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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OBIE L. CRISP, III,
Plaintiff,
v.
WASCO STATE PRISON, et al.,
Defendants.

Case No. 1:13-cv-01899-AWI-SKO (PC)
ORDER DENYING PLAINTIFF’S
MOTIONS TO STAY ACTION PENDING
SETTLEMENT CONFERENCE
(Docs. 66, 67, 70, 71)

I. Background

Plaintiff, Obie Lee Crisp, III, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on November 22, 2013 (Doc. 1) and is proceeding on claims of deliberate indifference to his serious medical needs and violation of the Americans with Disabilities Act (“ADA”) and Rehabilitation Act (“RA”). The parties have indicated that a court supervised settlement conference may be beneficial. (Docs. 65, 67.) Thus, a settlement conference before Magistrate Judge Kendall Newman is currently scheduled to take place on January 6, 2017. (Doc. 68.)

Plaintiff has filed four motions requesting that all proceedings in this action be stayed until completion of the settlement conference. (Docs. 66, 67, 70, 71.) Defendants have filed neither oppositions, nor statements of non-opposition. These motions are deemed submitted. L.R. 230(l).

II. Modification of Scheduling Order

A party seeking leave of court to amend the schedule of a case must satisfy Federal Rule

1 of Civil Procedure¹ 16(b)'s "good cause" standard. The good cause standard of Rule 16(b)
2 focuses primarily on the diligence of the moving party, *id.*, and the reasons for seeking
3 modification, *C.F. ex rel. Farnan v. Capistrano Unified Sch. Dist.*, 654 F.3d 975, 984 (9th
4 Cir.2011). If the party seeking to amend the scheduling order fails to show due diligence, the
5 inquiry should end and the court should not grant the motion to modify. *Zivkovic v. Southern*
6 *California Edison, Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002).

7 Plaintiff fails to show that he has exercised due diligence in any of his motions to stay the
8 action pending the settlement conference. His only statement is that he needs ninety days to
9 research and prepare for the settlement conference. The current Amended Discovery and
10 Scheduling Order issued in this case on October 3, 2016. (Doc. 63.) Though Plaintiff filed his
11 first motion requesting a stay on October 14, 2016, he fails to provide justification for delaying all
12 activities in this action, which is already over three years old, until after the settlement
13 conference. Likewise, Plaintiff has already had approximately three years within which to
14 research and familiarize himself on the legal issues for his claims in this action. Plaintiff fails to
15 show due diligence upon which to modify the scheduling order.

16 **III. Stay of Proceedings**

17 A district court has the inherent power to stay its proceedings, or any portion thereof.
18 This power to stay is "incidental to the power inherent in every court to control the disposition of
19 the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."
20 *Landis v. North American Co.*, 299 U.S. 248, 254 (1936); *see also Gold v. Johns–Manville Sales*
21 *Corp.*, 723 F.2d 1068, 1077 (3d Cir.1983) (holding that the power to stay proceedings comes
22 from the power of every court to manage the cases on its docket and to ensure a fair and efficient
23 adjudication of the matter at hand). This is best accomplished by the "exercise of judgment,
24 which must weigh competing interests and maintain an even balance." *Landis*, 299 U.S. at 254–
25 55. In determining whether a stay is warranted, courts consider the potential prejudice to the non-
26 moving party; the hardship or inequity to the moving party if the action is not stayed; and the
27 judicial resources that would be saved by simplifying the case or avoiding duplicative litigation if

28 ¹ The Federal Rules of Civil Procedure will hereinafter be referred to as "Rule *." Any reference to other statutory
authorities shall so indicate.

1 the case before the court is stayed. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir.1962). The
2 Ninth Circuit “has sustained or authorized in principle *Landis* stays on several occasions.”
3 *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir.2005).

4 There is no basis upon which to find that Plaintiff will be subjected to hardship or inequity
5 if the action is not stayed, nor is the case likely to be simplified to conserve judicial resources if a
6 stay is granted. Rather, if a stay is granted, there is risk of prejudice to Defendants from fading
7 memories -- which, given the age of this case, has likely already begun. There is also no basis
8 upon which find that the settlement conference is more likely to be successful if the parties do not
9 continue to engage in discovery prior thereto. To the contrary, engaging in discovery may well
10 educate Plaintiff on the legal issues and the strengths and weaknesses of his claims which would
11 assist his preparation for the settlement conference. As such, it is not reasonable to stay this
12 action pending the settlement conference.

13 **IV. Order**

14 Accordingly, it is HEREBY ORDERED that Plaintiff’s motions to stay this action until
15 after the settlement conference (Docs. 66, 67, 70, 71) are DENIED.

16 IT IS SO ORDERED.

17 Dated: November 29, 2016

18 /s/ Sheila K. Oberto
19 UNITED STATES MAGISTRATE JUDGE