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

MORRIS MESTER,

Plaintiff,

No. 2:09-cv-3307 FCD KJN P

vs.

MILLER and REED,

Defendants.¹

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel. On December 22, 2010, the undersigned issued an order to show cause why this action should not be stayed for three months based on plaintiff's alleged inability to write due to a wrist injury. On January 19, 2011, defendants filed a response. Defendants are not opposed to the proposed three-month stay, but note that Dr. Swingle's declaration states there have been discrepancies between the symptoms plaintiff reports and the results of diagnostic tests. (Dkt. No. 59 at 2, citing Case No. 2:10-cv-2105 LKK EFB P (Dkt. No. 25 at ¶¶ 5, 7, 10, 12 & 20).² Defendants request plaintiff be required

¹ Defendants Sinkovich and Robertson were dismissed by stipulation on December 21, 2010. Service of process on defendant Reed has been ordered. (Dkt. No. 46.)

² A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986).

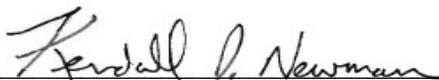
1 to file a status report at the end of the three month period, and that defendants be permitted to
2 object to further requests for stay should medical reports indicate plaintiff is capable of
3 proceeding.

4 As plaintiff was previously informed, this court is unable to stay this action for an
5 indefinite period of time. While the court is sympathetic to plaintiff's medical issues, it is
6 incumbent upon plaintiff to prosecute this action.³ The court will grant plaintiff a three month
7 stay from the date of the filing of his notice. Plaintiff will be required, by a date certain, to file a
8 status report indicating the status of his wrist injury, and whether he is able to proceed.

9 Defendants will be afforded an opportunity to respond to plaintiff's status report. Plaintiff is
10 cautioned that failure to comply with this order may result in a recommendation that this action
11 be dismissed. Fed. R. Civ. P. 41(b).

12 IT IS HEREBY ORDERED that this action is stayed. On or before March 11,
13 2011, plaintiff shall file a status report providing the status of his injury, and stating whether he is
14 able to proceed. Defendants' reply, if any, shall be filed fourteen days thereafter. The Clerk of
15 the Court is directed to administratively terminate this action.

16 DATED: January 25, 2011

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19 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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24 ³ Plaintiff may be able to obtain the assistance of another inmate or jailhouse lawyer.
25 Moreover, to oppose the motion to dismiss based on an alleged failure to exhaust his
26 administrative grievances, plaintiff may submit documents demonstrating he obtained a third
level decision concerning his grievance against defendant Miller. This would require
photocopying as opposed to handwriting.