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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAKEITH L. MCCOY,
Plaintiff,
v.
A. HOLGUIN, et al.,
Defendants.

1:15-cv-00768-DAD-MJS (PC)
ORDER GRANTING DEFENDANTS’
REQUEST FOR JUDICIAL NOTICE; AND
FINDINGS AND RECOMMENDATIONS
TO DENY DEFENDANTS’ MOTION TO
STAY
(ECF NOS. 72-73)
FOURTEEN (14) DAY OBJECTION
DEADLINE

Plaintiff is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This matter proceeds on Plaintiff’s Second Amended Complaint asserting excessive force and failure to protect claims against 19 Defendants following a March 2015 assault.

Pending before the Court is Defendants’ motion to stay. (ECF No. 72.) Plaintiff has not filed an opposition or statement of non-opposition, and the time for filing one has now passed. E.D. Cal. Local Rule 230(l).

I. Plaintiff’s Allegations

Plaintiff’s allegations may be summarized essentially as follows:

1 **A. Escort to Library**

2 On March 12, 2015, during an escort to the library, Plaintiff was shoved without
3 provocation by Defendant Casillas. Defendants Holguin, Moore, and King then joined
4 Defendant Casillas in punching and beating Plaintiff with their batons. Defendant Holguin
5 pepper sprayed Plaintiff; Defendant Lomas attempted to break Plaintiff's leg by twisting it
6 backwards; and Defendants Gonzales and A. Martinez dragged Plaintiff by his arms
7 approximately 10-15 yards, causing him pain. Throughout the beating, Plaintiff remained
8 handcuffed and was obeying orders.

9 Defendants Holland, Kilmer, Lomas, and Santa Maria watched the assault but
10 failed to intervene.

11 **B. Placement in Holding Cell**

12 When Plaintiff was then transferred to a holding cell, Defendant Gonzales twice
13 shoved him into it, slamming his head against the back of the cell. Defendants Delgado,
14 Barron, Montanez, Mayfield and Moreno then punched Plaintiff repeatedly, and
15 Defendant A. Martinez kicked Plaintiff in the ribs.

16 Defendants Deluna, Bennett, Arrellano, and C. Martinez watched this assault but
17 failed to intervene.

18 **II. Relevant Proceedings**

19 **A. The Rules Violation Report and Guilty Finding**

20 Plaintiff's claims in this case that a number of Defendants assaulted him without
21 provocation on March 12, 2015, while other Defendants watched and failed to intervene.
22 Defendants dispute this claim and seek judicial notice of the Rules Violation Report
23 ("RVR") issued following the incident charging Plaintiff with Battery on a Peace Officer;
24 there Plaintiff is described as having attacked the officers and resisted their attempts to
25 control him. See Defs.' Req. Jud. Notice ("RJN") (ECF No. 73) Ex. A.¹ They also submit
26 the report of the hearing on the RVR showing that Plaintiff was found guilty of the

27 ¹ Since these documents are referenced in Plaintiff's pleading, Defendants' request for judicial notice will
28 be granted. United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003).

1 charge.² Id. Ex. B.

2 **B. State Criminal Proceedings**

3 The March 12, 2015, incident was referred to the Kern County District Attorney's
4 Office, which charged Plaintiff under (1) Penal Code 69 for using threats or violence
5 against Officer Holguin to resist a peace officer in the performance of his duty; (2) Penal
6 Code 69 for using threats or violence against Officer Casillas to resist a peace officer in
7 the performance of his duty; (3) Penal Code section 4502(A) for possession of a weapon
8 while in prison; and (4) Penal Code 422 for threatening Officer King with death or great
9 bodily injury. RJN Ex. C.³ A jury trial is scheduled in the Kern County Superior Court for
10 September 18, 2017. Id. Ex. D.

11 **C. State Civil Action**

12 Soon after filing this federal action, Plaintiff initiated another action concerning the
13 same incident in the Kern County Superior Court against the California Department of
14 Corrections and eight individuals, including four Defendants named here (King, Moore,
15 Casillas, and Holguin). McCoy v. CDCR, Case No. BCV-15101024-TSC. RJN Ex. E.
16 There, Plaintiff asserts state law claims for battery, deceit, intentional infliction of
17 emotional distress, property damage, and breach of duty.

18 As of the date that Defendants filed their motion, the state court case was set for
19 a jury trial on September 25, 2017. Id. Ex. F. Recent review of the state court's docket
20 reveals that the civil case was stayed on August 2, 2017, pending resolution of the
21 criminal proceedings and, accordingly, all dates were vacated, including the trial date.

22 **III. Defendants' Motion to Stay**

23 Defendants have filed a motion to stay this case pursuant to two abstention

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25 ² Although Plaintiff was found guilty, he was not assessed any loss of behavioral/work credits because he
26 had not been served in a timely manner. He was, however, assessed 90-days loss of privileges.
27 Additionally, he was counseled, warned, and reprimanded, and he was referred to the Institutional
28 Classification Committee for possible placement in the Secure Housing Unit. RJN Ex. B.

³ The Court may also "take judicial notice of matters of public record," including documents filed in other
court proceedings, as long as they are not "subject to reasonable dispute." Intri-Plex Tech., Inc. v. Crest
Grp., Inc., 499 F.3d 1048, 1052 (9th Cir. 2007).

1 doctrines: the Pullman doctrine and the Colorado River doctrine. Railroad Comm'n of
2 Texas v. Pullman Co., 312 U.S. 496 (1941); Colorado River Water Conservation Dist. v.
3 United States, 424 U.S. 800 (1976).

4 **A. Pullman Abstention**

5 Defendants argue, first, that this action should be stayed pursuant to the Pullman
6 abstention doctrine pending the outcome of Plaintiff's criminal case.

7 "Pullman abstention is an equitable doctrine that allows federal courts to refrain
8 from deciding sensitive federal constitutional questions when state law issues may moot
9 or narrow the constitutional questions." San Remo Hotel v. City and Cnty of San
10 Francisco, 145 F.3d 1095, 1104 (9th Cir. 1998). Abstention is appropriate when: "(1) the
11 federal plaintiff's complaint must require resolution of a sensitive question of federal
12 constitutional law; (2) that question must be susceptible to being mooted or narrowed by
13 a definitive ruling on state law issues; and (3) the possibly determinative state law must
14 be unclear." United States v. Morros, 268 F.3d 695, 703-04 (9th Cir. 2001).

15 The doctrine is an "extraordinary and narrow exception" to the Court's jurisdiction,
16 and "should rarely be applied." Porter v. Jones, 319 F.3d 483, 492 (9th Cir. 2003). "If a
17 court invokes Pullman abstention, it should stay the federal constitutional question until
18 the matter has been sent to state court for a determination of the uncertain state law
19 issue." Fireman's Fund Ins. Co. v. City of Lodi, Cal., 302 F.3d 928, 940 (9th Cir. 2002)
20 (internal quotations and citations omitted).

21 The undersigned finds that this case does not involve "a sensitive question of
22 federal constitutional law." Questions of that sort "touch on a sensitive area of social
23 policy," Columbia Basin Apartment Ass'n v. City of Pasco, 268 F.3d 791, 802 (9th Cir.
24 2001), such as land use planning, landlord-tenant relationships, foreclosure policy, and
25 death penalty procedures.⁴ The Court cannot locate—and Defendants do not provide—

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27 ⁴ See, e.g., Columbia Basin, 268 F.3d at 802 (land use); 1049 Market Street LLC v. City & Cty. of San
28 Francisco, 2015 WL 5676019, at *3 (N.D. Cal. Sept. 28, 2015) (landlord-tenant relationships); Elliott v.
JPMorgan Chase Bank, N.A., 2012 WL 1682039, at *3 (D. Nev. May 11, 2012) (foreclosure); Brown v.
Vail, 623 F. Supp. 2d 1241 (death penalty by lethal injection procedure).

1 any authority that suggests that this relatively straightforward Eighth Amendment
2 challenge would qualify as “a sensitive area of social policy.” Pullman abstention is
3 inappropriate on this ground alone.

4 The second factor is also not satisfied. Defendants argue that under Heck v.
5 Humphrey, 512 U.S. 477 (1994), a conviction on any of the charges brought against
6 Plaintiff would result in a bar to Plaintiff’s Eighth Amendment claims

7 “Heck precludes a Section 1983 claim based on actions which would ‘render a
8 conviction or sentence invalid’ where that conviction has not been reversed, expunged,
9 or called into question by issuance of a writ of habeas corpus.” Benavides v. City of
10 Arvin, 2012 WL 1910259, at *4 (E.D. Cal. May 25, 2012) (citing Heck, 512 U.S. at 486).
11 In other words, Heck requires dismissal of a Section 1983 claim “if a criminal conviction
12 arising out of the same facts stands and is fundamentally inconsistent with the unlawful
13 behavior for which section 1983 damages are sought[.]” Id. (quoting Smithhart v.
14 Towers, 79 F.3d 951, 952 (9th Cir. 1996) (per curiam)). A district court determining
15 whether the Heck doctrine applies must consider whether a plaintiff’s success in his or
16 her Section 1983 suit would “‘necessarily imply’ or ‘demonstrate’ the invalidity of the
17 earlier conviction or sentence[.]” Beets v. Cnty. of Los Angeles, 669 F.3d 1038, 1042
18 (9th Cir. 2012) (quoting Heck, 512 U.S. at 487).

19 Heck does not shield liability from every Section 1983 claim solely because the
20 claim is based on the same facts as those in the underlying criminal conviction.
21 Benavides, 2012 WL 1910259, at *4. In Smith v. City of Hemet, the Ninth Circuit
22 “recognized that an allegation of excessive force by a police officer would not be barred
23 by Heck if it were distinct temporally or spatially from the factual basis for the person’s
24 conviction.” Beets, 669 F.3d at 1042 (citing Smith, 394 F.3d at 699). In particular, a
25 plaintiff may bring a Section 1983 claim “if the use of excessive force occurred
26 subsequent to the conduct on which his conviction was based.” Smith, 394 F.3d at 698
27 (emphasis in original omitted).

28 Additionally, the California Supreme Court in Yount v. City of Sacramento, 43 Cal.

1 4th 885 (2008), explained that there may be cases in which Heck would not bar a
2 plaintiff's Section 1983 claims:

3 For example, a defendant might resist a lawful arrest, to
4 which the arresting officers might respond with excessive
5 force to subdue him. The subsequent use of excessive force
6 would not negate the lawfulness of the initial arrest attempt,
7 or negate the unlawfulness of the criminal defendant's
8 attempt to resist it. Though occurring in one continuous chain
9 of events, two isolated factual contexts would exist, the first
10 giving rise to criminal liability on the part of the criminal
11 defendant, and the second giving rise to civil liability on the
12 part of the arresting officer.

13 Yount, 43 Cal. 4th at 899 (quoting Jones v. Marcum, 197 F. Supp. 2d 991, 1005 n.9
14 (S.D. Ohio 2002)). If, on the other hand, the facts giving rise to a plaintiff's claim cannot
15 be separated into distinct incidents, or requires a court to engage in "temporal hair-
16 splitting," such a claim is properly determined to be barred by Heck. Fetters v. Cnty. of
17 Los Angeles, 243 Cal. App. 4th 825, 840 (2016) (citing Truong v. Orange Cnty. Sheriff's
18 Dept., 129 Cal. App. 4th 1423, 1429 (2005)); see also Beets, 669 F.3d at 1044.

19 Under this legal framework, the undersigned concludes that the state criminal
20 proceedings would not necessarily bar Plaintiff's claims here. Those proceedings are
21 limited to Plaintiff's alleged possession of a weapon and alleged threats and/or violence
22 against Defendants Holguin, Casillas, and King—3 of 7 Defendants whom Plaintiff
23 accuses of assaulting him during the library escort. These proceedings will have no
24 bearing on Plaintiff's claim against the other Defendants whom Plaintiff accuses of
25 assaulting him in the holding cell after the library escort and those who failed to
26 intervene at that time.

27 Furthermore, even if Plaintiff is eventually convicted, his claims against
28 Defendants Holguin, Casillas, and King and the remaining Defendants who are alleged
to have assaulted him during the library escort will not necessarily be barred under Heck
to the extent the facts underlying the conviction and the civil claims do not overlap. See
Hooper v. Cty. of San Diego, 629 F.3d 1127, 1134 (9th Cir. 2011) (finding excessive
force claims not barred by Heck "when the conviction and the § 1983 claim are based on

1 different actions during ‘one continuous transaction.’”).

2 Accordingly, the Court finds that a stay pursuant to the Pullman abstention
3 doctrine is not warranted.

4 **B. Colorado River Abstention**

5 Defendants next move to stay these proceedings pursuant to the Colorado River
6 abstention doctrine. This doctrine, which is employed “[o]nly in rare cases,” permits the
7 district court to stay a federal suit ‘for reasons of wise judicial administration’ when there
8 is pending a concurrent state suit with overlapping claims. R.R. Street & Co., Inc. v.
9 Transport Ins. Co., 656 F.3d 966, 977-78 (9th Cir. 2011) (quoting Colorado River, 424
10 U.S. at 818).

11 In Colorado River, the Supreme Court derived a list of factors that weighed in
12 favor of dismissing a federal suit “due to the presence of a concurrent state proceeding.”
13 424 U.S. at 818. Federal courts must consider: “(1) whether either the state or federal
14 court has exercised jurisdiction over a res; (2) the inconvenience of the federal forum; (3)
15 the desirability of avoiding piecemeal litigation; and (4) the order in which the forums
16 obtained jurisdiction.” 40235 Washington St. Corp. v. Lusardi, 976 F.2d 587, 588 (9th
17 Cir. 1992) (citing Colorado River, 424 U.S. at 818).

18 Defendants rely on two of these factors in seeking a stay: the order in which
19 jurisdiction was obtained and the avoidance of piecemeal litigation. Defendants claim
20 that, although this federal action was initiated before the state action, the operative
21 pleading here was filed after the state case was initiated. Assuming the relevance of this
22 fact, and accepting that the state law case has indeed progressed faster than this case,
23 it remains that the state case is now stayed pending resolution of the criminal
24 proceedings.

25 Additionally, and contrary to Defendants’ suggestion, the issues raised in the state
26 case are distinct from those asserted here. While the state case raises claims related to
27 the March 12, 2015, incident, Plaintiff asserts an Eighth Amendment claim there. As the
28 Ninth Circuit has held, the Colorado River abstention doctrine is never appropriate if the

1 state court proceeding will not resolve all issues in the concurrent federal litigation.
2 Holder v. Holder, 305 F.3d 854, 859 (9th Cir. 2002).

3 The undersigned will thus recommend that Defendants' motion to stay pursuant to
4 the Colorado River abstention doctrine also be denied.

5 **IV. Conclusion**

6 Based on the foregoing, IT IS HEREBY ORDERED that Defendants' request for
7 judicial notice (ECF NO. 73) is GRANTED; and

8 IT IS HEREBY RECOMMENDED that Defendants' motion to stay (ECF No. 72)
9 be DENIED.

10 The Court's findings and recommendation will be submitted to the United States
11 District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C.
12 § 636(b)(1). Within fourteen (14) days after being served with the findings and
13 recommendation, Plaintiff may file written objections with the Court. The document
14 should be captioned "Objections to Magistrate Judge's Findings and Recommendation."
15 Plaintiff is advised that failure to file objections within the specified time may result in the
16 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
17 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

18 IT IS SO ORDERED.

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20 Dated: August 18, 2017

21 /s/ Michael J. Seng
22 UNITED STATES MAGISTRATE JUDGE
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