UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SAM DRAKE, Plaintiff, v. MCCOMAS, *et al.*, Defendants.	Case No. 1:22-cv-01149-JLT-BAM (PC) ORDER LIFTING STAY AND SETTING DISPOSITVE MOTION DEADLINE (ECF No. 60) Dispositive Motion Deadline: **October 27, 2025**

Plaintiff Sam Drake ("Plaintiff") is a pretrial detainee proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's second amended complaint on the following claims: (1) violation of the First Amendment based on a facial challenge to Fresno County Jail ("FCJ") Policy #E-120 and #E-410 against Defendants Mims, McComas, and Zanoni; (2) violation of the First Amendment based on an as-applied challenge to FCJ Policy #E-120 and #E-410 against Defendants Keoniyom, Nichols, and Snyder; and (3) violation of Due Process for returning Plaintiff's mail against Defendants Keoniyom, Nichols, and Snyder. (ECF No. 64.)

On January 31, 2025, Plaintiff filed a motion to compel discovery responses. (ECF No. 49.) Defendants filed a response on February 3, 2025, objecting to Plaintiff's motion on the grounds that it was untimely. (ECF No. 50.) On February 4, 2025, finding that further briefing

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on the motion was unnecessary, the Court denied Plaintiff's motion to compel. (ECF No. 51.)

On February 18, 2025, Plaintiff filed a notice of appeal challenging the Court's order denying Plaintiff's motion to compel without allowing Plaintiff to reply to Defendants' response, requesting to rescind his consent to Magistrate Judge jurisdiction, requesting that this action be reassigned to a different Magistrate Judge, and requesting that the Court assign a District Judge for trial of this action. (ECF No. 52.) Plaintiff's appeal was processed to the United States Court of Appeals for the Ninth Circuit, Case No. 25-1029. (ECF No. 54.) On February 21, 2025, the Court granted Defendants' motion to stay the dispositive motion deadline pending resolution of Plaintiff's interlocutory appeal. (ECF Nos. 55, 56.)

On March 27, 2025, the Ninth Circuit issued an order dismissing the appeal, determining that the Ninth Circuit lacks jurisdiction over the appeal because the February 4, 2025 order is not final or immediately appealable. (ECF No. 57.) On April 14, 2025, before issuance of the mandate giving effect to the Ninth Circuit's order, Plaintiff filed a motion for the Ninth Circuit to reconsider the dispositive order and his opening brief on appeal. Case No. 25-1029, Docs. 8, 9.

During pendency of the appeal, Defendants requested to set the dispositive motion deadline upon lifting of the stay. (ECF No. 58.) On May 5, 2025, considering Plaintiff's then-pending motion for reconsideration before the Ninth Circuit, the Court granted Defendants' motion and ordered that the deadline for filing all dispositive motions (other than a motion for summary judgment for failure to exhaust) remained stayed pending resolution of Plaintiff's interlocutory appeal. The Court indicated that the dipositive motion deadline would be reset, upon further order of the Court, for no less than 60 days following resolution of Plaintiff's appeal. (ECF No. 60.)

On August 27, 2025, the Ninth Circuit issued its mandate giving effect to its March 27, 2025 order dismissing Plaintiff's appeal. (ECF No. 65.) Based on the resolution of Plaintiff's interlocutory appeal, the Court will lift the stay of the dispositive motion deadline, issued February 21, 2025. (ECF No. 56.) The Court also will reset the dispositive motion deadline (other than a motion for summary judgment for failure to exhaust) for no less than 60 days from the date of this Order.

Accordingly, it is HEREBY ORDERED as follows:

1. The stay of the dispositive motion deadline (ECF No. 56) is LIFTED; and
2. The deadline for filing all dispositive motions (other than a motion for summary judgment for failure to exhaust) is **October 27, 2025**.

IT IS SO ORDERED.

Dated: **August 28, 2025**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE