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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY CEASAR HERNANDEZ,

Plaintiff,

v.

BALLAM, et al.,

Defendants.

Case No.: 1:17-cv-00468-LJO-BAM (PC)

ORDER GRANTING DEFENDANTS’
MOTION TO STAY ACTION

[Doc. 49]

I. Introduction

Plaintiff Anthony Ceasar Hernandez is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This matter proceeds on Plaintiff’s third amended complaint against Officers Perez and Duran for excessive force, and against Sergeant Ballam for the failure to intervene in the use of excessive force, in violation of the Eighth Amendment.

Currently before the Court is Defendants’ motion to stay this case until Plaintiff’s pending criminal proceeding in Madera County Superior Court is resolved, filed on May 14, 2018. (Doc. 49.) Plaintiff filed an opposition, on extension, on June 25, 2018. (Doc. 54.) Defendants filed a reply to the opposition on July 3, 2018. (Doc. 55.) The motion is deemed submitted. Local Rule 230(I).

1 **II. Motion to Stay**

2 **A. Parties' Arguments**

3 Plaintiff's claim in this federal civil case arise out of a use of force incident on May 18,
4 2016, during which Plaintiff alleges that Defendants Perez and Duran assaulted him while he
5 was completely restrained and subdued. Defendants request that the Court take judicial notice of
6 the fact that Plaintiff was charged with violating California Penal Code sections 69 (resisting an
7 executive officer by threats or violence in the performance of his or her duties) and 4501.5
8 (criminally battering a nonconfined person) for the same events at issue, by the Madera County
9 District Attorney's Office. Defendants seek for this Court to stay this matter until that criminal
10 case has reached completion.

11 Defendants assert that, although no trial has been scheduled, Plaintiff's criminal matter
12 should be resolved soon, such that Plaintiff will not be prejudiced by a stay here. Defendants
13 also argue that the State of California has an important interest in ensuring the integrity of the
14 criminal justice system here, free from federal interference, and that Plaintiff may raise his
15 version of events and Eighth Amendment excessive force argument in the criminal matter.
16 Further, Plaintiff's Fifth Amendment rights will be implicated by these civil proceedings, and
17 simultaneous civil and criminal will impose burdens on Defendants and potentially frustrate
18 discovery in both proceedings.

19 Plaintiff asserts that his criminal case is stalled, but this civil rights action is progressing
20 quickly, which will allow him to locate necessary evidence and witnesses to support his version
21 of events. Plaintiff asserts that he cannot effectively litigate his claim in his criminal case
22 because that case is delayed and because his criminal defense counsel was recently replaced with
23 someone who does not work on his case. Plaintiff also asserts that quickly progressing with this
24 matter before evidence is lost and memories fade weighs in favor of not staying this action.
25 Plaintiff further argues that there is a legitimate state interest and public interest being served by
26 having his allegations of unprovoked battery by correctional officers be proven. Plaintiff also
27 contends that he does not have any intention to invoke his Fifth Amendment rights, and instead
28 expects to testify in all matters consistent with the allegations of his complaint in this case.

1 In reply, Defendants argue that the convenience to Plaintiff in being able to conduct
2 better or quicker discovery in this federal civil case than in his state criminal matter does not
3 outweigh the necessity for instituting a stay here. The compelling interests of the State of
4 California in its pending criminal prosecution, and the fact that the state court procedures are
5 adequate, compel the stay of these proceedings. Further, Defendants argue that the conveniences
6 that Plaintiff asserts as reasons for not staying this action are in fact better met by a stay, because
7 the parties are likely to resolve factual disputes in this case through Plaintiff's criminal trial,
8 which may streamline or eliminate issues in this civil action.

9 **B. Legal Standards**

10 The Constitution does not ordinarily require a stay of civil proceedings pending the
11 outcome of criminal proceedings. *Federal Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899,
12 902 (9th Cir. 1989). "In the absence of substantial prejudice to the rights of the parties involved,
13 such parallel proceedings are unobjectionable under our jurisprudence." *S.E.C. v. Dresser*
14 *Industries, Inc.*, 628 F.2d 1368, 1374 (D.C. Cir. 1980). Nonetheless, a court may exercise its
15 discretion to stay civil proceedings when the interests of justice seem to require such action.
16 *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995). "A court must decide
17 whether to stay civil proceedings in the face of parallel criminal proceedings in light of the
18 particular circumstances and competing interests involved in the case." *Molinaro*, 889 F.2d at
19 902.

20 In determining whether to stay civil proceedings, a court must first consider "the extent to
21 which the defendant's fifth amendment rights are implicated." *Keating*, 45 F.3d at 324. In
22 addition, the court should generally consider the following five factors: "(1) the interest of the
23 plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the
24 potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the
25 proceedings may impose on defendants; (3) the convenience of the court in the management of
26 its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the
27 civil litigation; and (5) the interest of the public in the pending civil and criminal litigation." *Id.*
28 at 325.

1 Under *Younger v. Harris*, 401 U.S. 37 (1971), abstention is required if: (1) the state court
2 proceedings are ongoing; (2) the proceedings implicate important state interests; (3) the state
3 proceedings provide an adequate opportunity to raise federal questions; and (4) the federal court
4 action would enjoin, or have the practical effect of enjoining, the state court.
5 *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1149 (9th Cir. 2007).

6 C. Discussion

7 Since Defendants' main argument is that *Younger* abstention is required here, the Court
8 will begin with analyzing that issue. The first *Younger* prong—whether the state court
9 proceedings are ongoing—is easily met here. The Court may take judicial notice of the state
10 court records provided by Defendants, Fed. R. Evid. 201(b); *U.S. v. Wilson*, 631 F.2d 118, 119
11 (9th Cir. 1980), and here, those records show that Plaintiff has an ongoing criminal case before
12 the Superior Court of California for the County of Madera regarding the events at issue. (*See*
13 *Criminal Complaint MCR05598*, Doc. 49-3, Ex. C; Mar. 9, 2018 docket entry in *People v.*
14 *Anthony Cesar Hernandez*, Doc. 49-3, Ex. D.) Plaintiff does not dispute that the state court
15 proceedings are ongoing, and discusses in his opposition an upcoming hearing regarding a
16 competency evaluation motion on July 11, 2018 in that case. (Doc. 54, at 5.) The second
17 factor—that there are important state interests in the proceedings—is also clearly met,
18 particularly given the seriousness of the criminal charges as well as Plaintiff's defense, and the
19 fact that the criminal matter has not yet proceeded to trial. *See, e.g., Kelly v. Robinson*, 479 U.S.
20 36, 49 (1986) (the Supreme Court has long recognized that “the States’ interest in administering
21 their criminal justice systems free from federal interference is one of the most powerful of the
22 considerations that should influence a court considering” *Younger* abstention).

23 The third factor—whether the state proceedings provide an adequate opportunity to raise
24 federal questions—is also met here. As noted above, Plaintiff is being charged with violating
25 California Penal Code section 69 for resisting an officer performing his or her duties, and for
26 criminal battery in violation of section 4501.5. In this case, he asserts that there was no reason
27 for any use of force, and thus the force used was excessive. The criminal trial will afford
28 Plaintiff an opportunity to raise his excessive force claim as part of his defense.

1 In *Jones v. County of Contra Costa*, the court explained that:

2 To be found guilty of resisting an officer under California Penal Code § 69—one
3 of the charges against Jones—the officer must have been engaged ‘in the
4 performance of his duty’ at the time. This requires that officer be engaged in the
5 “lawful” performance of his duties. . . . In response to any evidence presented by
6 the prosecutor that Jones resisted the officers, Jones could defend those
7 allegations by claiming that the officers were not acting in ‘lawful’ performance
8 because they used excessive force against him, violated equal protection and
9 committed the other offenses that Jones alleges in his federal civil complaint. . . .
10 Jones would thus be able to raise his claims regarding the officers’ unlawful
11 conduct in state court, thereby satisfying the third prong.

12 *Jones v. County of Contra Costa*, No. 13-cv-05552-TEH, 2014 WL 1411205, at *2 (N.D. Cal.
13 Apr. 11, 2014). Such reasoning is equally persuasive here.

14 The fourth factor—whether the federal court action would enjoin, or have the practical
15 effect of enjoining, the state court—is also met here. Determining whether Plaintiff was
16 subjected to excessive force under the Eighth Amendment in this case depends on whether the
17 force used was employed not in “good faith effort to maintain or restore order, [but] maliciously
18 and sadistically for the very purpose of causing harm.” *Hudson v. McMillian*, 503 U.S. 1, 6
19 (1992). Thus, the fact finder in this case would have to evaluate whether Plaintiff’s conduct
20 under the circumstances justified the force used against him. Such a decision intrudes upon the
21 state criminal proceedings, which would also interrogate that question. If this case were not
22 stayed, rather than focusing on the criminal trial, the parties will be forced to incur the burdens of
23 duplicative litigation, and Plaintiff’s Fifth Amendment rights may be at issue, depending on
24 whether Plaintiff decides to raise those rights, further complicating this case. Therefore, the
25 fourth factor is met here.

26 Since the Court finds that all four factors are met in this case for *Younger* abstention,
27 Defendants’ motion will be granted on those grounds. The Court declines to address
28 Defendants’ other arguments for a court’s exercise of its discretion to stay civil proceedings in
the interests of justice.

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1 **III. Conclusion and Order**

2 For the reasons discussed above, the Court hereby orders that:

3 1. Defendants' motion to stay, filed on May 14, 2018 (Doc. 49), is granted;

4 2. This case is stayed pending the resolution of Plaintiff's criminal case, *People v.*
5 *Hernandez*, Madera County Superior Court Case No. MCR055598; and

6 3. Defendants shall file a status report, within **ninety (90) days** of the date of this
7 order, updating the Court as to the status of Plaintiff's criminal case, if it is not resolved by the
8 end of that period.

9
10 IT IS SO ORDERED.

11 Dated: July 9, 2018

12 /s/ Barbara A. McAuliffe
13 UNITED STATES MAGISTRATE JUDGE
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