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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES C. MCCURDY,
Plaintiff,
v.
CALIFORNIA DEPARTMENT OF
CORRECITONS AND
REHABILITATION, et al.,
Defendants.

No. 2:17-cv-1736 TLN CKD P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a California prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. The remaining defendant, Randy Thomas, is a Correctional Officer at the California Medical Facility. Plaintiff’s remaining claims arise under the Eighth Amendment and are for denial of medical care and excessive force. The events which form the basis of plaintiff’s claims occurred August 18, 2015.

Defendant has filed a motion asking that this action be stayed. He asserts plaintiff has been charged criminally with assault for actions he took during the August 18, 2015 incidents with defendant. Defendant claims that if plaintiff is convicted on that charge, the claims in this case will be barred by Heck v. Humphrey, 512 U.S. 477 (1994), in which the Supreme Court found that a prisoner cannot proceed on a claim for damages if a favorable outcome on that claim would imply the invalidity of his conviction. Id. at 487. Plaintiff opposes the motion.

1 A conviction for assault does not necessarily preclude a finding that, during the same
2 series of events, the criminal defendant was also subjected to excessive force or denial of medical
3 care in violation of the Eighth Amendment. Furthermore, defendant fails to point to specific facts
4 suggesting that if plaintiff were convicted of the pending assault charge, plaintiff's success on
5 either remaining Eighth Amendment claim would imply the invalidity of his conviction. For
6 these reasons, and because plaintiff prefers to proceed with this action, the court will recommend
7 that defendant's motion for a stay be denied.

8 Accordingly, IT IS HEREBY RECOMMENDED that defendant's motion for a stay (ECF
9 No. 26) be denied.

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." Any response to the
15 objections shall be served and filed within fourteen days after service of the objections. The
16 parties are advised that failure to file objections within the specified time may waive the right to
17 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 Dated: November 8, 2018

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20 CAROLYN K. DELANEY
21 UNITED STATES MAGISTRATE JUDGE

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