

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY A. SERMENO,  
Plaintiff,  
v.  
M. IRMER, et al.,  
Defendants.

No. 2: 17-cv-0745 GEB KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On April 12, 2017, the undersigned dismissed plaintiff’s complaint with leave to amend. (ECF No. 6.) On June 22, 2017, the undersigned granted plaintiff a thirty days extension of time to file his amended complaint. (ECF No. 12.)

On June 29, 2017, plaintiff filed a request to stay this action. (ECF No. 13). In the alternative, plaintiff requests that this action be dismissed without prejudice to his filing a motion to reopen this action pursuant to Federal Rule of Civil Procedure 60(b). (Id.) Plaintiff alleges that due to his prison work schedule, he is unable to prosecute this action at this time. (Id.)

Plaintiff is informed that this action cannot be indefinitely stayed based on plaintiff’s work schedule. Plaintiff is also informed that were this action dismissed without prejudice, it is very unlikely that a motion pursuant to Rule 60(b) to reopen this action based on plaintiff’s more lenient work schedule would be granted.

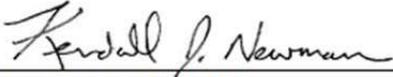
1 For the reasons discussed above, plaintiff's motion to stay this action or for a voluntary  
2 dismissal is denied. Plaintiff is granted thirty days to file an amended complaint. Plaintiff may,  
3 in the alternative, file a request to voluntarily dismiss this action without prejudice, without  
4 conditions for reopening this case. If this request is granted, plaintiff will most likely have to file  
5 a new civil rights action when he is ready to proceed with the claims raised in the instant action.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. Plaintiff's motion to stay this action or, in the alternative, to voluntarily dismiss this  
8 action (ECF No. 13) is denied;

9 2. Within thirty days of the date of this order, plaintiff shall file an amended complaint;  
10 failure to file an amended complaint will result in a recommendation of dismissal of this action  
11 without prejudice.

12 Dated: July 13, 2017

13   
14 \_\_\_\_\_  
15 KENDALL J. NEWMAN  
16 UNITED STATES MAGISTRATE JUDGE

17 Ser745.ord

18 kc