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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 Darnell O McGary,

11 Plaintiff,

12 v.

13 Jay Inslee et al.,

14 Defendants.

CASE NO. C15-5840 RBL-DWC

ORDER

15 Before the Court are: (1) Plaintiff's Motion for Summary Judgment and Cross-Claim
16 Against Defendants' Motion for Summary Judgment (Dkt. 87); (2) Defendants' Motion for
17 Summary Judgment (Dkt. 89); (3) Plaintiff's Motion for Additional Discovery (Dkt. 106), which
18 the Court interprets as Motion to Continue pursuant to Federal Rule of Civil Procedure 56(d)
19 ("Motion to Continue"); and (4) Plaintiff's "Motion under FRCP 60: Fraud on the Court
20 regarding Pierce County Superior Court Proceeding of Invalidation," ("Motion for Fraud," Dkt.
21 116).

22 **1. Stay of Case**

23 On April 18, 2017, the Court directed the parties to show cause why Defendants' Motion
24 for Summary Judgment (Dkt. 89); Plaintiff's Motion for Summary Judgment and Cross-Claim

1 Against Defendants’ Motion for Summary Judgment (Dkt. 87); and Plaintiff’s Motion to
2 Continue (Dkt. 106) should not be stayed, pending the outcome of Plaintiff’s appeal in a similar
3 case, *McGary v. Cunningham*, Case No. 3:13-cv-5130-RBL-JRC. Dkt. 125. Both parties indicate
4 they have no opposition to a stay. Dkts. 126, 127.

5 The district court has broad discretion to decide whether a stay is appropriate to “promote
6 economy of time and effort for itself, for counsel, and for litigants.” *Filtrol Corp. v. Kelleher*,
7 467 F.2d 242, 244 (9th Cir. 1972) (quotations and citations omitted). *Clinton v. Jones*, 520 U.S.
8 681, 706–07 (1997) (“The District Court has broad discretion to stay proceedings as an incident
9 to its power to control its own docket.”). “A trial court may, with propriety, find it is efficient for
10 its own docket and the fairest course for the parties to enter a stay of an action before it, pending
11 resolution of independent proceedings which bear upon the case.” *Mediterranean Enterprises,*
12 *Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983); *Leyva v. Certified Grocers of*
13 *California Ltd.*, 593 F.2d 857, 863–64 (9th Cir.1979); *Ass’n of Irrigated Residents v. Fred*
14 *Schakel Dairy*, 634 F. Supp. 2d 1081, 1094 (E.D. Cal. 2008).

15 Here, several of the issues raised in the parties Motions for Summary Judgment are the
16 same issues before the Ninth Circuit in *McGary v. Cunningham*. In this case, Plaintiff alleges the
17 mental health and sex offender treatment he received at the SCC is unconstitutional, falling below
18 the minimum standards. *See* Dkt. 31. Specifically, Plaintiff maintains he was subjected to: (1)
19 inadequate sex offender treatment, (2) inadequate psychiatric and medical treatment; (3)
20 harassment and mistreatment by Special Commitment Center (“SCC”) staff; (4) denial of equal
21 protection; (5) general lack of care related to his conditions of confinement; and (6) violations of
22 several other federal laws and constitutional amendments. Dkt. 31. In *McGary v. Cunningham*,
23 Plaintiff also raised claims related to the SCC’s treatment program for mentally ill residents and
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1 whether Plaintiff was provided with adequate treatment under the sex offender treatment
2 program. *See McGary v. Cunningham*, Case No. 3:13-cv-05130-RBL-JRC, Dkts. 42, 153, 156.
3 Because the Ninth Circuit’s ruling in *McGary v. Cunningham* could impact the Court's
4 disposition of the pending proceedings, waiting until the issues on appeal are decided will avoid
5 potential unnecessary litigation and provide direction to this Court. *See Jenkins*, 2009 WL
6 3415902 at 1. Thus, the Court finds a stay of the entire matter, including discovery, pending the
7 Ninth Circuit’s decision on appeal would serve the interests of fairness and “promote economy
8 of time and effort” for the Court and the parties. *Kelleher*, 467 F.2d at 244.

9 Accordingly, the Court orders this entire matter be stayed, pending resolution of
10 Plaintiff’s appeal, currently before the Ninth Circuit. The noting dates on Defendants’ Motion for
11 Summary Judgment (Dkt. 89); Plaintiff’s Motion for Summary Judgment (Dkt. 87); and
12 Plaintiff’s Motion to Continue (Dkt. 106) are stricken. Within thirty days of the Ninth Circuit’s
13 resolution of the appeal in *McGary v. Cunningham, et al.*, the parties shall file a joint status
14 report, informing the Court of the status of this matter.

15 **2. Motion for Fraud (Dkt. 116)**

16 Plaintiff moves for the Court to enter an order pursuant to Federal Rule of Civil
17 Procedure 60 due to “fraud on the court.” Dkt. 116. Plaintiff alleges Defendants’ counsel has
18 misrepresented his civil commitment proceedings. *Id.* Plaintiff appears to argue his civil
19 commitment proceedings have been invalidated. *Id.*

20 Defendants contend their characterization of Plaintiff’s civil commitment proceedings
21 have been truthful and consistent with the findings made in this Court. Dkt. 123; *See also* Dkt. 73
22 (Report and Recommendation on Plaintiff’s Motion for Partial Summary Judgment). Defendants
23 note Plaintiff was released from civil commitment, pursuant to Wash. Rev. Code 71.09, finding
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1 he no longer met the commitment criteria, not because his prior civil commitment had been
2 invalidated. Dkt 123.

3 Construing Plaintiff’s *pro se* motion liberally, it appears Plaintiff brings the present
4 motion under Rule 60(b)(4) and Rule 60(d)(3). Pursuant to Rule 60(b), a party may move for
5 relief from a judgment or order upon a showing of: (1) mistake, inadvertence, surprise, or
6 excusable neglect; (2) newly discovered evidence; (3) an adverse party's fraud,
7 misrepresentation, or other misconduct; (4) a void judgment; (5) a satisfied, released or
8 discharged judgment; or (6) any other reason justifying relief from the operation of the judgment.
9 *See Fed. R. Civ. P. 60(b)*. A party can obtain relief under Rule 60(b) only upon an adequate
10 showing of exceptional or extraordinary circumstances. *See Maraziti v. Thorpe*, 52 F.3d 252, 254
11 (9th Cir. 1995).

12 Under Rule 60(d)(3), a court has the authority to “set aside a judgment for fraud on the
13 court.” Fed. R. Civ. P. 60(d)(3). “Because fraud on the court concerns the integrity of the judicial
14 process itself, a judgment may be set aside for fraud on the court at any time.” *See* 12–60
15 Moore's Fed. Prac.-Civ. § 60.21[4][g]. The term “fraud on the court” will be read narrowly.
16 *Applying v. State Farm Mut. Auto. Ins. Co.*, 340 F.3d 769, 780 (9th Cir. 2003). “ ‘Fraud upon the
17 court’ ... embrace[s] only that species of fraud which does or attempts to, defile the court itself,
18 or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in
19 the usual manner its impartial task of adjudging cases that are presented for adjudication.” *Id.*
20 The burden is on the moving party to establish fraud by clear and convincing evidence. *See*
21 *Atchison, Topeka & Santa Fe Ry. Co. v. Barrett*, 246 F.2d 846 (9th Cir. 1957). Rule 60(d)(3)
22 only preserves the Court's power to “set aside a judgment for fraud on the court” – which must
23 be shown by clear and convincing evidence and typically does not arise from “[m]ere
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1 nondisclosure of evidence,” “perjury by a party or witness,” or other mere fraud “connected with
2 the presentation of a case to a court.” *United States v. Estate of Stonehill*, 660 F.3d 415, 443–44
3 (9th Cir. 2011).

4 Plaintiff has failed to establish Defendants or Defendants’ counsel engaged in any
5 conduct which Rule 60 is intended to remedy and has not shown any exceptional or
6 extraordinary circumstances are at issue in this case. Plaintiff fails to show clear and convincing
7 evidence of fraud such “that the judicial machinery cannot perform in the usual manner its
8 impartial task of adjudging cases that are presented for adjudication.” *Appling*, 340 F.3d at 780.
9 As this Motion does not meet the standard outlined in Rule 60, Plaintiff’s Rule 60 Motion for
10 Fraud (Dkt. 116) is denied.

11 Dated this 10th day of May, 2017.

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David W. Christel
United States Magistrate Judge