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

ROBERT P. BENYAMINI,

Plaintiff,

No. CIV S-09-2602 GGH P

vs.

MENDOZA, et al.,

Defendants.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Because, however, plaintiff had not filed an in forma pauperis affidavit or paid the required filing fee, see 28 U.S.C. §§ 1914(a), 1915(a), he was provided the opportunity, within thirty days, either to submit the appropriate affidavit in support of a request to proceed in forma pauperis or to submit the appropriate filing fee by Order, filed on October 6, 2009. Plaintiff failed to do so, and instead, in an untimely filing on November 24, 2009, submitted a “motion for stay of case.” Plaintiff seeks to demonstrate that he is suffering from mental health problems and includes a copy of what appears to be a May 19, 2009, memorandum from a California State Prison-Sacramento Correctional Lieutenant, indicating that, on May 19, 2009, a Dr. Johnson had documented that plaintiff was unable to take part in the disciplinary process related to a rules violation report due to plaintiff’s “current mental health status,” and that the

1 disciplinary hearing was being postponed. Motion, p. 4. Plaintiff also states that he is currently
2 taking anti-psychotic medication, is claustrophobic, has carpal tunnel syndrome, and is awaiting
3 gall bladder surgery, although he provides insufficient detail as to any impending surgery.

4 Motion, p. 1.

5 Subsequent to the mental condition apparently at issue in the above-referenced
6 memorandum, on September 17, 2009, plaintiff was able to file a civil rights complaint in this
7 court, albeit without the requisite in forma pauperis application or filing fee. Since plaintiff has
8 been able to fill out a complaint form more recently than the date identified in the memo (and
9 presumably, while he suffered the complained-of mental and physical conditions), it is unclear
10 why he would not be able to process an in forma pauperis affidavit. Moreover, it would be
11 inappropriate for the court to consider a stay in a case that is not, due to this deficiency, even
12 properly filed.

13 The court will, therefore, liberally construe plaintiff's motion as a request for an
14 extension of time, and will provide plaintiff with one further opportunity to provide the requisite
15 in forma pauperis application or the filing fee.

16 Accordingly, IT IS HEREBY ORDERED that:

17 1. The "motion for stay of case," filed on November 24, 2009 (docket # 4), is
18 construed as a request for an extension of time, and, so construed, is granted;

19 2. Plaintiff shall submit, within twenty-eight days from the date of this order, an
20 affidavit in support of his request to proceed in forma pauperis on the form provided by the Clerk
21 of Court, or the appropriate filing fee; plaintiff's failure to comply with this order will result in
22 the dismissal of this action; and

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3. The Clerk of the Court is again directed to send plaintiff a new Application to

Proceed In Forma Pauperis By a Prisoner.

DATED: December 3, 2009

/s/ Gregory G. Hollows

GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE

GGH:009
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