

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3

4 TODD ASHKER,

5                   Plaintiff,

6                   v.

7 MICHAEL C. SAYRE, et al.,

8                   Defendants.  
9 \_\_\_\_\_/

No. C 05-3759 CW

ORDER POSTPONING  
RULING ON  
PLAINTIFF'S MOTION  
TO HOLD DEFENDANTS  
IN CONTEMPT AND  
ORDERING  
DEEFNDANTS TO FILE  
EVIDENCE OF  
COMPLIANCE WITH  
COURT'S ORDERS

11           On December 19, 2011, Plaintiff Todd Ashker moved for an  
12 order to show cause why Defendants Pelican Bay State Prison (PBSP)  
13 Medical Chief Dr. Michael Sayre and Secretary of the California  
14 Department of Rehabilitation and Corrections (CDCR) Matthew Cate  
15 should not be held in contempt of this Court for not following the  
16 Court's orders that Dr. Sayre pay the \$6,500 judgment he owes to  
17 Plaintiff and that Secretary Cate provide Plaintiff with a  
18 properly fitting arm brace. On December 20, 2011, Defendants  
19 filed their opposition to the motion, arguing that they have been  
20 complying in good faith with the Court's orders. The motion was  
21 taken under submission on the papers. Having considered all the  
22 papers filed by the parties, the Court postpones ruling on  
23 Plaintiff's motion to hold Defendants in contempt, orders Dr.  
24 Sayre to file proof that he has paid Plaintiff the \$6,500 judgment  
25 and orders Secretary Cate to file proof that Plaintiff has  
26 received a properly fitting arm brace, or proof of the efforts he  
27  
28

1 has made to ensure that Plaintiff receive a properly fitting arm  
2 brace as soon as possible.

3 DISCUSSION

4 On October 19, 2011, the Court granted Dr. Sayre's request  
5 for a forty-five day extension to comply with its order that he  
6 pay to Plaintiff the \$6,500 judgment. The Court ordered Dr. Sayre  
7 to "pay to Plaintiff the judgment together with pre and post-  
8 judgment interest thereon, by no later than November 28, 2011."

9 On December 12, 2011,<sup>1</sup> Plaintiff mailed his motion for  
10 contempt stating that, as of that date, he had not received  
11 payment of the judgment and that, contrary to the Court's February  
12 4, 2010 Order for Specific Performance, since October 11, 2011,  
13 Secretary Cate had deprived him of a properly fitting arm brace.  
14

15 In his December 20, 2011 opposition, Dr. Sayre indicates that  
16 payment to Plaintiff was issued on December 16, 2011. The  
17 unintentional delay was caused by the holiday season and the  
18 CDCR's efforts to issue the entirety of the payment to Mr.  
19 Ashker in one check. In any event, the damages have been  
20 paid.<sup>2</sup>

21 In his opposition, Secretary Cate indicates,

22 As thoroughly explained in Defendant Cate's progress report,  
23 the brace was shipped to Sunrise Shoes for adjustment. Put  
24 simply, Mr. Ashker does not have the brace in his possession  
25 because he requested that it be adjusted.

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26 <sup>1</sup> The motion was filed on the Court's docket on December 19,  
27 2011.

28 <sup>2</sup> In Dr. Sayre's December 16, 2011 Progress Report Regarding  
Payment of Damages, he indicated that the check was issued on  
December 16, 2011 and would be mailed to Plaintiff via Federal  
Express on December 19, 2011.

1 In Secretary Cate's progress report, also filed on December  
2 20, 2011, he indicates that, on December 12, 2011, he learned that  
3 PBSP had mailed the arm brace to Sunrise Shoes for adjustments in  
4 October, 2011, but Sunrise Shoes never received it. Thus, it was  
5 determined that the brace had been lost in the mail. On December  
6 20, 2011, orthotist Jason Wong of Sunrise Shoes fitted Plaintiff  
7 for a new arm brace, took the brace to Sacramento to perform the  
8 adjustments, and "will return the brace upon completion."

9  
10 In Plaintiff's reply, mailed on December 28, 2011, he  
11 indicates that he still has not received payment of the judgment  
12 from Dr. Sayre and that he still does not have the arm brace.

13  
14 Therefore, within three days from the date of this Order, Dr.  
15 Sayre shall file evidence that Plaintiff received payment of the  
16 judgment in the form of a receipt or declaration from Plaintiff  
17 that he received payment. If Dr. Sayre cannot file such evidence,  
18 he shall file a declaration stating why the judgment has not been  
19 paid in compliance with this Court's order and why he indicated in  
20 his opposition that the judgment had been paid.

21  
22 Also, within three days from the date of this Order,  
23 Secretary Cate shall file evidence that Plaintiff has received a  
24 properly fitting arm brace. If Plaintiff has not received the arm  
25 brace, Secretary Cate shall file a declaration stating what  
26 efforts he has made to ensure that Plaintiff receive such an arm  
27 brace, and when Plaintiff will receive it.

1 The Court shall not rule on Plaintiff's motion to hold  
2 Defendants in contempt until it receives these documents from  
3 Defendants.

4 CONCLUSION

5 For the foregoing reasons, within three days from the date of  
6 this Order, Dr. Sayre shall file proof that Plaintiff has received  
7 payment of the judgment he owes to Plaintiff and Secretary Cate  
8 shall file proof that Plaintiff has received a properly fitting  
9 arm brace or a declaration listing the efforts he has made to  
10 ensure that Plaintiff receive the arm brace and the current status  
11 of the arm brace.  
12

13  
14 IT IS SO ORDERED.  
15

16 Dated: 1/10/2012  
17

18   
19 CLAUDIA WILKEN  
20 United States District Judge  
21  
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