UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

HUGO LUA,

Plaintiff,

v.

O. SMITH, et al.,

Defendants.

CASE No. 1:14-cv-00019-LJO-MJS

ORDER DENYING PLAINTIFF'S MOTIONS TO STAY THIS ACTION

(ECF No. 8 and 9)

AMENDED COMPLAINT DUE WITHIN SIXTY (60) DAYS

Plaintiff Hugo Lua is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 1.) His Compliant was dismissed for failure to state a cognizable claim, but he was given until May 5, 2014, to file an amended complaint. (ECF No. 7.)

On May 2, 2014, Plaintiff filed a motion to stay this action indefinitely. (ECF No. 8.) Plaintiff's request is based on the fact he was transferred to the Correctional Treatment Center because of his mental health, and he is not permitted to have personal property, including legal materials, while undergoing treatment there. (<u>Id.</u>) Plaintiff filed a second motion to stay on June 23, 2014. (ECF No. 9.)

"The district court has broad discretion to stay proceedings as an incident to its power to control its own docket." <u>Clinton v. Jones</u>, 520 U.S. 681, 706–07 (1997). Plaintiff's ability to litigate this matter may very well be impaired by his current situation.

1 However, the Court will not grant an indefinite stay. The Court's docket is full of similar 2 cases and it cannot justify holding such actions open indefinitely. See, e.g., Sims v. 3 Lopez, 2012 WL 4801128 (E.D. Cal. Oct. 9, 2012). 4 However, given that he reportedly had no access to his legal papers at the time 5 his deadline to amend expired, the Court will grant him an additional 60 days from the 6 date of this Order to file an amended complaint. 7 Alternatively, Plaintiff has an absolute right to voluntarily withdraw his complaint 8 without prejudice and refile it at a later date (subject of course to complying with 9 applicable statues of limitations and other procedural requirements). Fed. R. Civ. P. 10 41(a)(1). 11 Accordingly, it is HEREBY ORDERED that: Plaintiff's motions to stay (ECF Nos. 8 and 9) are DENIED; 12 1. 2. 13 14 which to file an amended complaint or file a notice of voluntary dismissal without 15 prejudice; and 16 3. form, (2) a copy of his Complaint, filed January 6, 2014, (3) a copy of the Court's March 17 18 31, 2014 Screening Order (ECF No. 7), and (4) a copy of the docket. 19 IT IS SO ORDERED. 20 21 Dated: June 24, 2014 22 23 24 25 26

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Plaintiff is granted sixty (60) days from the date of service of this order in The Clerk of the Court shall send Plaintiff (1) a blank civil rights complaint 1st Michael J. Seng 2