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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LOUREECE CLARK,
Plaintiff,
v.
THOMAS McGUIRE, et al.,
Defendants.

No. 2: 12-cv-2159 JAM KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a former state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. This action is set for jury trial before the Honorable John A. Mendez on April 6, 2015. Pending before the court is defendant McGuire’s motion to stay. (ECF No. 50.) For the following reasons, the undersigned recommends that defendant’s motion to stay be granted.

On August 29, 2014, the court denied defendant McGuire’s summary judgment motion on grounds that he was not entitled to qualified immunity. (ECF No. 40.) Defendant McGuire appealed that order to the Ninth Circuit Court of Appeals. (ECF No. 43.) That appeal is now pending before the Ninth Circuit.

In the context of interlocutory appeals based on qualified immunity, the district court is automatically divested of jurisdiction to proceed with trial pending appeal unless the district court finds that the defendant’s claim of immunity is frivolous or has been waived, and certifies such in

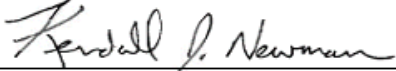
1 writing. See Chuman v. Wright, 960 F.2d 104, 105 (9th Cir. 1992). The district court has not
2 certified that defendant's appeal is frivolous or has been waived. Accordingly, this court is
3 divested of jurisdiction to proceed to trial. On these grounds, the undersigned recommends that
4 defendant's motion to stay be granted.

5 Accordingly, IT IS HEREBY ORDERED that the jury trial set for April 6, 2015, before
6 the Honorable John A. Mendez is vacated;

7 IT IS HEREBY RECOMMENDED that defendant's motion to stay (ECF No. 50) be
8 granted; and this action be stayed pending resolution of defendant's appeal by the Ninth Circuit.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
14 objections shall be filed and served within fourteen days after service of the objections. The
15 parties are advised that failure to file objections within the specified time may waive the right to
16 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 Dated: March 12, 2015

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20 KENDALL J. NEWMAN
21 UNITED STATES MAGISTRATE JUDGE

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