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United States District Court
For the Northern District of California

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

TODD ASHKER,

Plaintiff,

v.

MICHAEL SAYRE, et al.,

Defendants.

No. 05-03759 CW

ORDER DENYING
DEFENDANT'S
MOTION TO STAY
COURT ORDER AND
GRANTING
PLAINTIFF'S
MOTION TO COMPEL
PAYMENT OF
JUDGMENT

Defendants Matthew Cate, Secretary of the California Department of Corrections and Rehabilitation (CDCR) and Michael Sayre, M.D., move for a stay of the Court's March 7, 2011 order granting, in part, Plaintiff's motion for costs and ordering Defendants to pay \$4,228.50 to Plaintiff within fourteen days. Pro se Plaintiff Todd Ashker, an inmate at Pelican Bay State Prisoner (PBSP), opposes the motion and moves to compel payment of the judgment awarded to him. Defendants have not submitted a reply to Plaintiff's opposition to their motion or an opposition to Plaintiff's motion. The matters were taken under submission and decided on the papers. Having considered all the papers filed by the parties, the Court denies Defendants' motion and grants Plaintiff's motion.

BACKGROUND

A jury found that Dr. Sayre knowingly disregarded Plaintiff's serious medical needs, and awarded Plaintiff \$6,500 in damages. On February 4, 2010, judgment entered against Dr. Sayre in the amount of \$6,500, with interest thereon as provided by 28 U.S.C. § 1961. The judgment also included an order for specific performance against the CDCR based on the finding that it had breached a 2002 settlement agreement with Plaintiff. On February 12, 2010, the CDCR filed a notice of appeal of the judgment against it. Dr. Sayre did not appeal the judgment against him. On March 8, 2010, Plaintiff filed a notice of cross-appeal regarding several of the Court's previous rulings.

I. Motion for Stay of Order Awarding Plaintiff Costs

In deciding whether to stay an order pending appeal, a court must apply four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Hilton v. Braunskill, 481 U.S. 770, 776 (1987).

Defendants argue that the Hilton factors favor a stay. Relying on the CDCR's opening brief on file with the Ninth Circuit, Defendants contend that the CDCR has made a strong showing that it will succeed on the merits. Defendants argue that the CDCR will suffer irreparable harm if it has to pay Plaintiff's costs now because, if Plaintiff loses on appeal, it may not be able to

1 recover its money from Plaintiff. They argue that Plaintiff will
2 not suffer harm if the stay is granted because he has pro bono
3 counsel on appeal and, thus, lack of money will not prevent him
4 from meeting any financial obligations. Furthermore, they argue
5 that the public interest in preserving scarce state resources
6 favors a stay. In regard to Dr. Sayre, Defendants argue that, if
7 Plaintiff wins his appeal, additional costs would be incurred in
8 re-trying the case, so paying Plaintiff's costs now would be
9 premature.

10 The Court finds none of Defendants' arguments persuasive.
11 Therefore, they are ordered to pay Plaintiff his award of costs.
12 Defendants request that, in the event the Court denies the stay
13 pending appeal, they be allowed 120 days to comply because the CDCR
14 procedures require up to 120 days to process and deliver payments
15 after such a request is submitted. The Court grants this request.
16 Defendants, therefore, shall pay to Plaintiff the cost award of
17 \$4,228.50 as soon as possible, but no later than 120 days from the
18 date of this order. Defendants shall inform the Court when they
19 make this payment to Plaintiff, and shall inform the Court if they
20 fail to do so timely.

21 II. Plaintiff's Motion to Compel Payment of Judgment

22 This motion is unopposed and, therefore, Dr. Sayre must
23 concede that there is no reason for him to have delayed payment of
24 the judgment for over one year. He has not sought a stay or posted
25 a bond. The Court will not allow any further delay in the payment
26 of this judgment. Therefore, within seven days from the date of
27 this order, Dr. Sayre must pay to Plaintiff the sum of \$6,500

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1 together with pre-judgment and post-judgment interest thereon, as
2 provided by 28 U.S.C. § 1961. Dr. Sayre shall inform the Court
3 when he has made this payment to Plaintiff and shall explain to the
4 Court how he calculated the pre- and post-judgment interest.
5 Defendants shall inform the Court if Dr. Sayre fails to do so
6 timely. In that event, an order to show cause why he should not be
7 held in contempt of Court shall issue.

8 CONCLUSION

9 Accordingly, Defendants' motion for a stay is denied (Docket
10 No. 518) and Plaintiff's motion to compel payment of judgment is
11 granted (Docket No. 519). Payment shall be made pursuant to the
12 procedures described above.

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14 IT IS SO ORDERED.

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16 Dated: 10/11/2011

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18 CLAUDIA WILKEN
19 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ASHKER,

5 Plaintiff,

Case Number: CV05-03759 CW

CERTIFICATE OF SERVICE

6 v.

7 ALAMEIDA ET AL et al,

8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
10 Northern District of California.

11 That on October 11, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Todd A. Ashker C58191
16 Pelican Bay State Prison
17 Box 7500
18 D1-119
19 Crescent City, CA 95532

20 Dated: October 11, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

United States District Court
For the Northern District of California