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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

PETER GERARD WAHL,  
Plaintiff,  
v.  
SUTTON,  
Defendant.

Case No. 1:16-cv-01576-LJO-BAM (PC)  
ORDER DENYING MOTION FOR STAY OF  
PROCEEDINGS AS MOOT  
(ECF No. 43)

Plaintiff Peter Gerard Wahl (“Plaintiff”) is a former state prisoner appearing *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s third amended complaint against Defendant Sutton for deliberate indifference resulting from excessive custody, in violation of the Eighth Amendment.

On November 14, 2018, Defendant Sutton filed a motion to dismiss in response to the third amended complaint in lieu of filing an answer. (ECF No. 41.) Following re-service of the motion to dismiss on Plaintiff at Plaintiff’s correct address of record, (ECF Nos. 43, 44), Plaintiff filed his opposition on January 11, 2019, (ECF No. 45). Defendant filed a reply on January 16, 2019. (ECF No. 46.)

On May 23, 2019, Plaintiff filed a motion to stay the proceedings in this action throughout the month of June 2019. (ECF No. 48.) Plaintiff stated that he was scheduled to undergo cataract eye surgeries of both eyes on June 7 and June 27, 2019. Alternatively, Plaintiff requested

1 assistance of counsel if no stay was granted. (Id.) Defendant did not file an opposition, and the  
2 deadline to do so has expired.

3 As noted above, Defendant filed a motion to dismiss in lieu of filing an answer to the third  
4 amended complaint. Therefore, discovery has not been opened. Furthermore, Plaintiff timely  
5 filed his opposition to the motion to dismiss and Defendant filed a reply, and the motion is fully  
6 briefed. No other deadlines are currently pending. Finally, the month of June has passed, and  
7 therefore a stay of this action at this time would be moot, as would appointment of counsel for the  
8 purpose of assisting Plaintiff during the month of June.

9 Accordingly, Plaintiff's motion for stay, (ECF No. 48), is DENIED as moot. The Court  
10 will issue findings and recommendations regarding Defendant's motion to dismiss in due course.

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12 IT IS SO ORDERED.

13 Dated: July 15, 2019

/s/ Barbara A. McAuliffe  
14 UNITED STATES MAGISTRATE JUDGE

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