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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY COOPER,

 Plaintiff,

 v.

K. JONES,

 Defendant.

No. 2:14-cv-0453 KJM AC P

ORDER and

FINDINGS AND RECOMMENDATIONS

I. Introduction

Plaintiff is a state prisoner who proceeds pro se and in forma pauperis with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff is incarcerated at Folsom State Prison, under the authority of the California Department of Corrections and Rehabilitation (CDCR). Currently pending is defendant’s motion to stay this action pending the conclusion of plaintiff’s related state court action, pursuant to the authority of Colorado River Water Conservation District v. United States, 424 U.S. 800, 817 (1976). See ECF No. 34. Plaintiff filed an opposition to defendant’s motion, ECF No. 36, and defendant filed a reply, ECF No. 37.

This action is referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302(c). For the reasons set forth herein, this court recommends that defendant’s motion to stay this action be granted.

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1 II. Background

2 Plaintiff filed his initial complaint in this court on February 2, 2014.¹ In the First
3 Amended Complaint (FAC),² filed July 29, 2014, plaintiff alleges that on December 17, 2011,³
4 defendant Correctional Officer K. Jones deliberately dropped a flashlight on plaintiff's head from
5 an elevated walkway, causing plaintiff injury. See ECF No. 13. The court found that the FAC
6 states an Eighth Amendment claim against defendant Jones, and ordered service on defendant.
7 ECF Nos. 16, 18.

8 Defendant initially responded with a motion to dismiss the FAC on statute of limitations
9 grounds. See ECF No. 20. In the alternative, defendant sought to stay this action under the
10 abstention principles established by Younger v. Harris, 401 U.S. 37 (1971), on the ground that
11 plaintiff is currently pursuing a related action in state court. Id. Defendant's motion, construed in
12 part as a motion for summary judgment, was denied on both grounds without prejudice to
13 defendant filing a motion to stay this action under Colorado River. See ECF Nos. 25, 32.

14 The related state court action was filed on October 4, 2011, more than two years before
15 the instant federal action, based on the same incident challenged here. Defendant has provided a
16 copy of plaintiff's complaint filed in the Sacramento County Superior Court (Case No. 34-2011-
17 00111910). See ECF No. 20-1 at 6-20. The court takes judicial notice of plaintiff's state court
18 complaint and the Superior Court's docket in that case.⁴ The state lawsuit is an unlimited civil
19

20 ¹ Plaintiff's filings are accorded the benefit of the prison mailbox rule, pursuant to which a
21 document is deemed served or filed on the date a prisoner signs the document (or signs the proof
22 of service, if later) and gives it to prison officials for mailing. See Houston v. Lack, 487 U.S. 266
(1988) (establishing prison mailbox rule); Campbell v. Henry, 614 F.3d 1056, 1059 (9th Cir.
2010) (applying the mailbox rule to both state and federal filings by prisoners).

23 ² As discussed further below, plaintiff subsequently filed a Second Amended Complaint, without
leave of court, which will be disregarded.

24 ³ As earlier noted by the court, see ECF No. 25 at 3 n.3, the FAC omits the date of the challenged
25 incident. The court inferred, without objection by either party, that the FAC addresses the same
incident alleged in plaintiff's original federal complaint, which occurred on December 17, 2010.
26 This inference is confirmed by the allegations of plaintiff's proposed SAC. See ECF No. 27 at 4.

27 ⁴ This court may take judicial notice of court records. See United States v. Howard, 381 F.3d
28 873, 876 n.1 (9th Cir. 2004); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); see also
Fed. R. Evid. 201.

1 action for damages for personal injury, against defendants Jones, Folsom State Prison and CDCR,
2 based on theories of general negligence, intentional tort, premises liability and “oppression.” See
3 ECF No. 20-1 at 6-20. The Superior Court docket indicates that plaintiff’s case is now set for
4 trial assignment on March 27, 2017.

5 Defendant moves to stay the instant federal action under the authority of Colorado River,
6 supra, pending the conclusion of the related state court action. Plaintiff responds that he is
7 entitled to simultaneously pursue his state law claims in state court and his federal claims in
8 federal court, due to the primary jurisdiction and therefore specialization of each court. For the
9 reasons set forth below, the court finds that the pertinent factors under Colorado River weigh in
10 favor of staying this action, and therefore recommends that this action be stayed pending final
11 resolution of plaintiff’s related state court action.

12 III. Legal Standards

13 Federal district courts have discretion to stay an action in “exceptional circumstances,”
14 “due to the presence of a concurrent state proceeding for reasons of wise judicial administration.”
15 Colorado River, 424 U.S. at 818; accord, Moses H. Cone Memorial Hospital v. Mercury
16 Construction Corp. (Memorial Hospital), 460 U.S. 1, 28 (1983). “The Colorado River doctrine is
17 not a recognized form of abstention. Instead, it is a form of deference to state court jurisdiction.”
18 Coopers & Lybrand v. Sun-Diamond Growers, 912 F.2d 1135, 1137 (9th Cir. 1990) (citations
19 omitted). Within the Ninth Circuit, “district courts must stay, rather than dismiss, an action when
20 they determine that they should defer to the state court proceedings under Colorado River.” Id. at
21 1138 (citing, inter alia, Attwood v. Mendocino Coast District Hospital, 886 F.2d 241, 242-44 (9th
22 Cir. 1989); see also R.R. Street & Co. Inc. v. Transport. Ins. Co., 656 F.3d 966, 978 n.8 (9th Cir.
23 2011) (“We generally require a stay rather than a dismissal.”).

24 “Abstention from the exercise of federal jurisdiction is the exception, not the rule.”
25 Colorado River, 424 U.S. at 817. The determination whether to stay a federal action because of a
26 parallel state-court action rests “on a careful balancing of the important factors as they apply in a
27 given case, with the balance heavily weighted in favor of the exercise of jurisdiction. The weight
28 to be given to any one factor may vary greatly from case to case, depending on the particular

1 setting of the case.” Memorial Hospital, 460 U.S. at 16.

2 The Ninth Circuit Court of Appeals has summarized the factors to be considered on a
3 motion to stay under Colorado River, as follows:

4 (1) which court first assumed jurisdiction over any property at
5 stake; (2) the inconvenience of the federal forum; (3) the desire to
6 avoid piecemeal litigation; (4) the order in which the forums
7 obtained jurisdiction; (5) whether federal law or state law provides
8 the rule of decision on the merits; (6) whether the state court
proceedings can adequately protect the rights of the federal
litigants; (7) the desire to avoid forum shopping; and (8) whether
the state court proceedings will resolve all issues before the federal
court.

9 R.R. Street, 656 F.3d at 978-79 (citations omitted); accord, AmerisourceBergen Corp. v. Roden,
10 495 F.3d 1143, 1155 (9th Cir. 2007) (Ferguson, Circuit Judge, concurring); Travelers Indemnity
11 Co. v. Madonna, 914 F.2d 1364, 1367-72 (9th Cir. 1990).

12 The party seeking to stay a federal action due to the presence of a concurrent state
13 proceeding has the burden of showing, based on application of the above-noted factors, that
14 “exceptional circumstances” warrant the requested stay. See Colorado River, 424 U.S. at 819
15 (“Only the clearest of justifications will warrant dismissal.”). “[T]he burden of persuasion rest[s]
16 on the party opposing the exercise of federal jurisdiction.” Arkwright–Boston Mfrs. Mut. Ins. Co.
17 v. City of N.Y., 762 F.2d 205, 210 (2d Cir. 1985).

18 IV. Analysis

19 A. Substantial Similarity

20 As a threshold matter, the state and federal actions must be “substantially similar” to
21 support application of Colorado River. Nakash v. Marciano, 882 F.2d 1411, 1416 (9th Cir.
22 1989). This similarity requirement does not demand “exact parallelism.” Id. Here the court finds
23 plaintiff’s state and federal actions to be substantially similar.

24 The undersigned recognizes that the state court action appears to emphasize negligence
25 while the federal complaint has been amended in an effort to state an Eighth Amendment
26 deliberate indifference claim, which requires a more culpable mental state than negligence.⁵

27 _____
28 ⁵ The state complaint alleges, for example, that plaintiff’s “injury [was] suffered as a direct result
(continued...)

1 Moreover, the state suit names Jones, Folsom State Prison and CDCR as defendants, while the
2 federal suit proceeds only against Jones. These distinctions do not defeat substantial similarity.
3 Both actions arise from the same incident, and involve the central questions of Jones'
4 responsibility for causing plaintiff's head injury when the flashlight fell. The legal theories for
5 recovery in the two cases overlap, especially in light of the state complaint's inclusion of
6 intentional tort and "oppression" claims. Despite the variation in legal theories between the state
7 and federal complaints, both actions will require inquiry into Jones' conduct and state of mind,
8 determination of causation, and evaluation of plaintiff's injuries. Accordingly, the court finds
9 that plaintiff's state and federal actions are "substantially similar." It is therefore appropriate to
10 consider the Colorado River factors to determine whether a stay of the federal action is
11 appropriate. Nakash, 882 F.2d at 1416.

12 B. Application of Colorado River Factors

13 1. Jurisdiction over property at stake

14 No property is involved in these parallel lawsuits, so the first Colorado River factor does
15 not apply.

16 2. Inconvenience of federal forum

17 Both courts are located in Sacramento, so this factor is neutral.

18 of [defendant's] controlling [his] flashlight," ECF No. 20-1 at 9; "[plaintiff] suffered injury as a
19 direct result of K. Jones['] flashlight falling from his possession or control," id. at 11; "K Jones[']
20 flashlight inadvertently fell out of his holder," id. at 12, 13 and 17; "defendant admitted[] to
21 dropping his flashlight to the first tier from the fifth tier by failure to maintain security of his
22 possessed flashlight," id. at 15; "[t]he negligence act imposed or cause[d] head [injuries]," id.;
23 and that all "defendant(s) negligently caused the damage to plaintiff on 12/17/2010 . . .
24 negligently maintained the Gun Walker with strapless flashlight holders, and thereby allowed a
25 dangerous condition to exist, which caused injury to plaintiff when the flashlight fell," id. at 16.
26 Plaintiff's "premises liability" claim against defendants Folsom State Prison and CDCR alleges,
27 inter alia, negligent maintenance of the subject premises and "employing faulty equipment." Id.
28 at 10, 17.

The original federal complaint was dismissed on screening because plaintiff's allegations suggested that the incident had been accidental and therefore no more than negligent. See ECF No.10. Plaintiff was provided information on the elements of an Eight Amendment claim, id., and the subsequent FAC alleges that sole defendant Jones targeted plaintiff and that "the flashlight was dropped deliberately to observe the maximum injury result for amusement by K. Jones." ECF No. 13 at 3.

1 3. Avoidance of piecemeal litigation

2 The third factor weighs strongly in favor of a stay. “The mere possibility of piecemeal
3 litigation does not constitute an exceptional circumstance. Instead, the case must raise a special
4 concern about piecemeal litigation, which can be remedied by staying or dismissing the federal
5 proceeding.” R.R. Street, 656 F.3d at 979 (citations and internal quotation marks omitted).

6 Special concerns include the following: (1) whether deciding the state and federal actions in
7 separate courts “would result in duplication of efforts;” (2) whether the federal action seeks to
8 adjudicate issues implicated in a “vastly more comprehensive state action;” and (3) whether there
9 is a “highly interdependent” relationship between the federal and state cases. Id. at 979-80
10 (citations and internal quotation marks omitted). Where these circumstances exist, the avoidance
11 of piecemeal litigation weighs against the exercise of jurisdiction by the federal court. Id. at 980.

12 Each of these special concerns weighs against the exercise of federal jurisdiction in the
13 instant case. If plaintiff’s state and federal actions proceed contemporaneously, the assessments
14 of causation and injury would be duplicative and the results could be inconsistent. “Piecemeal
15 litigation occurs when different tribunals consider the same issue, thereby duplicating efforts and
16 possibly reaching different results.” Am. Int’l Underwriters, (Philippines), Inc. v. Cont’l Ins. Co.,
17 843 F.2d 1253, 1258 (9th Cir. 1988). Because plaintiff’s state court action includes additional
18 defendants, it is more comprehensive as to causation, particularly concerning the routine hazards
19 posed by the overhead walkway to prisoners required to wait underneath it for medical
20 appointments. Staying the instant federal action until the conclusion of plaintiff’s state action
21 would preserve limited judicial resources, contain defendants’ expenditure of time and resources,
22 and prevent inconsistent results. Although plaintiff’s state court action does not presently include
23 his federal deliberate indifference claim, plaintiff may seek leave of the state court to file an
24 amended complaint that includes that claim.⁶

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26 _____
27 ⁶ As plaintiff has previously been informed, a federal constitutional claim may be brought under
28 42 U.S.C. § 1983 in either state or federal court.

1 4. Chronology

2 The fourth factor, the order in which the forums obtained jurisdiction, clearly weighs in
3 favor of a stay. Plaintiff initiated his state court action more than two years before he filed this
4 federal action. Significantly more progress has been made in the state case. Trial assignment is
5 scheduled next month in plaintiff’s state lawsuit, while the instant action remains at the pleading
6 stage. It is reasonable that plaintiff “be bound by [his] initial choice of the state forum, given the
7 substantial progress that has occurred in the state court litigation.” Am. Int’l Underwriters, 843
8 F.2d at 1259.

9 5. Law providing rule of decision

10 Although negligence and other tort claims are governed by state law, and federal
11 constitutional claims are governed by federal law, plaintiff is not precluded from bringing his
12 federal claim in state court. This court previously encouraged plaintiff to amend his state
13 complaint to add his federal claim, even if presented in the alternative. The court informed
14 plaintiff that whether or not he amends his state court complaint to include his federal claim, this
15 court may nevertheless be precluded by principles of res judicata from later considering the
16 federal claim. See ECF No. 25 at 13 n.8. This is because “the doctrine of res judicata will bar not
17 only claims actually litigated in a prior proceeding, but also claims that could have been
18 litigated.” Palomar Mobilehome Park Ass’n v. City of San Marcos, 989 F.2d 362, 364 (9th Cir.
19 1993).

20 Because the state court has the authority to consider plaintiff’s federal claims, this factor
21 does not weigh against a stay. Any inconsistencies among plaintiff’s negligent, intentional tort,
22 and deliberate indifference claims can and should be resolved in one forum.

23 6. Protection of parties’ rights

24 The California courts are fully capable of vindicating plaintiff’s rights. Inclusion of his
25 federal constitutional claim in his state action, either in the original complaint or by amendment,
26 would have provided a full and fair opportunity to litigate these factually and legally intertwined
27 matters. “State courts, like federal courts, have a constitutional obligation . . . to uphold federal
28 law.” Stone v. Powell, 428 U.S. 465, 533 n.35 (1976) (citing Robb v. Connolly, 111 U.S. 624,

1 637 (1884)). This factor does not weigh against a stay.

2 7. Avoidance of forum shopping

3 Plaintiff has elected to pursue state law claims in state court and separately bring a related
4 federal claim in federal court, despite concurrent jurisdiction over the latter. If this court were to
5 proceed on the merits of plaintiff's federal action while his previously-filed and intentionally-
6 limited state action proceeds in state court, plaintiff's efforts at forum shopping would be
7 improperly rewarded. The courts "have no interest in encouraging this practice." Am. Int'l
8 Underwriters, 843 F.2d at 1259. This factor weighs in favor of a stay.

9 8. Whether state court will resolve all federal issues

10 Although not every element of plaintiff's federal claim will be litigated in the state
11 proceedings, a state court judgment will likely have preclusive effect on plaintiff's federal claim
12 for the reasons previously explained. Even absent a res judicata bar to federal litigation, a
13 majority of the factual and legal questions presented by the FAC will necessarily be decided in
14 the state court proceedings. This factor weighs in favor of a stay.

15 C. The Balance Weighs Strongly In Favor Of A Stay

16 Consideration of the above factors demonstrates that a stay is warranted in this case to
17 conserve judicial resources, and to avoid piecemeal litigation and the possibility of inconsistent
18 results. Deference to state court jurisdiction is particularly appropriate here because state court
19 was plaintiff's initial forum choice, and the state court has always been available to resolve
20 plaintiff's federal claim. Defendant has met his burden of demonstrating exceptional
21 circumstances warranting a stay of this action.

22 V. Proposed Second Amended Complaint

23 Plaintiff has, without leave of court, filed a proposed Second Amended Complaint (SAC).
24 See ECF No. 27. The proposed SAC seeks to assert deliberate indifference and "gross negligent"
25 claims against defendant Jones and several additional institutional defendants.

26 In general, upon motion, the court should "freely" grant leave to amend a pleading "when
27 justice so requires." Fed. R. Civ. P. 15(a)(2). Given the present procedural posture of this case,
28 however, amendment would be inappropriate. In light of the recommendation that this case be

1 stayed pending final resolution of plaintiff's state court action, with the understanding that the
2 state court's decision may impact the scope and viability of the instant case, amendment at this
3 time serves no purpose. Therefore, plaintiff's implied request for leave to file his proposed SAC
4 will be denied without prejudice.

5 CONCLUSION

6 For the foregoing reasons, IT IS HEREBY ORDERED that:


- 7 1. Plaintiff's implied motion for leave to file a Second Amended Complaint is DENIED
8 without prejudice; and
9 2. The Clerk of Court is directed to designate on the docket that the Second Amended
10 Complaint, ECF No. 27, is to be disregarded.

11 Additionally, IT IS HEREBY RECOMMENDED that:

- 12 1. Defendant's motion to stay this action, ECF No. 34, be GRANTED;
13 2. This action be stayed pending final resolution of plaintiff's related state court case,
14 Sacramento County Superior Court Case No. 34-2011-00111910; and
15 3. Defendant be directed to file and serve, within thirty days after final resolution of the
16 above-noted state court case, a statement so informing the court, together with a supported motion
17 requesting that this court either proceed with, or dismiss, the instant federal action.

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

25 DATED: February 10, 2017

26 
27 ALLISON CLAIRE
28 UNITED STATES MAGISTRATE JUDGE