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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

REGINALD EDWARD/ELLIS,

No. C 07-05452 WHA

Plaintiff,

v.

NEW UNITED MOTORS
MANUFACTURING INC.,

**ORDER RE PLAINTIFF'S
SECOND MOTION TO STAY
AND RE DEFENDANT'S
REQUEST FOR LEAVE TO
CONDUCT A DEPOSITION**

Defendant.

Two matters are currently pending in this *pro se* employment action. Plaintiff has filed a second motion to stay his employment action pending the outcome of an appeal in his criminal case. Defendant has filed an administrative request for leave to conduct a deposition of plaintiff who, defendant indicates, is currently incarcerated at the San Quentin jail.

Plaintiff had filed an earlier motion for a stay in August. The Court interpreted that motion as based on plaintiff's Fifth Amendment rights and, in a September 2 order, denied the request because plaintiff did not explain how his civil lawsuit jeopardized his Fifth Amendment rights (Dkt. No. 49). The basis for plaintiff's second motion is unclear. Although the motion is difficult to interpret, it appears that plaintiff's pending criminal appeal concerns a decision that he violated his probation. He requests a stay of his employment lawsuit pending the outcome of that appeal. Plaintiff explains that his criminal appeal is "directly related to his labor action lawsuit discovery evidence," and asserts due-process rights under the Fourteenth Amendment. Plaintiff does not further explain how plaintiff's own civil case will jeopardize his rights in his

1 appeal of a probation decision. Citing *Federal Sav. and Loan Ins. Corp. v. Molinaro*, 889 F.2d
2 899, 902–03 (9th Cir. 1989), the September 2 order set forth the factors courts consider when
3 faced with a motion to stay a civil lawsuit pending related criminal proceedings:

4 A court must decide whether to stay civil proceedings in the face
5 of parallel criminal proceedings in light of the particular
6 circumstances and competing interests involved in the case.
7 Obviously a court should consider the extent to which the
8 defendant’s fifth amendment rights are implicated. Other factors a
9 court should consider will vary according to the case itself, but
10 generally will include: (1) the interest of the plaintiffs in
11 proceeding expeditiously with this litigation or any particular
12 aspect of it, and the potential prejudice to plaintiffs of a delay; (2)
13 the burden which any particular aspect of the proceedings may
14 impose on defendants; (3) the convenience of the court in the
15 management of its cases, and the efficient use of judicial resources;
16 (4) the interests of persons not parties to the civil litigation; and (5)
17 the interest of the public in the pending civil and criminal
18 litigation.

12 The Court is no better able to assess how this lawsuit jeopardizes plaintiff’s rights (due process,
13 the right against self incrimination, or otherwise) than it was in the September order; plaintiff
14 has not explained what the issues are in his criminal appeal nor how precisely his rights will be
15 jeopardized.¹ As before, the remaining factors weigh in favor of denying the stay: the
16 discovery cutoff and trial dates are near, defendant has been preparing its defense, and the risk
17 of witnesses’ memories fading or witnesses becoming unavailable in the course of the requested
18 six-month stay remains. Moreover, unlike in *Molinaro*, where the *defendant* sought a stay of a
19 civil action against him, here *plaintiff* chose to bring this lawsuit. The Court is not inclined to
20 prejudice defendant absent a clear reason to do so, and plaintiff has provided none. Plaintiff’s
21 motion for a stay is therefore **DENIED**.

22 Defendant requests leave to depose plaintiff in prison. FRCP 30(a)(2)(B) states:

23 (a) **When a deposition may be taken.**

* * *

24 (2) **With Leave.** A party must obtain leave of court, and the court
25 must grant leave to the extent consistent with Rule 26(b)(2):

* * *


26 (B) if the deponent is confined in prison.

27
28 ¹ Plaintiff has attached what appears to be a letter from his attorney discussing the criminal appeal, but
due to the poor quality of the photocopy, much of the letter is illegible.

1 Defendant has served interrogatories on plaintiff and plaintiff has responded to those
2 interrogatories, but under FRCP 30(a)(2) defendant has a right to depose plaintiff in order to
3 prepare a thorough defense to plaintiff's claims. Good cause appearing, defendant's motion for
4 leave to depose plaintiff is **GRANTED**. The San Quentin State Prison shall allow for the
5 deposition of plaintiff at a date and time that is mutually convenient for defendant and the
6 prison, but no later than October 31, 2008. The prison shall provide appropriate security
7 personnel and a reasonable space for the deposition, allowing for the presence of defendant's
8 counsel, a representative of defendant if defendant chooses to have one present, a stenographer
9 or court reporter, plaintiff, and the security personnel.

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11 **IT IS SO ORDERED.**

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13 Dated: October 22, 2008

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16 WILLIAM ALSUP
17 UNITED STATES DISTRICT JUDGE
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