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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM HOUSTON,  
Plaintiff,  
v.  
L. ELDRIDGE, et al.,  
Defendants.

No. 2: 16-cv-2561 WBS KJN P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Introduction

Plaintiff is a state prisoner, proceeding through counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is defendants’ December 5, 2019 motion to stay this action. (ECF No. 125.) For the reasons stated herein, the undersigned recommends that defendants’ motion be granted.

This action is set for a pretrial conference before the Honorable William B. Shubb on February 18, 2020. (ECF No. 114.) This action is set for jury trial before Judge Shubb on April 21, 2020. (Id.) Based on the recommendation that this action be stayed, the pretrial conference and jury trial are vacated.

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1 Plaintiff's Failure to Oppose

2 Defendants noticed the motion to stay for hearing before the undersigned on January 9,  
3 2020. (ECF No. 125.) Plaintiff failed to oppose or otherwise respond to the motion.  
4 Accordingly, on January 7, 2020, the undersigned vacated the January 9, 2020 hearing and  
5 ordered plaintiff to show cause why sanctions should not be imposed for his failure to respond to  
6 defendants' motion. (ECF No. 127.)

7 On January 14, 2020, plaintiff's counsel filed an opposition to the motion to stay and a  
8 response to the order to show cause. (ECF No. 128.) Good cause appearing, the order to show  
9 cause is discharged.

10 Plaintiff's Claims

11 Following summary judgment, this action proceeds on the following claims: 1) on  
12 February 5, 2016, defendants Brewer, Huynh, Anderson and Stanfield used excessive force  
13 and/or failed to intervene when excessive force was used against plaintiff; 2) defendants Brewer,  
14 Padilla and Huynh used excessive force against plaintiff during the first July 17, 2016 incident;  
15 and 3) defendant Nyberg, Barajas, Morales, Stuhr, Rowe and Pacheco used excessive force  
16 against plaintiff during the second July 17, 2016 incident.

17 *February 5, 2016 Incident*

18 Plaintiff alleges that on February 5, 2016, he returned to California State Prison-  
19 Sacramento ("CSP-Sac") after being out to court at California State Prison-Lancaster ("CSP-  
20 Lancaster"). Plaintiff alleges that defendants Brewer and Huynh came to Receiving and Release  
21 ("R & R") to escort plaintiff to his cell in A Facility, 3 Building, Cell 107. Plaintiff alleges that  
22 once they arrived at Cell 107, plaintiff noticed that the cell was dirty. Plaintiff told defendants  
23 that the cell was dirty and that it was supposed to be clean for new arrivals. Defendant Brewer  
24 became angry and said, "O.K. We're going to do our job." Defendants Brewer and Huynh then  
25 took plaintiff through the A Section side door into B Section and put plaintiff in the B Section  
26 cage. Defendants left plaintiff in handcuffs and leg irons.

27 Plaintiff alleges that defendants Brewer and Huynh returned with defendant Anderson. As  
28 they approached the cage they said, "Let's go." Plaintiff had a gut feeling that they were going to

1 harm him. Plaintiff stated, "I'm not going anywhere until I see the Lieutenant." Defendant  
2 Brewer then opened the cage, snatched plaintiff out by the left shoulder and arm and violently  
3 shoved plaintiff into the hallway of the A3 Building Rotunda blind area. Defendants Huynh and  
4 Anderson followed plaintiff and defendant Brewer into the rotunda. Once they had plaintiff in  
5 the rotunda blind area, defendant Brewer ordered defendant Stanfield to put a spit mask over  
6 plaintiff's head. Then defendant Brewer slammed plaintiff's face against the wall. Defendant  
7 Brewer grabbed the back of plaintiff's head and started repeatedly bashing plaintiff's face into the  
8 wall.

9 Plaintiff begged defendant Brewer to stop the assault and asked to be taken to his cell.  
10 Defendant Brewer replied, "If I take you to your cell, you're just going to talk shit... You know  
11 what? You just assaulted an officer." Defendant Brewer then took plaintiff to the floor and  
12 started punching and elbowing plaintiff in the face over and over again. Defendant Brewer  
13 screamed, "Stop resisting!" Defendant Huynh then started jumping up and down on plaintiff's  
14 low back and rib area.

15 Plaintiff alleges that defendants Anderson and Stanfield later claimed that they were not  
16 present during the assault.

17 Plaintiff later received a fabricated rules violation report accusing plaintiff of headbutting  
18 and assaulting defendant Brewer.

19 *First July 17, 2016 Incident*

20 On July 17, 2016, when defendants Brewer and Huynh saw plaintiff on the exercise yard,  
21 defendant Brewer said, "You're out of handcuffs now, so do something! Do something!"  
22 Plaintiff alleges that as he walked to his building, defendant Brewer charged him from behind.  
23 Defendant Brewer then twisted plaintiff around and started punching plaintiff in the face.  
24 Plaintiff alleges that defendants Padilla and Huynh tackled plaintiff to the ground and had their  
25 knees in plaintiff's back. Plaintiff alleges that defendant Brewer then tried to poke plaintiff's  
26 eyes out with his fingers.

27 Plaintiff alleges that defendant Brewer wrote another fabricated rules violation report  
28 based on this first July 17, 2016 incident alleging that plaintiff threatened to commit crimes of

1 violence against him.

2 *Second July 17, 2016 Incident*

3 Plaintiff alleges that later on July 17, 2016, plaintiff was placed in administrative  
4 segregation (“ad seg”) in A Facility Building 5. As soon as plaintiff entered the building,  
5 escorting officer Nyberg asked plaintiff, “What happened earlier?” Defendant Nyberg then  
6 tripped plaintiff and slammed plaintiff against the ground. Defendants Nyberg, Barajas, Morales,  
7 Stuhr, Rowe and Pacheco assaulted plaintiff.

8 Discussion

9 In the pending motion, defendants request that this action be stayed pursuant to Heck v.  
10 Humphrey. In Heck v. Humphrey, 512 U.S. 477, 486-87 (1994), the Supreme Court held:

11 [T]o recover damages for an allegedly unconstitutional conviction or  
12 imprisonment, or for other harm caused by actions whose lawfulness  
13 would render a conviction or sentence invalid, a § 1983 plaintiff must  
14 prove that the conviction or sentence has been reversed on direct  
15 appeal, expunged by executive order, declared invalid by a state  
16 tribunal authorized to make such determination, or called into  
17 question by a federal court's issuance of a writ of habeas corpus[.]

18 512 U.S. at 487.

19 In the pending motion, defendants state that plaintiff is currently being prosecuted by  
20 Sacramento County “for his actions pertaining to July 17, 2016, and conviction against plaintiff  
21 will likely result in barring plaintiff’s July 17, 2016 claim in this court under Heck v. Humphrey,  
22 512 U.S. 477 (1994).” (ECF No. 125-1 at 2.) Defendants request that this case be stayed  
23 pending resolution of plaintiff’s criminal proceedings.

24 In the pending motion, defendants request that the court take judicial notice of a criminal  
25 complaint filed against plaintiff in Sacramento County Superior Court on October 26, 2016.  
26 (ECF No. 126.) This criminal complaint charges plaintiff with committing felony battery on July  
27 17, 2016, against defendants Brewer and Padilla, resisting defendant Brewer (felony), and four  
28 prior convictions. (Id.) This complaint does not charge plaintiff with assaulting defendant  
Huynh, who plaintiff alleges assaulted him during the first July 17, 2016 incident. (Id.)

In the pending motion, defendants do not clarify whether the prosecution concerns the  
first or second July 17, 2016 incident. However, based on the summary judgment motion and

1 criminal complaint, it appears that plaintiff's criminal prosecution concerns the first July 17, 2016  
2 incident.

3 Heck does not bar a plaintiff from bringing an action raising claims challenging ongoing  
4 criminal proceedings. However, Wallace v. Kato, 549 U.S. 384, 393-94 (2007), explains that  
5 such an action should be stayed:

6 [i]f plaintiff files a false-arrest claim before he [or she] has been  
7 convicted (or files any other claim related to rulings that likely will  
8 be made in a pending or anticipated criminal trial), it is within the  
9 power of the district court, and in accord with common practice, to  
stay the civil action until the criminal case or the likelihood of a  
criminal case is ended.

10 459 U.S. 393-94.

11 Later, “[i]f the plaintiff is convicted, and if the stayed civil suit would impugn that  
12 conviction, Heck requires dismissal; otherwise, the case may proceed.” Yuan v. City of Los  
13 Angeles, 2010 WL 3632810 at \*5 (C.D. Cal. Aug. 19, 2010) (citing Wallace, 549 U.S. at 393);  
14 Peyton v. Burdick, 358 Fed.Appx. 961 (9th Cir. 2009) (vacating judgment in a § 1983 case where  
15 claims implicated rulings likely to be made in pending state court criminal proceedings and  
16 remanding for district court to stay action until pending state court proceedings concluded).

17 The criminal complaint does not describe the facts on which the criminal charges against  
18 plaintiff are based. It is possible that defendants could have used excessive force against plaintiff  
19 even if plaintiff committed battery against them during the first July 17, 2016 incident.  
20 Nevertheless, because a finding that defendants Brewer and Padilla used excessive force against  
21 plaintiff during the first July 17, 2016 incident in the instant action could invalidate the ongoing  
22 criminal proceedings or be “related to rulings that will likely be made in a pending or anticipated  
23 criminal trial,” Wallace, 549 U.S. at 393, plaintiff's claims regarding the first July 17, 2016  
24 incident should be stayed. See Martinez v. Cty. of Santa Clara, 2017 WL 2180985, at \*3–4 (N.D.  
25 Cal. May 18, 2017) (granting stay of action alleging excessive force claims where the allegations  
26 in the civil action “ar[o]se from the same series of events and involve[d] overlapping issues of  
27 fact” as the plaintiff's felony criminal complaint); Monday v. McDonnell, 2015 WL 3970341, at  
28 \*3 (C.D. Cal. June 30, 2015) (granting stay where “[t]he criminal charges may [ ] be relevant to

1 the resolution of the Complaint’s excessive force claim”).

2 It is possible that even if plaintiff is eventually convicted, plaintiff’s claims regarding the  
3 first July 17, 2016 incident will not be barred under Heck in their entirety to the extent the facts  
4 underlying the conviction and the civil claims do not overlap. See Hooper v. Cty. of San Diego,  
5 629 F.3d 1127, 1134 (9th Cir. 2011) (finding excessive force claims not barred by Heck “when  
6 the conviction and the [Section] 1983 claim are based on different actions during ‘one continuous  
7 transaction.’”). However, the extent of that overlap and the scope of the Heck bar can only be  
8 determined after a conviction occurs. See Hopkins v. Contra Costa County Sheriff, 2012 WL  
9 2063112 at \*2 (N.D. Cal. 2012) (“In cases such as this one, where there is no extant conviction, it  
10 is appropriate to follow the [United States] Supreme Court’s suggestion and stay the case.”).

11 For the reasons discussed above, the undersigned recommends that plaintiff’s claim  
12 regarding the first July 17, 2016 incident be stayed.

13 In the pending motion, defendants also argue that plaintiff’s claim regarding the February  
14 5, 2016 incident may also be Heck barred because plaintiff was found guilty of a rules violation  
15 based on that incident. In the summary judgment motion, defendants argued that plaintiff’s  
16 excessive force claim regarding the February 5, 2015 incident and second July 17, 2016 incident  
17 were Heck barred because plaintiff was found guilty of disciplinary convictions related to these  
18 incidents for which he was assessed time credits. (ECF No. 87 at 21.)

19 In the opposition to the summary judgment motion, plaintiff argued that although he was  
20 assessed time credits following disciplinary convictions related to the February 5, 2016 and  
21 second July 17, 2016 incidents, his sentence was not extended by these assessments. (Id. at 22.)  
22 In the reply to plaintiff’s opposition, defendants conceded that by the time plaintiff received the  
23 rules violation convictions, he was no longer able to have additional time added to his  
24 confinement. (Id.) In the findings and recommendations addressing the summary judgment  
25 motion, the undersigned found that, “Thus, defendants appear to withdraw their argument that  
26 these claims are Heck barred. Accordingly, the undersigned will not address this issue in these  
27 findings and recommendations.” (Id.) Defendants did not object to this finding.

28 ///

1 Based on the record discussed above, the undersigned is puzzled by defendants' argument  
2 in the pending motion that plaintiff's claims regarding the February 5, 2016 incident are Heck  
3 barred. Because defendants appeared to concede in summary judgment proceedings that  
4 plaintiff's claim regarding the February 5, 2016 incident were not Heck barred, defendants'  
5 current argument that plaintiff's claims regarding the February 5, 2016 incident are Heck barred  
6 is not well supported.

7 Finally, the undersigned considers whether this entire action should be stayed, or only  
8 plaintiff's claim regarding the first July 17, 2016 incident.

9 A district court has "broad discretion to stay proceedings as an incident to its power to  
10 control its own docket." Clinton v. Jones, 520 U.S. 681, 706 (1997) (citing Landis v. N. Am. Co.,  
11 299 U.S. 248, 254 (1936)). "A trial court may, with propriety, find it is efficient for its own  
12 docket and the fairest course for the parties to enter a stay of an action before it, pending  
13 resolution of independent proceedings which bear upon the case." Mediterranean Enters., Inc. v.  
14 Ssangyong Corp., 708 F.2d 1458, 1465 (9th Cir. 1983) (quoting Leyva v. Certified Grocers of  
15 California, Ltd., 593 F.2d 857, 863 (9th Cir. 1979)).

16 In determining whether to grant a motion to stay, a court should generally consider the  
17 following factors:

18 (1) the interest of the plaintiffs in proceeding expeditiously with this  
19 litigation or any particular aspect of it, and the potential prejudice to  
20 plaintiffs of a delay; (2) the burden which any particular aspect of the  
21 proceedings may impose on defendants; (3) the convenience of the  
22 court in the management of its cases, and the efficient use of judicial  
23 resources; (4) the interests of persons not parties to the civil  
24 litigation; and (5) the interest of the public in the pending civil and  
25 criminal litigation.

24 Keating v. Office of Thrift Supervision, 45 F.3d 322, 324–25 (9th Cir. 1995); see Blue Cross &  
25 Blue Shield of Alabama v. Unity Outpatient Surgery Ctr., Inc., 490 F.3d 718, 724 (9th Cir. 2007).

26 While plaintiff has an interest in proceeding expeditiously with this litigation, the  
27 undersigned finds that the other factors set forth above warrant staying this entire action until  
28 plaintiff's criminal proceedings regarding the first July 17, 2016 incident are resolved. If this

1 action is not stayed, defendants may be required to defend related claims at two separate trials. In  
2 addition, staying this action promotes the efficient use of judicial resources by having one trial  
3 rather than (potentially) two trials. The undersigned also finds that the interest of the public in the  
4 pending civil and criminal actions is better served by staying this action. Accordingly, the  
5 undersigned recommends that this entire action be stayed pending resolution of plaintiff's  
6 criminal proceedings.

7 Because the criminal complaint was filed against plaintiff over three years ago, defendants  
8 are ordered to file a status report within thirty days of the order adopting these findings and  
9 recommendations addressing the status of the criminal proceedings.

10 Accordingly, IT IS HEREBY ORDERED that:


- 11 1. The pretrial conference set for February 18, 2020, and the jury trial set for April 21,  
12 2020, before Judge Shubb are vacated;
- 13 2. Within thirty days of the order adopting these findings and recommendations,  
14 defendants shall file a status report addressing the status of the criminal proceedings;  
15 and

16 IT IS HEREBY RECOMMENDED that defendants' motion to stay (ECF No. 125) be  
17 granted.

18 These findings and recommendations are submitted to the United States District Judge  
19 assigned to the 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." Any response to the  
23 objections shall be filed and served within fourteen days after service of the objections. The  
24 parties are advised that failure to file objections within the specified time may waive the right to  
25 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

26 Dated: January 23, 2020

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28   
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE