

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DARRELL LOWE,

Plaintiff,

v.

WILLIAM J. MCGUINNESS, et al.,

Defendants.

) CASE NO. 1:09-cv-00712 JLT (PC)

) ORDER GRANTING REQUEST TO LIFT
) STAY OF PROCEEDINGS

) (Doc. 21)

) ORDER DENYING PLAINTIFF'S REQUEST
) FOR ENTRY OF DEFAULT

(Doc. 20)

Plaintiff is a prisoner proceeding pro se in this action that asserts violation of his civil rights according to 42 USC § 1983. Plaintiff is proceeding against three defendants, Dr. Rahimifar, Dr. McGuinness and nurse Call. (Doc. 11 at 2)

In December 2007, Plaintiff sued defendants McGuinness and Call in state court under 42 USC § 1983 for violations of the Eighth Amendment based upon the same events plead here. (Doc. 16, Exs A, B) On March 7, 2008, the Kings County Superior Court determined that Plaintiff had failed to exhaust his administrative remedies, required by the Prison Litigation Reform Act ("PLRA"), as to events alleged to have occurred after May 7, 2006. (Doc. 16, Ex B) The Court granted Plaintiff leave to amend his complaint to allege only exhausted claims. (Doc. 15 at 2)

On September 13, 2010, Defendants sought a stay of this matter to allow the state court proceedings to conclude. (Doc. 15) On September 29, 2010, the Court granted the stay. (Doc. 19) On

1 November 22, 2010, Defendants filed a status report, as required by the Court's September 29, 2010,
2 order, and reported that the state court proceeding had concluded. (Doc. 21 at 2) Defendants request the
3 Court lift the stay and grant them 30 days within which to answer the complaint. Id.

4 Meanwhile, on November 10, 2010, Plaintiff filed a motion for entry of default against
5 Defendants for their failure to answer the complaint. (Doc. 20) It appears that Plaintiff was unaware that
6 the stay order issued by the Court precluded Defendants from filing an answer while the stay was in
7 effect. As a result, Defendants are not in default.

8 Based upon the foregoing, the Court **ORDERS**,

- 9 1. The stay of the matter is lifted;
10 2. Defendants are **GRANTED** 30 days within which to file their answer;
11 4. Plaintiff's request for default is **DENIED**.

12
13 IT IS SO ORDERED.

14 Dated: November 23, 2010

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE