

1 HONORABLE RONALD B. LEIGHTON

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 STEVEN DARBY MCDONALD,

10 Plaintiff,

v.

11 KENNETH B LAUREN, et al.,

12 Defendants.

CASE NO. C17-5013 RBL-DWC

ORDER ON DEFENDANTS'
OBJECTIONS TO MAGISTRATE
JUDGE'S ORDER

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14 THIS MATTER is before the Court on the State Defendants' Objections [Dkt. # 193] to
15 the Magistrate Judge's Order [Dkt. # 189] granting Plaintiff McDonald's "Motion to Stay
16 Proceedings until Resolution of Preliminary Injunction" [Dkt. # 169], pending the Ninth
17 Circuit's decision on McDonald's most recent¹ appeal [Dkt. # 161]. McDonald's appeal relates
18 to this Court's Order [Dkt. # 160] adopting a Report and Recommendation [Dkt. # 156] and
19 denying as moot (but granting leave to immediately re-file) various motions, including
20 McDonald's Motion for a Preliminary Injunction [Dkt. # 99]. For reasons that cannot be not
21 clear, McDonald chose to appeal a third time rather than re-file.

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23 ¹ This case was also stayed during McDonald's two prior appeals. When the Ninth Circuit dismissed those appeals,
24 the Magistrate Judge lifted the stay and issued his R&R on McDonald's various pending motions, including the
Motion for a Preliminary Injunction. This Court adopted that R&R, which McDonald appealed.

1 The Magistrate Judge granted McDonald's Motion to Stay the day after the Ninth Circuit
2 denied the similar Motion to Stay McDonald filed there. [Dkt. # 192]. It is not clear why
3 McDonald wants a stay (or exactly what he wants to stay) but it may relate to the State
4 Defendants' pending Motion for Summary Judgment [Dkt. # 177].

5 The State claims the Magistrate Judge's ruling is clearly erroneous and contrary to law.
6 *See Fed. R. Civ. Pro. 72(a); see also 28 U.S.C. § 636(b)(1)(A).* The State argues that
7 McDonald's pending appeal relates *only* to the propriety of the Court's decision to deny the
8 pending motions, without prejudice, as moot. Accordingly, neither the Magistrate Judge nor this
9 Court has considered or ruled upon the merits of McDonald's motion for a preliminary
10 injunction (or McDonald's other motions), and the merits of those motions are therefore not at
11 issue in the Ninth Circuit.

12 Thus, it claims, the Ninth Circuit's resolution of McDonald's pending appeal will not
13 impact this Court's consideration of the merits of either McDonald's not yet re-filed motion for a
14 preliminary injunction, his other motions, or the State's own Motion for Summary Judgment².
15 The State argues that staying the case after the Ninth Circuit already declined to do so
16 undermines (and is inconsistent with) the Ninth Circuit's ruling.

17 McDonald argues that prior delays were caused by this Court's denying his objections to
18 the Magistrate Judge's orders, not by his since-dismissed appeals, and he seems to renew his
19 request for the appointment of counsel. He also argues, again, that he has emergent medical
20 needs. But he does not articulate how Staying this case assists him in resolving those needs, or
21 why he chose to appeal the denial without prejudice of his motion for a preliminary injunction,
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23 ² The State's Motion is partly based on qualified immunity, which, it accurately points out, should be resolved as
24 early as possible in the litigation. *See Hunter v Bryant*, 502 U.S. 224 (1991). Waiting for the resolution of another
interlocutory appeal is not "the earliest possible stage of the litigation."

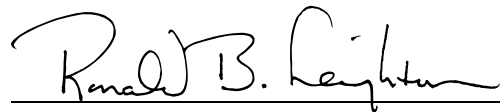
1 rather than simply and logically re-filing it—particularly where the motion is based on a medical
2 condition he now claims is *worse* than when he first filed.

3 The Court respectfully disagrees with the Magistrate Judge on the utility of a stay
4 pending the Ninth Circuit’s review of a non-dispositive, and likely non-appealable Order. The
5 Ninth Circuit itself rejected a stay, strongly suggesting that it did not intend for this litigation to
6 await its resolution of McDonald’s third interlocutory appeal.

7 The State’s Objection [Dkt. # 193] is **GRANTED**. The Court will not Stay this case
8 pending the Ninth Circuit’s review of the prior Order [Dkt. # 160], denying various motions
9 without prejudice to immediately re-file. The Magistrate Judge’s Order [Dkt. # 189] Granting
10 McDonald’s Motion to Stay [Dkt. # 169] is **VACATED** and that Motion for a Stay is **DENIED**.

11 IT IS SO ORDERED.

12 Dated this 27th day of November, 2018.

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15 Ronald B. Leighton
16 United States District Judge
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