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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEENAN W. WILKINS,
Plaintiff,
v.
DAVID BAUGHMAN, et al.,
Defendants.

No. 2:17-cv-1368 TLN KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion to stay filed March 13, 2018. (ECF No. 12.) For the reasons stated herein, the undersigned recommends that plaintiff’s motion to stay be denied.

On February 22, 2018, the undersigned recommended that plaintiff’s motion to proceed in forma pauperis be revoked pursuant to 28 U.S.C. § 1915(g). (ECF No. 11). The undersigned also recommended that plaintiff be ordered to pay the filing fee of \$400. (Id.) In the February 22, 2018 findings and recommendations, the undersigned found that in Wilkins v. Gonzales, 2:16-cv-347 KJM KJN P, the Honorable Kimberly J. Mueller found that plaintiff had three prior § 1915(g) strikes. (Id.) In 16-cv-347, Judge Mueller found the following strikes: case no. 3:97-cv-2298 (N.D. Cal.), and appeal nos. 12-16170 and 13-17060. (See 16-cv-347 at ECF No. 61.)

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1 In the pending motion to stay, plaintiff argues that he currently has an appeal pending in
2 the Ninth Circuit that will resolve the “ifp issue.” (ECF No. 12.) Plaintiff cites appeal no. 17-
3 16274. (Id.)

4 The undersigned has reviewed the Ninth Circuit docket for appeal no. 17-16274. Case
5 No. 17-16274 is an appeal from an action filed by plaintiff in the United States District Court for
6 the Northern District of California, i.e., no. 3:16-cv-7016 (N.D. Cal.). The docket from the
7 Northern District indicates that on June 5, 2017, in 3:16-cv-7016, the Northern District found that
8 plaintiff had three prior § 1915(g) strikes and ordered plaintiff to pay the filing fee. (See 3:16-cv-
9 7016 at ECF No. 22.) Plaintiff appealed this order, which became appeal no. 17-16274. While
10 the appeal was pending, plaintiff filed a motion for reconsideration with the Northern District
11 seeking to reopen the case so that he could pay the full filing fee. (Id., see ECF No. 33.) On
12 March 29, 2018, the Ninth Circuit dismissed appeal 17-16274 as moot because plaintiff paid the
13 filing fee in the district court. (See Ninth Circuit Docket at 9.)

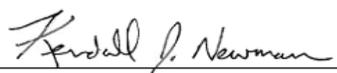
14 To the extent appeal 17-16274 may have been relevant to this court’s recommendation
15 that plaintiff’s application to proceed in forma pauperis be revoked, the appeal is no longer
16 relevant as it was dismissed by the Ninth Circuit as moot.

17 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s motion to stay (ECF No.
18 12) be denied; and plaintiff be granted fourteen days to file objections to the February 22, 2018
19 findings and recommendations.

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

27 Dated: June 20, 2018

28 Wilk1368.den.kc


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE