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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY O’KEEFE,
Plaintiff,
v.
JERRY BROWN, et al.,
Defendants.

No. 2: 11-cv-2659 KJM KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are plaintiff’s motions to stay this action filed October 25, 2013, and December 16, 2013. For the following reasons, these motions are denied.

Background

On January 2, 2013, the court granted defendants’ motion to dismiss with leave to amend. (ECF No. 69.) In the third amended complaint filed January 28, 2013, plaintiff alleged that he had not received adequate mental health care at the R.J. Donovan Correctional Facility (“RJDCF”), where plaintiff was housed when he filed the third amended complaint. (ECF No. 72.) Plaintiff sought injunctive relief only. (Id.)

On April 10, 2013, plaintiff filed a notice of change of address indicating that he had been temporarily transferred to the California Medical Facility (“CMF”). (ECF No. 79.) Plaintiff stated that he was on his way to being permanently housed at Mule Creek State Prison (“MCSP).

1 (Id.) On May 6, 2013, the court dismissed the third amended complaint with leave to file a fourth
2 amended complaint addressing the conditions at MCSP. (ECF No. 80.)

3 On May 6, 2013, plaintiff filed a notice of change of address indicating that he had been
4 returned to RJDCF. (ECF No. 81.) Accordingly, on June 12, 2013, the court reinstated plaintiff's
5 third amended complaint. (ECF No. 84.)

6 On August 6, 2013, plaintiff filed a notice of change of address indicating that he had
7 been temporarily transferred to the California Health Care Facility ("CHCF") in Stockton,
8 California. (ECF No. 89.) Plaintiff also filed a motion to stay this action because he did not have
9 access to a law library while housed at CHCF. (ECF No. 90.) On September 18, 2013, the court
10 granted plaintiff's motion to stay and ordered this action stayed until November 16, 2013, or if
11 plaintiff notified the court that he had been returned to RJDCF prior to that time. (ECF No. 94.)

12 On October 15, 2013, plaintiff filed a notice of change of address indicating that he had
13 been transferred to California State Prison-Corcoran ("Corcoran"). (ECF No. 99.) On October
14 25, 2013, plaintiff filed a motion to extend the stay on grounds that his situation was "still not
15 settled." (ECF No. 101.) Plaintiff alleged that he was requesting to be returned to RJDCF. (Id.)

16 On December 16, 2013, plaintiff filed his second motion to extend the stay. (ECF No.
17 109.) Plaintiff alleged that his "situation" was going to change, but it could be in thirty days or
18 four to five months. (Id.) Plaintiff alleged that on December 4, 2013, he appeared before the
19 Classification Committee and requested that he be transferred to RJDCF. (Id.) Plaintiff
20 requested that the court stay this action until at least May 31, 2014. (Id.)

21 Legal Standard

22 "[T]he decision to grant a stay ... is 'generally left to the sound discretion of district
23 courts.'" Ryan v. Gonzales, 133 S. Ct. 696, 708 (2013) (quoting Schriro v. Landrigan, 550 U.S.
24 465, 473 (2007)). However, "[t]he proponent of a stay bears the burden of establishing its need,"
25 and issuing a stay without taking any account of the nonmovant's interests in proceeding can be
26 an abuse of discretion. Clinton v. Jones, 520 U.S. 681, 708 (1997). In determining whether to
27 stay proceedings, courts generally "consider[] the following factors: (1) judicial economy;
28 (2) the moving party's hardship; and (3) potential prejudice to the non-moving party." Single

1 Chip Sys. Corp. v. Intermec IP Corp., 495 F.Supp.2d 1052, 1057 (S.D.Cal. 2007).

2 Analysis

3 Plaintiff requests that the court stay this action for approximately six more months. The
4 grounds of this request are that plaintiff anticipates that his housing situation will be settled by
5 that time. For the following reasons, the undersigned finds that a stay is not warranted.

6 According to defendants, plaintiff is not going to be transferred to RJDCF. On November
7 1, 2013, defendants filed the declaration of J. Powell, the Acting Chief of the Health Care
8 Placement Oversight Program (“HCPOP”) with California Correctional Health Care Services.
9 (ECF No. 104.) J. Powell states that plaintiff receives the Enhanced Out Patient (“EOP”) level of
10 care. (Id. at 2.) Plaintiff is also classified as a Level III inmate and designated as a Sensitive
11 Needs Yard (“SNY”) inmate. (Id. at 2-3.) RJDCF does not have a Level III SNY EOP Program.
12 (Id. at 3.) While RJDCF has a Level IV SNY EOP program, that program is for medical high risk
13 patients and plaintiff does not meet the criteria. (Id.)

14 According to J. Powell, the only institution that meets plaintiff’s level of care, safety and
15 security requirements is MCSP, but a staff safety concern regarding plaintiff has been identified
16 at that prison. (Id.) Therefore, HCPOP, in coordination with the California Department of
17 Corrections Classification Services Unit, determined that Corcoran, which has a Level IV SNY
18 EOP program, would be the most appropriate institution to house plaintiff. (Id.) J. Powell states
19 that should the safety concerns at MCSP be resolved, or should another Level III SNY EOP bed
20 become available, plaintiff will be reconsidered for transfer to such an institution. (Id.)
21 Additionally, should plaintiff become eligible for a lower security level institution, he may be
22 considered for transfer to an institution that offers the same clinical and safety concerns that he
23 requires. (Id. at 3-4.) Finally, if plaintiff’s level of care is downgraded, other institutions will be
24 available to him for placement. (Id.at 4.)

25 Based on the statements contained in the declaration of J. Powell, the court finds that
26 plaintiff’s placement at Corcoran is stable and it is not likely that plaintiff will be returned to
27 RJDCF. For this reason, staying this action for another six months does not promote judicial
28 economy. In addition, plaintiff’s alleged hardship, i.e., the alleged instability of his housing

1 situation, is not supported by the information in J. Powell's declaration. Staying this action for an
2 additional six months, under these circumstances, could also potentially prejudice defendants.


3 Accordingly, for the reasons discussed above, plaintiff's motions to continue the stay of
4 this action are denied. Plaintiff has two options. Plaintiff may either file a fourth amended
5 complaint addressing the conditions at Corcoran or he may move to voluntarily dismiss this
6 action without prejudice.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Plaintiff's motions to stay (ECF No. 101 and 109) are denied; and
- 9 2. Plaintiff is granted thirty days to file either a fourth amended complaint addressing the
10 conditions at Corcoran or a motion to voluntarily dismiss this action without
11 prejudice; the court will screen a fourth amended complaint; defendants shall file
12 either a statement of opposition or non-opposition to a motion to voluntarily dismiss
13 within fourteen days of its filing.

14 Dated: December 19, 2013

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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