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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Jordan M. Meschkow,

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CV 12-01703-PHX-FJM

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Plaintiff,

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**ORDER**

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vs.

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Office of the United States Trustee; United  
States Department of Justice; Ilene J.  
Lashinsky; Richard J. Cuellar,

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Defendants.

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The court has before it defendants' motion to dismiss (doc. 5), plaintiff's response and  
18 cross-motion for sanctions (doc. 8), defendants' reply to the response and response to the  
19 motion for sanctions (doc. 12), plaintiff's reply to the response (doc. 14), and plaintiff's notice  
20 regarding further evidence for sanctions (doc. 15). We also have before us defendants'  
21 response to plaintiff's motion for temporary restraining order ("TRO") (filed in state court)  
22 (doc. 6), and plaintiff's reply (doc. 8). We also have plaintiff's motion to remand (doc. 7) and  
23 defendants' response (doc. 9). Plaintiff did not reply, and the time for replying has expired.  
24 Finally, defendants filed an objection to plaintiff's amended complaint (doc. 11), to which  
25 plaintiff responded (doc. 13).

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This action arises from a stipulation entered into by plaintiff and defendants in  
27 bankruptcy court that certain documents would be filed under seal. Plaintiff alleges that  
28 defendants violated the stipulation. After removing this action from the Superior Court of

1 Arizona in Maricopa County, defendants filed a motion to dismiss on August 10, 2012.  
2 Plaintiff amended his complaint on August 18, 2012 (doc. 10). Because the first amended  
3 complaint ("FAC") asserts a claim under the False Claims Act, 31 U.S.C. § 3729, it is sealed.

4 A party may amend his pleading once as a matter of course within twenty-one days  
5 after service of a motion under Rule 12(b). Fed. R. Civ. P. 15(a)(1)(B). An amended  
6 complaint supercedes the original complaint. Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th  
7 Cir. 1992). Because plaintiff amended his complaint less than twenty-one days after the  
8 motion to dismiss was filed, this action is now proceeding under the FAC and the pending  
9 motion to dismiss and motion to remand are rendered moot. Moreover, plaintiff's request for  
10 a TRO, which was filed in state court and pertains to the original complaint, is also moot.

11 This is not the first time that plaintiff has attempted to assert claims under the False  
12 Claims Act against these defendants. In a recent case before Judge Wake in this district,  
13 plaintiff filed an FAC that added a nearly identical claim against these defendants under the  
14 False Claims Act. After concluding that the False Claims Act claim appeared to be "patently  
15 frivolous" because it alleged "nothing that could constitute a claim under the Act," Judge  
16 Wake concluded that there was no justification for keeping the complaint from public view  
17 and ordered that the case be unsealed. Meschkow v. Office of the U.S. Tr., No. CV 12-  
18 01378-PHX-NVW (doc. 20). Plaintiff then filed a motion for leave to file a second amended  
19 complaint ("SAC"). Judge Wake reviewed the False Claims Act claims in the proposed  
20 SAC. He noted that plaintiff alleged "no claims presented to the United States," concluding  
21 that these claims "are patently frivolous and appear to have been brought for the sake of  
22 harassment." Meschkow v. Office of the U.S. Tr., No. CV 12-01378-PHX-NVW (doc. 31).  
23 Judge Wake denied plaintiff's motion for leave to amend on August 1, 2012. That same day,  
24 plaintiff filed a notice of voluntary dismissal.

25 Our review of the False Claims Act claims in the FAC here leads us to the same  
26 conclusion as Judge Wake. Indeed, the False Claims Act claims in the FAC and those in the  
27 proposed SAC before Judge Wake are virtually identical. Especially in light of the prior  
28 ruling by Judge Wake denying plaintiff's motion for leave to amend in the prior action,

1 plaintiff's recycling of the False Claims Act claims in this FAC appears frivolous. However,  
2 the FAC contains other claims that must await a motion to dismiss. Accordingly, we will  
3 order that the FAC in this action be unsealed. If the government moves to seal the FAC, we  
4 will re-seal it quickly.

5 Plaintiff moves for sanctions against defendants. He argues that defendants' conduct  
6 in defending this action somehow amounts to attempted theft of his documents. Thus far,  
7 defendants have removed the action, filed a motion to dismiss, and responded to plaintiff's  
8 filings. Nothing about these actions would lead us to conclude sanctions under the court's  
9 inherent power is appropriate. Defending a lawsuit by asserting defenses that plaintiff  
10 disagrees with does not equate to "bad faith or conduct tantamount to bad faith." See Fink  
11 v. Gomez, 239 F.3d 989, 994 (9th Cir. 2001). Plaintiff's motion for sanctions is denied.

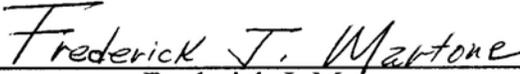
12 **IT IS ORDERED DENYING** defendants' motion to dismiss on grounds of mootness  
13 (doc. 5). **IT IS ORDERED DENYING** plaintiff's motion to remand on grounds of  
14 mootness (doc. 7). **IT IS ORDERED DENYING** plaintiff's motion for a temporary  
15 restraining order on grounds of mootness. **IT IS ORDERED DENYING** plaintiff's motion  
16 for sanctions (doc. 8). **IT IS FURTHER ORDERED** that the first amended complaint is  
17 unsealed (doc. 10).

18 Under LRCiv 3.8(a)(2), if an action is voluntarily dismissed and a related action is  
19 later filed in the district, "the filing party must file a separate notice with the party's  
20 complaint" that identifies the dismissed action. The clerk will then assign the new action "to  
21 the Judge who was last assigned to the dismissed action." Id. Plaintiff voluntarily dismissed  
22 the action before Judge Wake. This action is related to that before Judge Wake because it  
23 involves similar claims and parties. Although this action came to us by way of removal from  
24 state court, rather than by the filing of a new complaint by plaintiff, we conclude that the  
25 purpose of LRCiv 3.8(a)(2) will best be served by transferring this nearly identical action to  
26 Judge Wake, especially where as here there is the specter of forum shopping. Accordingly,  
27 **IT IS ORDERED** that the clerk shall transfer this action to Judge Wake.

28 Finally, we strongly encourage plaintiff to seek the advice of another lawyer. A

1 lawyer can offer a neutral evaluation of plaintiff's case and recommend the best way for  
2 plaintiff to protect his interests.

3 DATED this 14<sup>th</sup> day of September, 2012.

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7 Frederick J. Martone  
8 United States District Judge

9 (cc: Judge Wake)

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