UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BRIAN APPLEGATE,

Plaintiff,

v.

CHRISTIAN TRAUSCH,

Defendant.

1:15-cv-00811-AWI-GSA-PC

ORDER FOR DEFENDANT TO FILE STATUS REPORT WITHIN 30 DAYS

Plaintiff Brian C. Applegate ("Plaintiff") is a prisoner in the custody of the California Department of Corrections and Rehabilitation. Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The action is proceeding on Plaintiff's Eighth Amendment and state law claims against Defendant Christian Trausch.

On March 29, 2016, the Court granted Defendant's motion to stay the proceedings pending resolution of Plaintiff's writ of mandate in the Sacramento County Superior Court. The two inmate appeals that Plaintiff contends exhausted the issues herein were the subject of the petition, and the Court granted the stay because the outcome of the petition would impact the exhaustion analysis in this action. In granting the stay, the Court ordered Defendant to file a status report within ten days of the state court's ruling on Plaintiff's petition.

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On April 7, 2016, Plaintiff submitted a filing indicating that he *may* file a notice of voluntarily dismissal if the state court determined that administrative remedies remained. An actual request to dismiss has not been filed.

On July 21, 2016, Defendant filed a status report as directed by this Court. According to the report, the state court denied the petition on July 11, 2016, finding that Plaintiff had not demonstrated that he submitted the appeals and that staff had received them. Defendant requested that the stay remain until the state court decision is final. On July 25, 2016, the Court issued an order continuing the stay of the action.

On September 15, 2016, Plaintiff submitted a status report indicating that he was awaiting the appeal record from the Sacramento Superior Court, after which time he expected to pursue a mandamus action at the court of appeals. Plaintiff requested that the stay remain in place.

The Court now requests a status report from Defendant. Accordingly, **IT IS HEREBY ORDERED** that within thirty (30) days of the date of service of this order, Defendant SHALL file a status report informing the Court of the current status of this case.

IT IS SO ORDERED.

Dated: **January 11, 2017**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE