

Judges: Before: CANBY, W. FLETCHER, and CALLAHAN, Circuit Judges.

Opinion

[*517] MEMORANDUM*

Johnathan Williams, AKA Johnathan Samuel Williams, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious dental needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal on the basis of res judicata, *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002), and we affirm.

The district court properly dismissed Williams's action on the basis of res judicata because Williams's claim was raised, or could have been raised, in his prior action between the same parties, and the prior action resulted in a final judgment on the merits. *See id.* (explaining requirements for res judicata under federal law and that res judicata bars "any claims that were raised or could have been **[**2]** raised in a prior action" (citation, internal quotation marks, and emphasis omitted)). Contrary to Williams's contention, res judicata applies even though defendants were not served in the prior action.

Williams's appeal of the denial of his motions for preliminary injunctive relief is moot. *See Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441, 1449-50 (9th Cir. 1992) (when underlying claims have been decided, reversal of denial of preliminary injunctive relief would have no practical consequences, and the issue is therefore moot).

The district court did not abuse its discretion by denying Williams's motion for reconsideration because Williams failed to demonstrate any grounds warranting relief. *See Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for relief under Fed. R. Civ. P. 60(b)).

We reject as meritless Williams's contentions that the district court erred in its decisions regarding Williams's appointed counsel; that there was misconduct by the magistrate judge that affected Williams's right to due process and equal protection; and that his cell searches affected the outcome of this case.

Williams opposed request for judicial notice (Docket Entry No. 21) is denied.

AFFIRMED.

End of Document

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Williams v. Kurk

United States Court of Appeals for the Ninth Circuit

January 23, 2018, Filed

No. 15-17402

Reporter
2018 U.S. App. LEXIS 1744 *

JOHNATHAN S. WILLIAMS, AKA Jonathan Samuel Williams, Plaintiff-Appellant, v. KURK, Dr.; MCINTYRE, Dr.; WOOD, Dr., Defendants-Appellees.

Prior History: **[*1]** D.C. No. ***2:11-cv-02526***-WBS-CMK. Eastern District of California, Sacramento.

Williams v. Kurk, 2015 U.S. Dist. LEXIS 149823 (E.D. Cal., Sept. 10, 2015)

Core Terms

appointment of counsel, reconsideration motion, opening brief, Appellees', answering, excerpts, renewed

Counsel: Johnathan S. Williams, Plaintiff - Appellant, Pro se, Soledad, CA.

For KURK, Dr., MCINTYRE, Dr., WOOD, Dr., Defendants - Appellees: Vickie P. Whitney, AGCA-Office of the California Attorney General, Sacramento, CA.

Judges: Before: PAEZ and BEA, Circuit Judges.

Opinion

ORDER

Appellant has filed a renewed request for appointment of counsel, contained within the November 8, 2017 filing. We construe this request as a motion for reconsideration of this court's September 12, 2017 order denying appellant's prior motion for appointment of counsel. The September 12, 2017 order stated that "[n]o motions for reconsideration, clarification, or modification of this denial shall be filed or entertained." Accordingly, the court declines to consider appellant's renewed motion for appointment of counsel (Docket Entry No. 24).

Appellant's requests for injunctive relief, also contained within the November 8, 2017 filing, are denied.

Appellant's motions for an extension of time to file the opening brief (Docket Entry Nos. 24, 25) are granted. The opening brief is now due March 15, 2018; the answering brief is due April 16, 2018; and the optional reply **[*2]** brief is due within 21 days after service of the answering brief. Because appellant is proceeding without counsel, the excerpts of record requirement is waived. *See* 9th Cir. R. 30-1.2. Appellees' supplemental excerpts of record are limited to the district court docket sheet, the notice of appeal, the judgment or order appealed from, and any specific portions of the record cited in appellees' brief. *See* 9th Cir. R. 30-1.7.

End of Document

Neutral
As of: March 30, 2019 8:00 PM Z

Williams v. Kurk

United States Court of Appeals for the Ninth Circuit

November 2, 2018, Filed

No. 15-17402

Reporter
2018 U.S. App. LEXIS 31173 *

JOHNATHAN S. WILLIAMS, AKA Jonathan Samuel Williams, Plaintiff-Appellant, v. KURK, Dr.; et al., Defendants-Appellees.

Prior History: [*1] D.C. No. 2:11-cv-02526-WBS-CMK. Eastern District of California, Sacramento.

Williams v. Kurk, 730 Fed. Appx. 516, 2018 U.S. App. LEXIS 19325 (9th Cir. Cal., July 13, 2018)

Core Terms

en banc, petition for rehearing

Counsel: Johnathan S. Williams, AKA: Jonathan Samuel Williams, Plaintiff - Appellant, Pro se, Soledad, CA.

For KURK, Dr., MCINTYRE, Dr., WOOD, Dr., Defendants - Appellees: Vickie P. Whitney, AGCA- Office of the California Attorney General, Sacramento, CA.

Judges: Before: CANBY, W. FLETCHER, and CALLAHAN, Circuit Judges.

Opinion

ORDER

The mandate is recalled for the limited purpose of considering the petition for panel rehearing and petition for rehearing en banc.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 35.

Williams's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 38) are denied.

No further filings will be entertained in this closed case.

End of Document

APPENDIX C

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

----oo0oo----

JOHNATHAN SAMUEL WILLIAMS,

Plaintiff,

v.

KURK, et al.,

Defendants.

CIV. NO. 2:11-cv-2526-WBS-CMK-P

ORDER RE: FINDINGS AND RECOMMENDATIONS

----oo0oo----

Plaintiff Johnathan Samuel Williams, a state prisoner proceeding without counsel, brought a § 1983 action against three defendants--Drs. Kurk, McIntyre, and Wood--for violations of his Eighth Amendment rights. (See Pl.'s Am. Compl. at 43-50 (Docket No. 9).) On January 8, 2013, the Magistrate Judge informed plaintiff that service directed to these defendants was returned unexecuted after the California State Prison, Solano, told the

United States Marshal there was no record of defendants having worked there. (Docket No. 24.) Plaintiff was directed to seek additional information sufficient to effect service. (Id.)

During the next year, plaintiff made several requests for extensions of time, (Docket Nos. 26, 27-29), stating that prison policy limits his access to the prison's law library and that his requests for information from the California Department of Corrections and Rehabilitation ("C.D.C.R.") had gone unanswered. (Pl.'s Second Mot. For Extension Of Time (Docket No. 28).) After receiving two extensions, plaintiff failed to provide any further information concerning the defendants. (Docket No. 31.) The Magistrate Judge submitted Findings and Recommendations ("F&Rs") recommending that the case be dismissed for failure to prosecute and failure to comply with the court's order to serve defendants. (Id.) Plaintiff timely filed objections to the F&Rs. (Docket No. 32.)

For the reasons below, the court rejects the Magistrate Judge's recommendation and remands with orders to appoint counsel for the plaintiff and allow counsel time to locate information concerning the defendants.

I. Involuntary Dismissal for Failure to Serve Process

Courts may involuntarily dismiss a case for failure to prosecute or failure to comply with court rules and orders. See Local Rule 110; Fed. R. Civ. P. 41(b). "Dismissal is a harsh penalty and is to be imposed only in extreme circumstances," Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986), but dismissal without prejudice is a more easily justified sanction

for failure to prosecute than dismissal with prejudice, see Ash v. Cvetkov, 739 F.2d 493, 496 (9th Cir. 1984).[1]

When determining whether dismissal is appropriate, courts must weigh five factors: (1) the public interest in expeditious resolution of litigation, (2) the court's need to manage its docket, (3) the risk of prejudice to the defendant, (4) the public policy favoring disposition of cases on their merits, and (5) the availability of less drastic alternatives. See Bautista v. Los Angeles Cnty., 216 F.3d 837, 841 (9th Cir. 2000). The Ninth Circuit prefers but does not require explicit discussion of these factors. See Malone v. U.S. Postal Serv., 833 F.2d 128, 132 (9th Cir. 1987); Henderson, 779 F.2d at 1424.

The Ninth Circuit has upheld dismissal for failure to serve process. In Anderson v. Air West, Inc., 542 F.2d 522 (1976), for example, the Ninth Circuit upheld a district court's decision to dismiss for lack of prosecution after "a clear showing of willful delay in the service of process on . . . defendants." Id. at 525. The plaintiff failed to provide a reasonable explanation for a one-year delay in service of

---

[1] The Ash court noted, however, that dismissal without prejudice still presents dangers, "as for example when statute of limitations or service of process problems are present." Ash, 739 F.2d at 496. At least some circuits have held that the filing of a complaint that is later dismissed without prejudice for failure to perfect service does not toll the applicable statute of limitations in all contexts. See e.g., Wilson v. Grumman Ohio Corp., 815 F.2d 26, 28 (6th Cir. 1987) ("We are persuaded that the filing of a complaint which is later dismissed without prejudice does not toll the statutory filing period of Title VII."). The Ninth Circuit has followed this approach in the context of claims under Title VII of the Civil Rights Act of 1964. See Wei v. State of Hawaii, 763 F.2d 370, 372 (9th Cir. 1985).

process, and the court interpreted the record to reflect "deliberate delay[]" as plaintiff's counsel tried "to decide whether he really wanted to serve these individuals." Id.

Dismissal for failure to serve defendants has also been used in the context of prisoner litigation. In Taraldsen v. Camberos, Civ. No. 80-1855, 2009 WL 825807 (D. Ariz. Mar. 30, 2009), a district court in Arizona dismissed a pro se prisoner's § 1983 complaint without prejudice after the plaintiff failed to complete and return a service pack for the defendant. Id. at *1. However, the court's ultimate decision to dismiss the case considered several factors beyond delinquent service of process, including the plaintiff's failure to notify the court of a change of address. Id. at *1-2.

II. Application of the Five Factors

This is a close case. The court finds that three of the five factors weigh against involuntary dismissal, while two factors support it. Ultimately, however, plaintiff's good faith attempts to obtain information concerning the defendants and comply with the court's orders distinguishes his situation from a typical case warranting dismissal. Accordingly, the court finds involuntary dismissal inappropriate at this time.

A. The Public Interest in Expeditious Resolution of Litigation and the Court's Need to Manage Its Docket

The Ninth Circuit's discussion of the first two factors in Malone is helpful in fleshing out the essential analysis. Under these factors, the Malone court considered whether the defendant delayed or impeded resolution of the case or prevented the district court from adhering to its trial schedule. See

Malone, 833 F.2d at 131.

The length of plaintiff's delay in serving process arguably supports dismissal under this analysis. The Magistrate Judge responded to the initial failure to serve defendants by ordering plaintiff on January 8, 2013, to seek additional information. Since then, plaintiff has requested and received two extensions granting him more time, (Docket Nos. 26, 27), in addition to an unrequested extension provided by the Magistrate Judge after ruling on one of plaintiff's motions. (Docket No. 25.) Fed. R. Civ. P. 4(m) requires defendants to be served with 120 days of filing a complaint.

Since service of process was authorized, plaintiff has had more than a year to provide an address or any information sufficient to serve the defendants--a delay that exceeds what other courts have found to be "unreasonable delay." See Henderson, 779 F.2d at 1423 (finding sufficient delay over a period of nine months). This delay has unquestionably impeded resolution of the case, as the court cannot move forward before notifying the defendants of the lawsuit against them. Plaintiff's requests for more time have also required the expenditure of judicial resources and prevented the Magistrate Judge from determining whether this case has merit.

B. Prejudice to the Defendants

Delay in serving a complaint also frustrates a defendant's ability to prepare. See Anderson, 542 F.2d at 525 ("Delay in serving a complaint is a particularly serious failure to prosecute because it affects all the defendant's preparations."). Courts have found that "failure to prosecute

diligently is sufficient by itself to justify a dismissal, even in the absence of a showing of actual prejudice to the defendant from the failure." Id. at 524 (collecting cases). In general, however, the district court's job is to chart the line between acceptable and "unreasonable" delay. See Ash v. Cvetkov, 739 F.2d 493, 496 (9th Cir. 1984) ("Limited delays and the prejudice to a defendant from the pendency of a lawsuit are realities of the system that have to be accepted, provided the prejudice is not compounded by 'unreasonable' delays."). To do this, courts examine whether the defendant has suffered any actual prejudice from the delay. See Nealey v. Transportacion Maritima Mexicana, S. A., 662 F.2d 1275, 1280 (9th Cir. 1980) ("The pertinent question for the district court . . . is not simply whether there has been any [delay], but rather whether there has been sufficient delay or prejudice to justify a dismissal of the plaintiff's case."); Citizens Utilities Company v. American Telephone & Telegraph Company, 595 F.2d 1171, 1174 (9th Cir. 1979) ("Whether actual prejudice exists may be an important factor in deciding whether a given delay is 'unreasonable.'"). In Malone, for example, the court analyzed the third factor by examining whether the plaintiff's actions had impaired the defendant's ability to go to trial or the court's ability to arrive at a just decision. Malone, 833 F.2d at 131. In particular, the court discussed plaintiff counsel's "bad faith decision" to wait until the last minute before notifying the government that it would not comply with a pretrial order. Id.

Here, plaintiff has not yet served any of the defendants, making it difficult to know whether they have

suffered actual prejudice as a result. However, Malone suggests that the court can also consider whether the plaintiff has acted in good faith by diligently attempting to serve process. Id.

The record suggests that plaintiff has acted in good faith by repeatedly trying to secure the defendants' addresses or location information. Plaintiff claims to have requested such information from the C.D.C.R. without receiving a response. (Pl.'s Second Mot. For Extension Of Time; Pl.'s Opp'n at 9). He supports this claim with a copy of a letter addressed to the "Director of Corrections and Rehabilitation for the State of California." (Pl.'s Opp'n at 12, Ex. A.) Within the letter, plaintiff asks for information on the defendants and states that this is the second letter of its kind because his first went without a response. (Id.) Plaintiff contends in his opposition that his status as a current prisoner may prevent him from obtaining information on C.D.C.R. employees, (Id. at 2.), but his letter requests that information be provided directly to the U.S. Marshal or this court. (Id. at 12.) These actions do not evince a bad faith motive to waste time or resources like that found in Malone. Accordingly, the third factor weighs against dismissal.

C. Public Policy Favoring Disposition on the Merits

The Malone court noted without discussion that the fourth factor cuts against dismissal. Malone, 833 F.3d at 133 n.2.[2] Similarly here, the public policy favoring disposition of

[2] Several courts have simply noted that public policy favors disposition of cases on the merits without significant discussion. See, e.g., Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002).

cases on their merits weighs against dismissal, which will only result in the defendant refilling his case and pushing potential resolution back further.

D. Consideration of Alternatives

The Magistrate Judge did warn plaintiff that failure to serve process could result in dismissal. See Malone, 833 F.3d at 132 (suggesting that providing a plaintiff with warnings that failure to serve process will result in dismissal suffices under the consideration-of-alternatives factor). However, the court finds a more thorough consideration of less-drastic alternatives to be appropriate in this case. The Ninth Circuit has recognized the "unique handicaps of incarceration" facing pro se prisoner plaintiffs, including "prisoners' limited access to legal materials, constraints on their abilities to obtain evidence, and difficulties monitoring the progress of their cases." Woods v. Carey, 684 F.3d 934, 938 (9th Cir. 2012) (quoting Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998) (internal quotations omitted)). It has suggested that district courts should provide extra guidance and clear explanations of any deficiencies "in language comprehensible to a lay person." Ferdik, 963 F.2d at 1260-61 (9th Cir. 1992) (upholding dismissal after observing that the district court gave the plaintiff adequate guidance and clearly explained deficiencies in the plaintiff's pleadings). In the absence of such guidance, procedural defaults cannot be entirely surprising, and a lesser sanction is more appropriate.[3]

[3] As the Malone court noted, "[p]roviding plaintiff with a second or third chance following a procedural default is a 'lenient sanction,' which, when met with further default, may justify imposition of the ultimate sanction of dismissal with

The Magistrate Judge's order directed plaintiff to obtain information relating to service of process "through any means available to him, including the California Public Records Act, Cal. Gov't. Code § 6250, et seq., or other means." (Docket No. 24.) While this order points to what may be a helpful statute, it fails to provide guidance on how or to whom such a request should be made--the kind of practical information most useful to a pro se plaintiff with limited access to legal materials. (See Docket No. 27, 28 (stating that the plaintiff can only access the law library once per week).) The order also suggests that plaintiff may seek judicial intervention if access to the information is denied or unreasonably delayed. (Docket No. 24.) Again, this guidance is helpful.[4] But it fails to provide any concrete direction on how or through whom to request judicial support. Considering the difficulties that face a prisoner without counsel, the Magistrate Judge's orders may not provide even a diligent plaintiff with the support needed to avoid procedural default.[5]

In sum, three of the five factors weigh against

---

prejudice." Malone, 833 F.2d at 132 (quoting Callip v. Harris County Child Welfare Department, 757 F.2d 1513, 1521 (5th Cir.1985)).

[4] Plaintiff's Motion for Injunctive Relief, filed just before the Magistrate Judge submitted his F&Rs, was perhaps such an attempt to secure judicial assistance. (See Docket No. 30.)

[5] To be clear, it is not the job of a magistrate judge to prosecute the plaintiff's case for him. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 n.4 (9th Cir. 1992). ("It is not the district court's role to amend plaintiff's complaint for him after his failure to comply with its court order to do just that."). The court merely believes that dismissal is too harsh a sanction given the obstacles plaintiff faces in requesting judicial assistance.

involuntary dismissal here. More importantly, dismissal of plaintiff's case without prejudice will not cure the difficulties discussed above. Accordingly, the court finds dismissal inappropriate at this stage of the proceeding.

III. Appointment of Counsel

The Magistrate Judge denied plaintiff's earlier request for appointment of counsel. (Docket No. 26 at 3.) In light of the difficulties that have arisen since then, however, the court now finds that appointment of counsel will best serve to move this matter forward. The court may request the assistance of counsel, pursuant to 28 U.S.C. § 1915(e)(1), upon a finding of "exceptional circumstances." See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). A finding of exceptional circumstances requires evaluating two factors: (1) plaintiff's "likelihood of success on the merits" and (2) "the ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal issues involved." See Terrell, 935 F.2d at 1017. Neither factor is dispositive and both must be viewed together before reaching a decision. See id.

Evaluation of the likelihood of success is difficult at such an early stage in this proceeding. Plaintiff claims that, over the last ten years, he has repeatedly requested dental care to alleviate pain and prevent the loss of teeth. (Pl.'s Am. Compl. at 43, 48.) He alleges that doctors at California State Prison, Solano, refused to provide treatment, with the exception of tooth extraction. (Id. at 44.) Plaintiff states he has few remaining teeth with several defective crowns and fillings, (id.

at 46-47), and that denial of treatment has caused him to endure "painful tooth aches" that force him to chew only on one side of his mouth, (id. at 44). Similarly situated plaintiffs have won verdicts premised upon comparable denial of dental care. See, e.g., Woods, 684 F.3d at 936-38 (detailing a former prisoner's success in a civil rights case for failure to provide adequate dental care while incarcerated at California State Prison, Solano).

More apropos to the circumstances of the case here, what plaintiff seeks immediately is to locate the whereabouts and serve the defendants he has sued. Given the assistance of counsel, he should be able to succeed in doing that. Thus, under the second factor, both the plaintiff and this court would benefit from the appointment of counsel to help prosecute plaintiff's case. The plaintiff has been unable to locate the named defendants without assistance, and more delay may further exacerbate his injuries. (See Pl.'s Mot. for Inj. Relief at 2 (stating that plaintiff arrived in prison with thirty teeth, but "now has only eight upper teeth, and has been disfigured by the loss of his other teeth which also created a speech impediment").) Counsel can help by making requests for information on his behalf and more efficiently securing responses.

Moreover, the Magistrate Judge has noted that plaintiff has a tendency to respond to court requests with "diatribe[s] of how he has been mistreated," rather than addressing procedural deficiencies. (Docket No. 26 at 2.) Plaintiff also evinces a misunderstanding of the complexities of his case by frequently

misstating the type of case he is proceeding in by referring to himself as a petitioner and discussing a writ of habeas corpus. (Id.) Given the severity of his alleged injuries and this case's potential impact on other prisoners within the California prison system, adequate presentation of this case is exceptionally important. See Wood, 900 F.2d at 1336 n.1 (Reinhardt, J., dissenting) (suggesting that counsel should have been appointed sooner in a case involving allegations of deficient medical treatment within the Nevada penal system).

IT IS THEREFORE ORDERED that (1) the Magistrate Judge's Findings and Recommendations of April 16, 2014, be, and the same hereby are, rejected; (2) this matter be, and the same hereby is, REMANDED to the Magistrate Judge with instructions to appoint counsel to represent plaintiff pursuant to 28 U.S.C. § 1915, and to permit counsel sufficient time to seek information on the location the three named defendants and to effect service upon them.

Dated: September 19, 2014

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE