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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MARK HUNT,)	Case No.: 1:19-cv-00504-DAD-SAB (PC)
)	
Plaintiff,)	
)	ORDER GRANTING DEFENDANTS’ MOTION
v.)	TO STAY PROCEEDINGS PENDING
)	RESOLUTION OF PLAINTIFF’S CRIMINAL
D. DIAZ, et al.,)	CASE AND DISCIPLINARY ACTION
)	
Defendants.)	(ECF No. 52)
)	
)	
)	
)	

Plaintiff Mark Hunt is appearing *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Defendants’ motion to stay proceedings pending resolution of Plaintiff’s criminal case and disciplinary action, filed September 15, 2020. Accordingly, Defendants’ motion to stay is deemed submitted for review.

I.

RELEVANT BACKGROUND

This action is proceeding against Defendants Diaz, Solorio, Brainard, Reyes, and Velasquez for excessive force in violation of the Eighth Amendment. (ECF No. 20.) Plaintiff alleges that on May 16, 2018, when Plaintiff went to the 5:00 p.m. medication line, he was attacked by D. Diaz and A. Velasquez. Velasquez used her baton to hit Plaintiff while D. Diaz attacked Plaintiff non-stop

1 while stating racial slurs and because of his “IEX”¹ status. Numerous other officers were responding
2 to the radio code and officers G. Solorio and K. Reyes arrived to assist in the attack which was ordered
3 by sergeant J. Brainard. When Plaintiff attempted to get away, Solorio pulled out his pepper spray and
4 sprayed everybody while Reyes was assisting Diaz punch and kick Plaintiff as he was on the ground.
5 When Plaintiff attempted to get up, Solorio slammed Plaintiff back to the ground, while Velasquez
6 continued to hit Plaintiff with her baton.

7 On March 2, 2020, Defendants filed an answer to the complaint. (ECF No. 30.)

8 After an unsuccessful settlement conference, the Court issued the discovery and scheduling
9 order on August 11, 2020. (ECF No. 49.)

10 On September 15, 2020, Defendants filed the instant motion to stay the proceedings pending
11 Plaintiff’s criminal prosecution and prison disciplinary proceedings. (ECF No. 52.) Plaintiff filed an
12 opposition on October 19, 2020. (ECF No. 58.) For the following reasons, Defendants’ motion shall
13 be granted.

14 II.

15 DISCUSSION

16 A. Request for Judicial Notice

17 Defendants request that the Court take judicial notice of the following documents: (1) Docket
18 Sheet for People of the State of California v. Mark Hunt, Kings County Superior Court Case No. 19-
19 CM-0598; (2) Criminal Complaint filed in People of the State of California v. Mark Hunt, Kings
20 County Superior Court Case No. 19-CV-0598; (3) CDCR 128B Informational Chrono, reflecting
21 Kings County District Attorney’s Office’s decision to prosecute; and (4) CDCR 115 Rules Violation
22 Report (RVR Log No. 5027404), reflecting Plaintiff was charged with committing battery causing
23 serious injury on Defendant Diaz on May 16, 2018, and reflecting Plaintiff’s decision to postpone the
24 RVR disciplinary proceedings pending the outcome of his criminal case. (ECF No. 52-1, Exs. A-D.)

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28 ¹ “IEX” refers to inmate exhibitionist masturbation.

1 Federal Rule of Evidence 201 permits the Court to take judicial notice at any time. A
2 judicially noticed fact must be one not subject to reasonable dispute in that it is either: (1) generally
3 known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready
4 determination by resort to sources whose accuracy reasonably cannot be questioned. Fed. R. Evid.
5 201(b). Courts may take judicial notice of facts related to the case before it. Amphibious Partners,
6 LLC v. Redman, 534 F.3d 1357, 1361-1362 (10th Cir. 2008) (district court was entitled to take
7 judicial notice of its memorandum of order and judgment from previous case involving same parties).
8 This Court may judicially notice the records and filing of other court proceedings. Tellabs, Inc. v.
9 Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007); Bennett v. Medtronic, Inc., 285 F.3d 801, 802
10 n.2 (9th Cir. 2002). In addition, a court may take judicial notice of undisputed matters of public
11 record, including papers filed with the court and the records of state agencies and administrative
12 bodies. Disabled Rights Action Comm. V. Las Vegas Events, Inc., 375 F.3d 861, 866 n.1 (9th Cir.
13 2004); Lundquist v. Cont'l Cas. Co., 394 F.Supp.2d 1230, 1242-42 (C.D. Cal. 2005) (stating that court
14 may take judicial notice of records and reports of administrative bodies).

15 Because the Court may take judicial notice of public records, including duly recorded
16 documents under Rule 201(b)(2), Defendants' request to take judicial notice of the above-mentioned
17 documents is granted.

18 **B. Motion to Stay**

19 The district court "has broad discretion to stay proceedings as an incident to its power to
20 control its own docket." Clinton v. Jones, 520 U.S. 681, 706 (1997) (citing Landis v. North American
21 Co., 299 U.S. 248, 254 (1936)). A stay is discretionary and the "party requesting a stay bears the
22 burden of showing that the circumstances justify an exercise of that discretion." Nken v. Holder, 556
23 U.S. 418, 433-34 (2009). "Generally, stays should not be indefinite in nature." Dependable Highway
24 Exp., Inc. v. Navigators Ins. Co., 498 F.3d 1059, 1066-67 (9th Cir. 2007). If a stay is especially long
25 or its term is indefinite, a greater showing is required to justify it. Yong v. I.N.S., 208 F.3d 1116, 1119
26 (9th Cir. 2000). The Court should "balance the length of any stay against the strength of the
27 justification given for it." Id.

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1 “The Constitution does not ordinarily require a stay of civil proceedings pending the outcome
2 of criminal proceedings.” Keating v. Office of Thrift Supervision, 45 F.3d 322, 324 (9th Cir. 1995).
3 “In the absence of substantial prejudice to the rights of the parties involved, [simultaneous] parallel
4 [civil and criminal] proceedings are unobjectionable under our jurisprudence.” Id. “Nevertheless, a
5 court may decide in its discretion to stay civil proceedings ...‘when the interests of justice seem[] to
6 require such action.’ ” Id. (citations omitted).

7 1. Same Nucleus of Facts

8 When a civil plaintiff brings claims under § 1983 that are “related to rulings that will likely be
9 made in a pending or anticipated criminal trial,” it is “common practice” for the court “to stay the civil
10 action until the criminal case or the likelihood of a criminal case is ended.” Wallace v. Kato, 549 U.S.
11 384, 393-94 (2007); see also Fed. Saving & Loan Ins. Corp. v. Molinaro, 889 F.2d 899, 902 (9th Cir.
12 1989).

13 When determining whether a stay is appropriate, courts look to whether the criminal
14 defendant’s Fifth Amendment rights may be implicated by the civil proceedings. Keating, 45 F.3d at
15 324 (citing Molinaro, 889 F.2d at 902). Courts also consider (1) the interest of the plaintiff in
16 proceeding with the litigation and the potential prejudice to the plaintiff of a delay; (2) the
17 convenience of the court and the efficient use of judicial resources; (3) the interests of third parties;
18 and (4) the interests of the public. Keating, 45 F.3d at 324-25.

19 Here, the civil rights action implicates Plaintiff’s Fifth Amendment rights. The facts and
20 circumstances underlying Plaintiff’s criminal prosecution for battery on officer Diaz substantially
21 overlap with the excessive force claims at issue in this case. Both cases involve the May 16, 2018
22 incident between Plaintiff and the Defendant officers. Thus, if this case proceeds, Defendants will
23 seek discovery from Plaintiff, and he will be required to respond under oath. The discovery will
24 involve Plaintiff’s alleged misconduct on May 16, 2018. Thus, there exists a substantial risk of
25 prejudice to Plaintiff’s Fifth Amendment rights. Furthermore, if Plaintiff invokes his Fifth
26 Amendment rights it may impede Defendants’ discovery. Jones v. Conte, No. C045312S1, 2005 WL
27 1287017, at *1 (N.D. Apr. 19, 2005) (finding that a stay of the civil case involving defendant in
28 criminal action was appropriate “because [i]f discovery moves forward, [the] defendant will be faced

1 with the difficult choice between asserting [his] right against self-incrimination, thereby inviting
2 prejudice in the civil case, or waiving those rights, thereby courting liability in the civil case.”)
3 (internal quotations and citation omitted).

4 Likewise, the other Keating factors also support a stay. Any prejudice to Plaintiff is minimal
5 given that both proceedings involve the similar facts and witnesses, and it is unlikely that evidence
6 will be lost or memories will fade with passage of time. McCormick v. Rexroth, No. C 09-4188 JT,
7 2010 WL 934242, at *3 (N.D. Cal. Mar. 15, 2010). In addition, the public interest weights in favor of
8 a stay because “[t]he public has an interest in ‘ensuring that the criminal process is not subverted’ by
9 ongoing civil cases.” Douglas v. United States, No. C 03-4518, 2006 WL 2038375, at *6 (N.D. Cal.
10 July 17, 2006).

11 Furthermore, if a stay is not granted the defenses available may be limited. If the Court in the
12 criminal action considers Plaintiff’s factual allegations regarding the May 16, 2018 incident, such
13 findings may be binding in this Court. Additionally, Plaintiff’s prison disciplinary proceedings
14 cannot be completed until after the criminal action is resolved and Plaintiff’s Fifth Amendment rights
15 are no longer implicated. Until resolution of both proceedings, it is unclear whether certain defenses
16 are available, such as, a Heck bar or issue preclusion. See Wallace, 549 U.S. at 393-94 (noting that
17 the question of whether a section 1983 action is barred by Heck is more difficult to answer where the
18 plaintiff is facing charges of resisting arrest or similar conduct arising from the same incident he is
19 claiming excessive force, a stay may be appropriate until such time as the underlying criminal
20 proceedings are conducted. “If the plaintiff is ultimately convicted, and if the stayed civil action
21 would impugn that conviction, Heck will require dismissal; otherwise, the civil action will proceed,
22 absent some other bar to suit.”) (citation omitted); see also Vivas v. Cty. of Riverside, No. EDCV 15-
23 1912-VAP (DTBx), 2016 WL 9001020, at *3 (C.D. Cal. Jan. 12, 2016) (staying excessive force case
24 where criminal prosecution for resisting arrest was pending).

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1 Judicial efficiency also favors imposition of a stay because Plaintiff’s criminal action and
2 prison disciplinary action involve many of the same facts.² Accordingly, the Court will stay this
3 action until Plaintiff’s criminal and disciplinary charges have been resolved.

4 2. Younger Abstention

5 Absent extraordinary circumstances, federal courts may not interfere with ongoing state
6 criminal proceedings. See Younger v. Harris, 401 U.S. 37, 43–54 (1971); Sprint Communications, Inc.
7 v. Jacobs, 571 U.S. 69, 77 (2013). A court may consider sua sponte whether Younger abstention
8 should be invoked at any point in the litigation. H.C. ex rel. Gordon v. Koppel, 203 F.3d 610, 613 (9th
9 Cir. 2000). Abstention is proper regardless of whether the applicant seeks declaratory relief,
10 injunctive relief, or damages. See Mann v. Jett, 781 F.2d 1448, 1449 (9th Cir. 1986) (“When a state
11 criminal prosecution has begun, the Younger rule directly bars a declaratory judgment action” as well
12 as a section 1983 action for declaratory relief and damages “where such an action would have a
13 substantially disruptive effect upon ongoing state criminal proceedings.”); Gilbertson v. Albright, 381
14 F.3d 965, 984 (9th Cir. 2004) (en banc) (Younger abstention applies to actions for damages as it does
15 to declaratory and injunctive relief).

16 A court may apply a stay under Younger when: “(1) the state court proceedings are ongoing;
17 (2) the proceedings implicate important state interests; and (3) the state proceedings provide an
18 adequate opportunity to raise the constitutional claims.” Escobar v. LASD Male Doe, No. CV-17-
19 7352-DSF (SP), 2017 WL 7050642, at *2 (C.D. Cal. Nov. 30, 2017) (citing Middlesex Cty. Ethics
20 Comm. v. Garden State Bar Ass’n, 457 U.S. 423 (1982)).

21 Even if a stay is not warranted under the former analysis, a stay is warranted under Younger.
22 Here, Plaintiff’s criminal case is ongoing and implicates the State of California’s important interest in
23 ensuring the integrity of its criminal justice system. See Kelly v. Robinson, 479 U.S. 36, 49 (1986)
24 (“the States’ interest in administering their criminal justice systems free from federal interference is
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27 ² Plaintiff argues that because the Court previously denied his request to stay the action pending the criminal proceedings,
28 the Court should also deny Defendants’ request to stay. However, the mere fact that the Court previously denied Plaintiff’s
request to stay does not foreclose the Court from reviewing and granting a stay based on the information and
documentation provided by Defendants.

1 one of the most powerful of the considerations that should influence a court considering equitable
2 types of relief.”). Indeed, Plaintiff may raise constitutional issues in the state proceedings. See
3 Pennzoil Co. v. Texaco, 481 U.S. 1, 15 (1987) (“a federal court should assume that state procedures
4 will afford an adequate remedy, in the absence of unambiguous authority to the contrary.”). In
5 addition, Plaintiff is seeking damages in this civil action. Accordingly, it is clear that principles of
6 judicial comity authorize the Court to stay this action until Plaintiff’s criminal proceedings have
7 concluded.

8 **III.**

9 **CONCLUSION AND ORDER**

10 Based on the foregoing, it is HEREBY ORDERED that:

- 11 1. The instant action is stayed pending resolution of Plaintiff’s criminal case and prison
12 disciplinary proceedings; and
- 13 2. Defendants shall file a status report within **ninety (90)** days from the date of service of
14 this order, and every **sixty (60)** days thereafter, addressing the status of the proceedings
15 until the proceedings are resolved.

16
17 IT IS SO ORDERED.

18 Dated: October 29, 2020



19 UNITED STATES MAGISTRATE JUDGE