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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN HARDNEY,
Plaintiff,
v.
R. WARREN, et al.,
Defendants.

No. 2:16-cv-0172-KJM-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Defendants have filed a motion to stay this action pending plaintiff’s state criminal proceedings which, they contend, arise from the same facts at issue in this case. ECF No. 41. Plaintiff has filed an opposition to the motion (ECF No. 46) and defendants have filed a reply (ECF No. 47). For the reasons stated hereafter, defendants’ motion should be granted.

I. Background

In the operative complaint, plaintiff alleges that defendants subjected him to excessive force on October 10, 2014. ECF No. 10 at 7. Specifically, he contends that, defendant Pogue approached his cell and informed him that defendant Warren had seen him masturbating “in the cell on the bunk [across] from the officer’s desk.” *Id.* at 8. Plaintiff was then escorted from his cell to the medical clinic where defendants Pogue, Hickman, Almodovar and several other unnamed officers assaulted him by bashing his head into a window, dislocating his shoulder,

1 slamming him to the floor, and placing weight on his supine body. *Id.* at 8-9. Plaintiff claims
2 that defendant Kumeh, a vocational nurse, witnessed these events, ignored his cries for help, and
3 falsely documented that plaintiff had not sustained injuries during the altercation. *Id.* After these
4 events, plaintiff alleges that defendant Brazil subjected him to a second incident of excessive
5 force by bending his arm during the escort back to a cell. *Id.* at 9-10.

6 In their motion, defendants state that the events of October 10, 2014 are the subject of a
7 pending state criminal case against plaintiff in Amador County. ECF No. 41 at 3. He received a
8 rules violation report for indecent exposure on that date. *Id.* Defendants argue that, afterwards
9 and contrary to his allegations, plaintiff became upset during an escort from his cell and officers
10 used force to restrain him. *Id.* As a consequence, he is being charged with one instance of
11 resisting arrest/threatening an officer under California Penal Code section 69 and two instances¹
12 of indecent exposure under California Penal Code section 314(1). *Id.* Plaintiff's criminal case
13 was originally set for trial on March 6, 2018, but plaintiff filed a motion to continue which was
14 granted. *Id.* A trial setting conference was scheduled for March 9, 2018 but, at the time the
15 motion was filed, no date certain for the trial was available. *Id.*

16 **II. Analysis**

17 Defendants raise two arguments as to why this action should be stayed. First, they argue
18 that a stay is appropriate under the rubric announced in *Keating v. Office of Thrift Supervision*, 45
19 F.3d 322 (9th Cir. 1995), where the Ninth Circuit explained:

20 The Constitution does not ordinarily require a stay of civil
21 proceedings pending the outcome of criminal proceedings. "In the
22 absence of substantial prejudice to the rights of the parties involved,
23 [simultaneous] parallel [civil and criminal] proceedings are
unobjectionable under our jurisprudence." "Nevertheless, a court
may decide in its discretion to stay civil proceedings . . . 'when the
interests of justice seem[] to require such action.'"

24 The decision whether to stay civil proceedings in the face of a
25 parallel criminal proceeding should be made "in light of the
26 particular circumstances and competing interests involved in the
case." This means the decisionmaker should consider "the extent to
which the defendant's fifth amendment rights are implicated." In

27 ¹ One charge of indecent exposure relates to the October 2014 events. Defendants state
28 that the other relates to events which occurred on April 3, 2015. ECF No. 41 at 3.

1 addition, the decisionmaker should generally consider the following
2 factors: (1) the interest of the plaintiffs in proceeding expeditiously
3 with this litigation or any particular aspect of it, and the potential
4 prejudice to plaintiffs of a delay; (2) the burden which any
5 particular aspect of the proceedings may impose on defendants; (3)
6 the convenience of the court in the management of its cases, and the
7 efficient use of judicial resources; (4) the interests of persons not
8 parties to the civil litigation; and (5) the interest of the public in the
9 pending civil and criminal litigation.

10 *Id.* at 324-25. Second, they argue that a stay is appropriate pursuant to *Younger v. Harris*, 401
11 U.S. 37, 45-46 (1971). The court finds the latter argument persuasive and thus declines to
12 address the former.

13 Under *Younger*, abstention is required if: (1) the state court proceedings are ongoing; (2)
14 the proceedings implicate important state interests; (3) the state proceedings provide an adequate
15 opportunity to raise federal questions; and (4) the federal court action would enjoin, or have the
16 practical effect of enjoining, the state court. *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143,
17 1149 (9th Cir. 2007). The first two factors are clearly met and, given the charges against him,
18 plaintiff should be afforded an opportunity to raise an excessive force claim as part of his defense.
19 In *Jones v. County of Contra Costa*, the court explained that:

20 To be found guilty of resisting an officer under California Penal
21 Code § 69 — one of the charges against Jones — the officer must
22 have been engaged ‘in the performance of his duty’ at the time.
23 This requires that officer be engaged in the “lawful” performance of
24 his duties. . . . In response to any evidence presented by the
25 prosecutor that Jones resisted the officers, Jones could defend those
26 allegations by claiming that the officers were not acting in ‘lawful’
27 performance because they used excessive force against him,
28 violated equal protection and committed the other offenses that
Jones alleges in his federal civil complaint. . . . Jones would thus be
able to raise his claims regarding the officers’ unlawful conduct in
state court, thereby satisfying the third prong.

29 *Jones v. County of Contra Costa*, No. 13-cv-05552-TEH, 2014 U.S. Dist. LEXIS 50734, *6-7
(N.D. Cal. Apr. 11, 2014).

30 The fourth prong is also met insofar as hearing this case could unreasonably intrude on the
31 state court case. A determination of whether plaintiff was subjected to excessive force under the
32 Eighth Amendment focuses on whether the force used was employed not in “good faith effort to
33 maintain or restore order, [but] maliciously and sadistically for the very purpose of causing

1 harm.” *Hudson v. McMillian*, 503 U.S. 1, 6 (1992). Thus, this court would have to evaluate
2 whether any resistance raised by plaintiff justified the force used against him. Such a decision
3 intrudes upon the state criminal proceedings which would also interrogate that question.

4 **III. Conclusion**

5 Based on the foregoing, it is RECOMMENDED that:

- 6 1. Defendants’ motion to stay (ECF No. 41) be GRANTED;
7 2. The case be stayed pending the resolution of Plaintiff’s criminal case; and
8 3. Defendants be directed to file a status report, within ninety days of any order adopting
9 this recommendation, updating the court as to the status of plaintiff’s criminal case.

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
12 after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Such a document should be captioned
14 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
15 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
16 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

17 DATED: May 10, 2018.

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19 EDMUND F. BRENNAN
20 UNITED STATES MAGISTRATE JUDGE
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