

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 JOE JW ROBERTS, JR.,

9 Plaintiff,

10 v.

11 TIM THRASHER, *et al.*,

12 Defendants.

CASE NO. C20-0376-RSM-BAT

ORDER RE: PLAINTIFF'S
OBJECTIONS

13
14 **I. INTRODUCTION**

15 This matter comes before the Court on Plaintiff's objections to orders by the Honorable Brian
16 A. Tsuchida, United States Magistrate Judge. Dkts. #121; #130. Plaintiff requests that the Court
17 "review all response and briefing related to [his] motions DKTS. 78, 80, 81, 83, 105, 113 and
18 116; including DOC policy 590-500 and 450-100." Dkt. #121 at 1. Plaintiff also objects to
19 Judge Tsuchida's order denying Plaintiff's motion to stay proceedings. Dkt. #123. This district's
20 local rules prohibit an opposing party from responding to an objection unless the court orders a
21 response. Local Rules W.D. Wash. LCR 72(a). The Court finds that no response is necessary and
22 addresses Plaintiff's objections as set forth below.

23 //

1 **II. BACKGROUND**

2 **A. Plaintiff’s March 15, 2021 Objections**

3 Judge Tsuchida’s order dated January 11, 2021 addressed three motions filed by Plaintiff
4 that are captioned as follows: (1) Motion that defendants and non-defendants are intentionally
5 trying to sabotage and discredit him,” Dkt. #78; (2) Motion that my mental illness is interfering
6 with my ability to litigate and request for a jury trial, Dkt. #80; and (3) demand for jury, Dkt. #79.
7 *See* Dkt. #82. Because the Court granted Plaintiff’s jury demand, Plaintiff only appears to object
8 to the Court’s denial of his first two motions regarding sabotage and interference due to mental
9 illness.

10 In denying Plaintiff’s motion regarding sabotage, Judge Tsuchida found that Plaintiff
11 sought injunctive relief and failed to set forth an adequate basis for such relief. Dkt. #82 at 2
12 (citing *Winter v. Natural Res. Def. Council*, 555 U.S. 7 (2008)). Dkt. #82 at 2 (“[P]laintiff offers
13 no evidence or argument in support of his motion to demonstrate a likelihood of success on the
14 merits in the underlying action.”). Regarding Plaintiff’s motion that his mental illness interfered
15 with his ability to litigate, Plaintiff requested that the Court appoint an expert to support his claims
16 of psychological problems under Fed. R. Evid. 706. Dkt. #80. In denying his motion, Judge
17 Tsuchida concluded that appointing an expert to support Plaintiff’s claims about the negative
18 effects of prolonged solitary confinement on his mental health was not a proper basis for a Rule
19 706 appointment. Dkt. #82 at 4.

20 Judge Tsuchida’s order dated February 25, 2021 addressed Plaintiff’s motion that asked,
21 “why hasn’t the court responded to my objection.” Dkt. #116. As summarized in the order,
22 Plaintiff’s inquiry was based on his three motions filed on December 23, 2021 that mental illness
23 was interfering with his ability to litigate, that defendants were trying to sabotage Plaintiff, and

1 demanding a jury. *See* Dkts. #78, #79, #80. Defendants filed a response to Plaintiff’s motion, and
2 Plaintiff filed a reply followed by an objection stating that the prison e-filed his reply late and he
3 was not given sufficient time to respond. *See* Dkt. #83. Judge Tsuchida determined that Plaintiff’s
4 objections were unfounded on the basis that “[h]e presents nothing showing defendants’ response
5 was not timely filed or somehow improper.” Dkt. #116 at 1. Judge Tsuchida further determined
6 that notwithstanding Plaintiff’s untimely reply, the Court reviewed his reply and concluded that it
7 did not alter the order entered the day before. *Id.* at 1-2.

8 **B. April 20, 2021 Objections**

9 Judge Tsuchida’s order dated April 8, 2021 denied Plaintiff’s motion to stay proceedings.
10 Dkt. #123. Plaintiff moved to stay proceedings due to another case he filed in this Court “with
11 identical near claims as the claims involved in this case” on the basis that he cannot litigate the
12 instant case until his other case is adjudicated. Dkt. #115. Judge Tsuchida denied Plaintiff’s
13 request on the basis that he failed to meet his burden to establish that a stay was warranted. Dkt.
14 #123. On April 20, 2021, Plaintiff objected on the basis that he requires all his medical and mental
15 health history to show that he was denied appropriate treatment for the duration of his isolation
16 confinement. Dkt. #130 at 1. Plaintiff also disputes that he filed an untimely reply to Defendant’s
17 response and contends that the prison continues to e-file his documents late. *Id.* at 2-6.

18 **III. DISCUSSION**

19 A court can modify a magistrate’s order resolving a nondispositive motion only where it is
20 “clearly erroneous” or “contrary to law.” Fed. R. Civ. P. 72(a). Plaintiff’s objections filed on
21 March 15, 2021 ask the Court to review briefings addressed in Judge Tsuchida’s orders on his
22 motions regarding sabotage and interference with his ability to litigate due to mental illness, but
23 point to no specific error committed by the Court in reaching its conclusions. *See* Dkt. #121 at 1

1 (“I ask the district judge to review all response and briefing related to my motions DKTS. 78. 80,
2 81, 83, 105, 114 and 116; including DOC policy 590-500 and 450-11.”). Plaintiff also re-states
3 his request for the Court to appoint an expert witness under Fed. R. Civ. P. 706. *Id.*

4 Having reviewed both orders and the underlying briefing related to Plaintiff’s March 15,
5 2021 objections, the Court concludes that Judge Tsuchida’s determinations are neither clearly
6 erroneous nor contrary to law. Because Plaintiff offered no evidence or argument to demonstrate
7 a likelihood of success on the merits of his claims in the underlying action, he failed to set forth
8 an adequate basis for injunctive relief. *See Winter*, 555 U.S. at 7 (setting forth criteria for granting
9 injunctive relief). Regarding Plaintiff’s request to appoint an expert, Rule 706 affords a court
10 discretion to appoint an expert where “scientific, technical, or other specialized knowledge will
11 assist the trier of fact to understand the evidence or decide a fact in issue.” *Torbert v. Gore*, No.
12 14-cv-2911, 2016 WL 3460262, at *2 (S.D. Cal. June 23, 2016) (internal citation omitted). Here,
13 the Court finds no clear error in Judge Tsuchida’s determination that an expert witness would not
14 assist the trier of fact in this case given the complexity of the issues. *See Noble v. Adams*, No. 103-
15 cv-05407, 2009 WL 3028242, at *1 (E.D. Cal. Sept. 16, 2009) (denying motion for appointment
16 of Rule 706 expert where issues “not so complex as to require the testimony of an expert witness”
17 and “Plaintiff has not requested an expert because one is needed to assist the court. Rather Plaintiff
18 is requesting an expert because he cannot afford to hire one. Such reasons fall outside of reasons
19 for an expert under Rule 706.”). Accordingly, having reviewed the underlying orders for clear
20 error, the Court declines to modify them based on Plaintiff’s March 15, 2021 objections.

21 Turning to Plaintiff’s April 20, 2021 Objections, the Court likewise finds no clear error in
22 Judge Tsuchida’s determination that Plaintiff’s other lawsuit in this district, C18-746-MJP,
23 warrants a stay in the proceedings. Whether to stay a lawsuit is within this Court’s discretion.

1 *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1105 (9th Cir. 2005). In considering a stay request, courts
2 consider the possible damage that may result from granting the stay, the hardship or inequity a
3 party may suffer in being required to go forward, and the orderly course of justice “measured in
4 terms of the simplifying or complicating of issues, proof, and questions of law which could be
5 expected to result from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). “The
6 proponent of a stay bears the burden of establishing its need.” *Clinton v. Jones*, 520 U.S. 681, 708
7 (1997).

8 Here, the Court finds no clear error in Judge Tsuchida’s determination that Plaintiff failed
9 to meet his burden of establishing the need for a stay. Plaintiff objects that he requires “the totality
10 of his medical and mental health history” to show he was denied appropriate treatment during is
11 isolated confinement in this case. Dkt. #130 at 1. Yet as Judge Tsuchida correctly pointed out,
12 decisions made in Plaintiff’s other pending case are not an appropriate basis to stay this matter.
13 *See* Dkt. #123 at 2 (“[T]he disposition of this case will rise and fall upon decisions made in this
14 case, not determinations made in Plaintiff’s other case.”). Finally, to the extent Plaintiff objects
15 that his reply was timely, Judge Tsuchida considered the reply and found Plaintiff’s arguments
16 unavailing. *See id.* at 2 (addressing Plaintiff’s arguments that (1) Defendants failed to prove a stay
17 is proper; and (2) Plaintiff is not in agreement on settlement). For that reason, Plaintiff’s objection
18 as to the timeliness of his reply is inapposite.

19 IV. CONCLUSION

20 For the reasons set forth above, the Court declines to modify previous rulings in this case
21 based on Defendants’ objections, Dkts. #121, #130. The Clerk is directed to send a copy of this
22 order to the parties and to Judge Tsuchida.

23 //

1 Dated this 30th day of April, 2021.

2
3 

4 RICARDO S. MARTINEZ
5 CHIEF UNITED STATES DISTRICT JUDGE

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23