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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VINCENT BRUCE,  
Plaintiff,  
v.  
SHAMA CHAIKEN, et al.,  
Defendants.

No. 2:15-cv-0960 KJN P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On July 27, 2015, plaintiff filed a motion requesting that the court order the California Department of Corrections and Rehabilitation (“CDCR”) to collect his filing fees sequentially. (ECF No. 14.) Plaintiff alleges that this method for calculating filing fees, compared to the proposed alternative method, imposes a hardship on his ability to correspond with others and to purchase items at the canteen, including personal hygiene items. (Id. at 3-4.) On September 1, 2015, the undersigned directed the CDCR Director to file a response to this motion. (ECF No. 16.)

On October 1, 2015, CDCR Director filed a response to plaintiff’s pending motion. (ECF No. 22.) CDCR Director correctly states that there is a significant split in the circuits of the United States Courts of Appeal on the issue of the calculation of multiple filing fee payments from prisoners. CDCR Director states that the United States Supreme Court has granted certiorari

1 to address this subject. See Pinson v. Samuels, 761 F.3d 1, 7 (D.C. Cir. 2014) (“The courts of  
2 appeals are divided concerning the manner in which the PLRA calls for collection of installment  
3 payments from prisoners who simultaneously owe filing fees in multiple cases”), certiorari  
4 granted by Bruce v. Samuels, 135 S. Ct. 2833 (June 15, 2015). The CDCR Director requests that  
5 this court stay disposition of plaintiff’s pending motion pending adjudication of the issue by the  
6 United States Supreme Court.

7 For the following reasons, the undersigned recommends that plaintiff’s motion regarding  
8 the calculation of his filing fees be stayed pending adjudication of the issue by the United States  
9 Supreme Court.

10 “[T]he power to stay proceedings is incidental to the power inherent in every court to  
11 control disposition of the cases on its docket with economy of time and effort for itself, for  
12 counsel, and for litigants.” Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). “The exertion of  
13 this power calls for the exercise of sound discretion.” CMAX, Inc. v. Hall, 300 F.2d 265, 268  
14 (9th Cir. 1962).

15 The court considers a number of factors in deciding whether to grant a stay. Id. (citing  
16 Landis, 299 U.S. at 254–55). First, a court may consider the “possible damage which may result  
17 from granting a stay.” Id. The second factor to consider is the hardship or inequity which a party  
18 may suffer in being required to go forward. CMAX, 300 F.2d at 268. The third factor the court  
19 may consider is “the orderly course of justice measured in terms of the simplifying or  
20 complicating of issues, proof, and questions of law which could be expected to result from a  
21 stay.” CMAX, 300 F.2d at 268.

22 With respect to the first factor, plaintiff will continue to suffer the alleged injuries if this  
23 action is stayed. With respect to the second factor, the undersigned finds that neither plaintiff nor  
24 the CDCR Director would suffer any significant hardship if they were required to go forward with  
25 respect to disposition of the issue raised by plaintiff in the pending motion. The third factor,  
26 however, clearly weighs in favor of staying this case. Because the United States Supreme Court  
27 is considering the same issue raised by plaintiff in the pending motion, the orderly course of  
28 justice warrants a stay.

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Accordingly, IT IS HEREBY ORDERED that:


1. The Clerk of the Court is directed to appoint a district judge to this action;
2. The Clerk of the Court is directed to serve a copy of these findings and

recommendations on Deputy Attorney General Gabriel Ullrich, specially appearing on behalf of the CDCR Director; and

IT IS HEREBY RECOMMENDED that plaintiff's motion requesting that CDCR calculate his filing fees sequentially (ECF No. 14) be stayed pending the resolution of this issue by the United States Supreme Court.

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

Dated: October 21, 2015

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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