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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES BOWELL,
Plaintiff,
vs.
F. MONTOYA, et al.,
Defendants.

1:17-cv-00605-LJO-GSA-PC

**ORDER ADDRESSING PLAINTIFF’S
OPPOSITION AND DENYING MOTION
FOR STAY
(ECF No. 43.)**

I. BACKGROUND

James Howell (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with Plaintiff’s First Amended Complaint, filed on May 3, 2018, against defendants Montoya and Carter for violation of due process under the Fourteenth Amendment, and against defendants Killmer and Lopez for conspiracy to place Plaintiff at risk of serious harm, and for failure to protect Plaintiff under the Eighth Amendment. (ECF No. 16.)¹

On April 12, 2019, findings and recommendations were entered, recommending that Defendants’ motion to revoke Plaintiff’s *in forma pauperis* status be granted. (ECF No. 39.) The

¹ On October 25, 2018, the court issued an order dismissing all other claims and defendants from this case, for Plaintiff’s failure to state a claim. (ECF No. 20.)

1 parties were granted fourteen days in which to file objections to the findings and
2 recommendations, and ten days from the date of filing of any objections in which to file a reply
3 to the objections. (Id.) On April 19, 2019, Plaintiff filed objections, and on April 29, 2019,
4 Defendants filed a reply to the objections. (ECF Nos. 40. 41.) On May 1, 2019, the district judge
5 adopted the findings and recommendations granting Defendants’ motion to revoke Plaintiff’s *in*
6 *forma pauperis* status, and ordered Plaintiff to pay the \$398.00 balance of the filing fee owed for
7 this action in full within thirty days. (ECF No. 42.)

8 On May 6, 2019, Plaintiff filed an opposition to Defendants’ reply to Plaintiff’s objections
9 to the findings and recommendations. (ECF No. 43.) Plaintiff also filed a motion to stay all of
10 the proceedings in this case. (Id.)

11 **II. PLAINTIFF’S OPPOSITION FILED ON MAY 6, 2019**

12 Plaintiff’s opposition to Defendants’ reply to Plaintiff’s objections, filed on May 6, 2019,
13 shall not be considered by the court because Plaintiff did not have leave to file the opposition.
14 The time period for filing responses regarding the findings and recommendations concluded
15 when Defendants filed their reply on April 29, 2019. The court only granted leave for the parties
16 to file objections to the findings and recommendations within fourteen days, and a reply to any
17 objections within ten days. (ECF No. 39.) Therefore, Plaintiff’s opposition filed on May 6,
18 2019, shall not be considered by the court.

19 **III. MOTION FOR STAY**

20 The court has inherent authority to manage the cases before it. Landis v. N. Am. Co.,
21 299 U.S. 248, 254-55 (1936) (“[T]he power to stay proceedings is incidental to the power
22 inherent in every court to control the disposition of the causes on its docket with economy of
23 time and effort for itself, for counsel, and for litigants. How this can best be done calls for the
24 exercise of judgment which must weigh competing interests and maintain an even balance.”)
25 Stays of proceedings in federal court, including stays of discovery, are committed to the
26 discretion of the trial court. See, e.g., Jarvis v. Regan, 833 F.2d 149, 155 (9th Cir. 1987).

27 Plaintiff requests a stay of the proceedings in this case until he is released from custody.
28 Plaintiff seeks additional time in which to pay the \$398.00 balance of the filing fee in this case.

1 Plaintiff asserts that he will pay the filing fee in full within thirty days of his release from custody,
2 but he gives no indication of when he will be released. This court does not lightly stay litigation
3 due to the possibility of prejudice to defendants. Plaintiff has not shown good cause for a stay
4 of the proceedings, and a stay of the entire action is not Plaintiff's only remedy. If Plaintiff
5 requires additional time to pay the filing fee, he should file a motion for extension of time before
6 the expiration of the prior deadline showing good cause why the extension should be granted.

7 Therefore, Plaintiff's motion for stay shall be denied

8 **IV. CONCLUSION**

9 Based on the foregoing, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff's opposition to Defendants' reply, filed on May 6, 2019, shall not be
11 considered by the court; and
12 2. Plaintiff's motion for stay, filed on May 6, 2019, is DENIED.

13
14 IT IS SO ORDERED.

15 Dated: May 10, 2019

/s/ Gary S. Austin
16 UNITED STATES MAGISTRATE JUDGE