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

Kenneth Wilson Norwood,)	No. 1:07-CV-00889-SMM
Plaintiff,)	ORDER
vs.)	
Suzan Hubbard, et al.,)	
Defendants.)	

Before the Court is Plaintiff’s Motion to Stay Discovery (Doc. 105). Defendants filed a Response (Doc. 107) and Plaintiff replied (Doc. 111). Plaintiff requests a stay because he has not received the internal affairs investigation from the California Department of Corrections and Rehabilitation (“CDCR”). Documentation that he believes is necessary to respond to the Motion for Summary Judgment filed by Defendants Brandon, Canedo, Frescura, Gonzales, Keener, Koelher, Morales, Pascua, Price, and Maldonado.

As the Court held in its December 22, 2010 Order, the Court will not issue a stay on a hypothetical possibility that Plaintiff will not receive the CDCR internal affairs documents. A stay or continuance is appropriate only upon good faith showing by affidavit that it is needed to obtain facts essential to preclude summary judgment. See McCormick v. Fund American Cos., Inc., 26 F.3d 869, 885 (9th Cir. 1994). Thus, the Plaintiff must show (1) that he has set forth in affidavit form the specific facts that he hopes to elicit from further discovery, (2) that the facts sought exist, and (3) that these sought-after facts are "essential" to resist the summary judgment motion.” State of California v. Campbell, 138 F.3d 772, 779 (9th Cir. 1998). Here, Plaintiff has not made the requisite showing. A subpoena was served

1 on CDCR on January 24 and Plaintiff should receive the documents in short order. Thirty
2 days still remain until the March 3, 2011 Response date set by the Court. If plaintiff does not
3 receive the documents he may petition the court for an extension, but as of now Plaintiff's
4 request for a stay must be denied.

5 **IT IS HEREBY ORDERED DENYING** Plaintiff's Motion to Stay Discovery (Doc.
6 105).

7 DATED this 1st day of February, 2011.

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11 Stephen M. McNamee
12 United States District Judge
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