

1 I. MOTION TO STAY PROCEEDINGS

2 A. Relevant Facts

3 In support of plaintiff's motion to stay these proceedings for ninety days, he asserts that
4 on November 30, 2022, he was transferred from Mule Creek State Prison ("MCSP") to a different
5 facility to receive short-term medical care. ECF No. 62 at 1. Approximately three weeks later, he
6 was told that he would not be able to return to MCSP due to lack of room. Id. As a result,
7 plaintiff would have to be transferred to another facility. Id.

8 Plaintiff states that all his property is still at MCSP, including his legal files. ECF No. 62
9 at 1. He further asserts that he has not received any information from prison authorities indicating
10 when his files will be returned to him. Id. For these reasons, he asserts that a ninety-day stay of
11 these proceedings is warranted. Id. Defendants have neither filed an opposition, nor a statement
12 of non-opposition to plaintiff's motion.

13 B. Discussion

14 The motion must be denied. The transfer of prison litigants among institutions is a normal
15 incident of prison life. Staying this matter for ninety days due to plaintiff's prison transfer and
16 resultant lack of access to his legal property is not warranted given that plaintiff fails to identify
17 the legal property that he needs at this time and why. See generally ECF No. 62.

18 Furthermore, the November 2022 date to file motions to compel (see ECF No. 50 at 2)
19 (order amending discovery and scheduling order) was rendered moot when extensions of time
20 were granted to serve and respond to discovery requests (see ECF Nos. 54, 57) (orders granting
21 extensions of time). Consequently, that date as well as the remaining pretrial motion date
22 currently set for February 20, 2023 (ECF No. 50 at 2), must be reset. There is no fast-
23 approaching discovery deadline that would warrant a stay of these proceedings simply because
24 plaintiff has been transferred a different prison and currently has no access to his legal files.

25 In the future, once any remaining discovery deadlines have been reset, plaintiff may
26 request extension of any specific deadline that he believes he cannot meet, due to lack of his legal
27 files or for any other reason. Any such motion must clearly identify the particular deadline
28 plaintiff seeks to extend and the basis for his request.

1 II. “RELEASE” OF DECEASED DEFENDANT GENTRY

2 On December 8, 2022, defendants filed a notice of death for defendant D. Gentry. ECF
3 No. 58. In response, plaintiff has stated that he wishes to “release” defendant Gentry as a named
4 defendant in this case. ECF No. 62 at 1.

5 Rather than dismissing Gentry at this time, the court will provide information regarding
6 plaintiff’s options. The Federal Rules of Civil Procedure provide that when a party dies, that
7 person’s successor(s) and/or personal representative(s) may be substituted in the place of the
8 deceased party. Rule 25(a), Fed. R. Civ. Pro.; see also Gilmore v. Lockard, 936 F.3d 857 (9th
9 Cir. 2019). This allows a plaintiff to proceed on a claim against a deceased defendant, and to
10 recover from the deceased defendant’s estate should plaintiff ultimately prevail on the merits.
11 The notice of death filed in this case states that defendant Gentry is survived by her daughter and
12 son. ECF No. 58. These survivors have been identified to plaintiff, and they were served with
13 the notice of death. Id.

14 Plaintiff therefore has ninety days from the filing of the notice of death to bring a motion
15 to substitute parties. Rule 25(a), Fed. R. Civ. Pro.; Gilmore, 936 F.3d at 867-66. If plaintiff
16 would like to substitute Gentry’s next of kin for defendant Gentry, he must file a motion for
17 substitution within ninety days of the date of service of defendants’ notice of death. See id. The
18 motion must be served on the representative(s) plaintiff wishes to substitute for Gentry. Rule
19 25(a)(3).

20 If plaintiff does not wish to substitute one of defendant Gentry’s children in her place, and
21 instead wishes to dismiss Gentry after having considered his options, he should file a motion to
22 voluntarily dismiss Gentry as a defendant. The present request to “release” Gentry will be denied
23 without prejudice to such a motion. Such a motion may be filed without delay.

24 If plaintiff fails to respond to this order within 90 days of service of the notice of death,
25 Gentry must be dismissed with or without plaintiff’s consent. Rule 25(a).

26 Once the status of defendant Gentry as a party has been clarified, the court will reset any
27 remaining discovery deadlines.

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff’s motion for a stay of the proceedings (ECF No. 62 at 1) is DENIED;
2. Plaintiff’s request to “release” defendant Gentry (ECF No. 61 at 1-2) is DENIED;
3. If plaintiff still wishes to proceed in this case without substituting a successor for

defendant Gentry, within fourteen days from the date of this order, he must file a motion stating as much, and

4. If plaintiff wishes to substitute one of the deceased defendant Gentry’s successors as a defendant in this action, he must timely file a motion for substitution of parties consistent with Federal Rule of Civil Procedure 25 and other federal and local rules.

Upon plaintiff’s filing of his motion related to deceased defendant Gentry, the court will reset the necessary discovery and pretrial deadlines.

DATED: January 12, 2023



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE