


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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

EDWARD ANTHONY THROOP,

Plaintiff,

vs.

SECRETARY OF CORRECTIONS, et al.,

Defendant.

CASE NO. 08cv2109-MMA(KSC)

**ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFF'S MOTION FOR A
STAY OF THE ACTION**

[Doc. No. 82]

On February 24, 2012, plaintiff filed a Motion to Stay and a supporting Declaration, both of which request an indefinite stay of the entire action. On April 27, 2012, defendants filed a statement indicating they do not oppose plaintiff's request for a stay. For the reasons outlined below, the Court finds it appropriate to DENY plaintiff's request for an indefinite stay but to GRANT plaintiff a limited stay of the entire action.

BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Edward Anthony Throop, a state prisoner proceeding *pro se*, filed this action alleging violations of his civil rights under 42 U.S.C. § 1983. Based on the District Court's Order Granting in Part and Denying in Part Defendants' Motion to Dismiss the Second Amended Complaint [Doc. No. 76], the following claims remain at issue: conspiracy; retaliation; due process; and equal protection. Plaintiff's claims arise out of his placement and long-term retention in a segregated housing unit because of his alleged prison gang affiliation. Plaintiff believes defendants conspired against him and

1 commenced proceedings to transfer him to segregated housing based on his alleged gang affiliation in
2 retaliation for the filing of a civil rights complaint against them. He also complains about the
3 constitutionality of the procedures used to commit him to segregated housing on a long-term basis and
4 the “mandatory debriefing” which is a precondition to release from segregated housing.

5 DISCUSSION

6 Plaintiff seeks an indefinite stay of the entire action for two reasons. First, plaintiff has been
7 contacted by a prisoners’ rights organization known as California Prison Focus. This organization has
8 expressed an interest in either transferring plaintiff’s case to the Northern District of California or joining
9 it with other cases under the Federal Rules, so it will be included in a class action challenging long-term,
10 indeterminate commitments to segregated housing units without due process of law. Plaintiff provided
11 Prison Focus with a copy of his Second Amended Complaint in January 2012 and is awaiting an
12 evaluation of his case by the organization. Plaintiff is uncertain how long it will take for his case to be
13 evaluated. It is his understanding Prison Focus is evaluating a number of cases, so it will take a long
14 time for the staff to address his individual case. If his case is selected, plaintiff states he is willing to
15 transfer and relinquish control over his case to Prison Focus because of the disadvantages he faces in
16 prosecuting his claims in this action without counsel and while incarcerated in a segregated housing unit.

17 Second, plaintiff has a prior section 1983 case that is currently on appeal before the Ninth Circuit
18 entitled *Throop v. Woodford*, No. 06cv2376-JAH(NLS). Appellate counsel was recently appointed to
19 represent plaintiff in this matter, and he believes the case will soon be remanded to this Court for further
20 proceedings. According to plaintiff, the allegations in *Throop v. Woodford* are factually related to the
21 claims he has raised in this case. As a result, he argues we should stay this case until *Throop v.*
22 *Woodford* is remanded by the Ninth Circuit, so discovery and trial dates in the two cases can proceed
23 on the same track.

24 “A district court has discretionary power to stay proceedings in its own court.” *Lockyer v. Mirant*
25 *Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005). “[T]he power to stay proceedings is incidental to the power
26 inherent in every court to control the disposition of the causes on its docket with economy of time and
27 effort for itself, for counsel, and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254-255
28 (1936). “Where it is proposed that a pending proceeding be stayed, the competing interests which will

1 be affected by the granting or refusal to grant a stay must be weighed. Among these competing interests
2 are the possible damage which may result from the granting of a stay, the hardship or inequity which a
3 party may suffer in being required to go forward, and the orderly course of justice measured in terms of
4 the simplifying or complicating of issues, proof, and questions of law which could be expected to result
5 from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) “Generally, stays should not be
6 indefinite in nature.” *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066-1067
7 (9th Cir. 2007) If a stay is especially long or its term is indefinite, a greater showing is required to justify
8 it. *Yong v. I.N.S.*, 208 F.3d 1116, 1119 (9th Cir. 2000).

9 Here, plaintiff’s request is unopposed, and he has presented information that is sufficient to
10 justify a brief stay of the proceedings, so his case can be evaluated by Prison Focus for possible inclusion
11 in a class action challenging the procedures used to subject state prisoners to long-term, indeterminate
12 commitments to segregated housing units. However, the Court does not find a sufficient basis for a
13 longer, more indefinite stay to await a decision from the Ninth Circuit on plaintiff’s appeal in the *Throop*
14 *v. Woodford* case. A review of the Ninth Circuit’s docket (Appeal No. 09-56068) does not suggest the
15 matter will be remanded soon as plaintiff contends. Pro bono appellate counsel was only recently
16 appointed on March 14, 2012. [Doc. No. 34.] Although a briefing order was issued when appellate
17 counsel was appointed, the briefing schedule was later vacated, because the case was selected for
18 participation in a Mediation Program. [Doc. Nos. 34, 36, 39.] Therefore, it appears plaintiff’s appeal will
19 return to the initial briefing stage, unless it settles during the mediation process. Under these
20 circumstances, it is uncertain when or if the case will be remanded to this Court. It is also unclear what
21 will remain of plaintiff’s factually related claims even if the case is remanded here. The Court therefore
22 declines to stay this case indefinitely pending the outcome of plaintiff’s appeal in the *Throop v.*
23 *Woodford* matter.

24 CONCLUSION

25 Based on the foregoing, IT IS HEREBY ORDERED THAT:

- 26 1. Plaintiff’s Motion for Stay is DENIED to the extent it requests an indefinite stay of the
27 entire action pending the outcome of plaintiff’s appeal in the *Throop v. Woodford* case.

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