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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

STEVEN C. MARTINEZ,)	1:09cv0899 LJO DLB
)	
)	
Plaintiff,)	ORDER REGARDING PLAINTIFF’S
)	APPLICATION TO STAY PROCEEDINGS IN
v.)	ORDER TO EXHAUST ADMINISTRATIVE
)	REMEDIES
)	(Document 8)
DERRAL ADAMS, et al.,)	
)	
)	
Defendants.)	

Plaintiff Steven C. Martinez (“Plaintiff”) filed the instant civil rights action on May 21, 2009, against Defendants Derral Adams, William J. McGuinness, Frances Garza, Emily Vargas, Catherine Nacar, Michael Van Natta, Mark Smith, Cornelio Garcia and Paul Sena.

On August 27, 2009, Plaintiff filed an Application To Stay Proceedings In Order to Exhaust Administrative Remedies. (Doc. 8). In the application, Plaintiff’s counsel asserts that the allegations in the current complaint are exhausted. However, Plaintiff is attempting to perfect certain claims by exhausting administrative remedies and then filing a First Amended Complaint. Plaintiff reportedly has been attempting to exhaust the prison grievance process since February 2009 and does not know where the grievances are in the process.

Plaintiff’s counsel further indicates that the complaint has not been served on Defendants. Plaintiff states that the deadline for service of the complaint and summons is September 18, 2009, and a Scheduling Conference is set for September 3, 2009. Plaintiff contends that the

1 purpose of the Scheduling Conference cannot be fulfilled because the complaint has not been
2 served. Plaintiff requests that the Court stay this matter for 90 days while he exhausts
3 administrative remedies “or is in a position to claim a procedural default.” Application, p. 4.

4 At this time, the Court defers ruling on Plaintiff’s application for stay. As Plaintiff has
5 not requested an extension of time to serve the complaint or a continuation of the initial
6 scheduling conference, the Scheduling Conference set for September 3, 2009, at 9:15 a.m., shall
7 proceed as previously scheduled.

8 Plaintiff has indicated that the instant matter is the progeny of another case, *Steven C.*
9 *Martinez v. State of California, et al.*, 1:07-cv-00996 DLB, in which certain claims and parties
10 were severed by stipulation of the parties. In the original case, defense counsel stipulated to
11 accepting service of any new complaint and summons by mail on behalf of all previously served
12 defendants. Although the complaint has not been served, defense counsel shall be invited to
13 attend the Scheduling Conference without making a formal appearance. Plaintiff’s counsel shall
14 provide a copy of the Application for Stay of Proceedings and a copy of this Order to defense
15 counsel identified in *Steven C. Martinez v. State of California, et al.*, 1:07-cv-00996 DLB.

16
17 IT IS SO ORDERED.

18 **Dated: September 2, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE