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IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

PHILLIP SANDERS,	)	1:11-CV-596 AWI MJS
	)	
Plaintiff,	)	ORDER VACATING
	)	HEARING OF MAY 27, 2011,
v.	)	ORDER ON DEFENDANT'S
	)	MOTION TO DISMISS, AND
MAGEC METRO TACTICAL TEAM,	)	ORDER ON DEFENDANT'S
et al.,	)	MOTION TO CONSOLIDATE
	)	AND STAY ACTION
Defendants.	)	
	)	
_____	)	(Doc. Nos. 4, 6)

17   This case was removed from the Fresno County Superior Court. See Court's Docket

18 Doc. No. 1. Plaintiff is pro se. Currently pending before the Court is Defendant County of

19 Fresno's motion to consolidate, request to stay, and motion to dismiss. Hearing on these matters

20 is currently set for May 27, 2011. Plaintiff filed an untimely opposition to these motions in

21 violation of the Local Rules. See Local Rule 230. As such, Plaintiff is not entitled to be heard in

22 opposition to the motions. See id. Having reviewed the motions, the Court has determined that

23 these matters are suitable for decision without oral argument. See id.

24   With respect to the motion to consolidate, Defendant requests that the Court completely

25 consolidate this matter with a case filed earlier by Plaintiff, case number 1:11-CV-184 LJO MJS.

26 The Court believes that consolidation is appropriate. A review of the complaint in this case

27 reveals common questions of law and fact as those in Case Number 1:11-CV-184 LJO MJS.

28 Although the complaints are not identical, they are very similar and appear to involve the same

1   transactions (Plaintiff's arrest, prosecution, and defense of the prosecution by a public defender)

2   and the defendants in this case are also named as defendants in Case Number 1:11-CV-184 LJO

3   MJS. Plaintiff has not articulated a reason why these cases should not be consolidated.[1] Under

4   the circumstances, consolidation of both of these cases is appropriate. See Fed. R. Civ. Pro.

5   42.(a)(2).

6   With respect to the stay, Magistrate Judge Seng stayed case number 1:11-CV-184 LJO

7   MJS because a state criminal prosecution of the Plaintiff is on-going. See Court's Docket Doc.

8   No. 7 in Case No. 1:11-CV-184 LJO MJS. Because this matter will be consolidated, the Court

9   will order that the stay in the previously filed matter will continue.

10   Finally, with respect to the motion to dismiss, it is unknown how long the criminal

11   proceedings against Plaintiff will continue. Therefore, it is unknown how long the stay will

12   remain in force. Administratively, the Court cannot have pending motions lingering for

13   unknown durations because of a stay. Since the Court will be consolidating this case, and the

14   entire matter will be stayed, the Court will deny without prejudice the motion to dismiss. Once

15   the stay is lifted, Defendant may refile the motion to dismiss if it so chooses.

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17   Accordingly, IT IS HEREBY ORDERED that:

18   1.   The May 27, 2011, hearing date is VACATED;

19   2.   Defendant's motion to dismiss is DENIED without prejudice;

20   3.   Defendant's motion to consolidate is GRANTED;

21   4.   The Clerk of the Court is DIRECTED to consolidate these cases, and insofar as case

22   1:11-CV-184 LJO MJS was the first action petitioner filed with the Court, it will be

23   considered the lead case;

24   _____

25   [1]Plaintiff's opposition is unclear and not always legible or intelligible. In part, Plaintiff appears to argue
     that the motion to dismiss, which is separate from the motion to consolidate, some how makes the motion to

26   consolidate confusing. Plaintiff then argues that he is alleging state causes of action, which are not the same as
     federal causes of action. However, Plaintiff nowhere states that the two cases do not involve common questions of

27   law and/or fact.

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5. The parties SHALL IDENTIFY all future pleadings by the case number of the lead case, that is case number 1:11-CV-184 LJO MJS;

6. Defendant's request for a stay is GRANTED in that the stay issued on April 5, 2011, in case number 1:11-CV-184 LJO MJS shall continue; and

7. The Clerk of the Court IS DIRECTED to administratively close case 1:11-CV-596 AWI MJS in light of the consolidation.

IT IS SO ORDERED.

Dated: May 25, 2011

_____
CHIEF UNITED STATES DISTRICT JUDGE

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