

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PHILLIP SANDERS, CASE NO. 1:11-cv-184-LJO-MJS
Plaintiff, ORDER DENYING PLAINTIFF'S MOTIONS
v. TO OBTAIN MONETARY SANCTIONS,
MAGEC METRO TACTICAL TEAM, et al., REMOVE CONSOLIDATED CASE TO
Defendants. REMOVE THE STAY PENDING THE
RESOLUTION OF PLAINTIFF'S CRIMINAL
PROCEEDINGS.

_____/ [ECF Nos. 15-16.]

Plaintiff Phillip Sanders initiated this action by filing a pro se Complaint on February 9, 2011. (ECF No. 1.) On April 1, 2011, the Court issued an order staying the case while Plaintiff's criminal proceedings related to acts which are the subject of the present complaint are pending in Fresno County Superior Court. (ECF No. 7.) The Court ordered Plaintiff to update the Court every 90 days regarding the status of his criminal proceeding.

On April 8, 2011, a second Complaint, originally filed by Plaintiff in Fresno County Superior Court, was removed by Defendants to this Court. See Sanders v. Magec Metro Tactical Team, EDCA Case No. 1:11-cv-00596-AWI-MJS. On May 25, 2011, the Court consolidated the matter with the present case and continued the stay put in place on April 1, 2011. EDCA Case No. 1:11-cv-00596-AWI-MJS, ECF No. 10.

On September 19, 2011, the Court issued an order to show cause why Plaintiff had

1 not filed a status report. (ECF No. 14.) In response to the order to show case, Plaintiff filed
2 two documents on October 5, 2011, one titled ““plaintiff object to court sanctions and
3 request award plaintiff moneys for court errors delaying plaintiff case missed scheduling
4 conference 7/14/11 and request move consolidated case back down to state level” and the
5 other titled, “second status update report and request court remove stay.” (ECF Nos. 15-
6 16.) The Court shall address each filing in turn.

8 In Plaintiff’s first filing he (1) objects to any sanctions from the Court, (2) requests
9 a monetary award from the Court, (3) and requests the Court remand the consolidated
10 case back to the Fresno County Superior Court. (ECF No. 15.) First, the Court is not going
11 to sanction Plaintiff since he did file a status report in response to the order to show cause.
12 (ECF No. 16.)

14 Second, the Court DENIES Plaintiff’s request for a monetary award. Plaintiff seeks
15 to recover fees for his attendance at a status conference scheduled on July 14, 2011. On
16 May 25, 2011, over a month before the scheduled conference, the Court consolidated and
17 stayed the action. EDCA Case No. 1:11-cv-00596-AWI-MJS, ECF No. 10. The order
18 directed that the case be administratively closed. The closing of the case placed Plaintiff
19 on notice that the hearing was no longer on calendar. Plaintiff is not entitled to damages
20 for his appearance at the hearing.

22 Finally, Plaintiff asserts that the consolidated matter should be remanded back to
23 state court. Plaintiff’s motion to remand the case to state court is DENIED. To the extent
24 Plaintiff challenges any aspect to the procedure in which the action was removed, the
25 motion is untimely as it was filed over thirty days after the notice of removal. See 28 U.S.C.
26 § 1447(c). Further, if Plaintiff is claiming that the Complaint lacks subject matter jurisdiction,
27

1 the motion to remand is likewise denied. Plaintiff has clearly stated claims that his federal
2 due process and other constitutional rights were violated. While the complaint may contain
3 some state law claims, the fact that federal claims are included creates federal question
4 jurisdiction, and removal was proper.
5

6 In Plaintiff's other filing, he provides a status report and requests the Court to
7 remove the stay in place during the pendency of his criminal proceedings. In light of the
8 information presented in his status report and Defendants' assertion in their opposition that
9 the criminal case is still pending, the Court DENIES Plaintiff's request to lift the stay.
10 Plaintiff is instructed to file a third status report within 90 days of the service of this order,
11 and every 90 days thereafter until his criminal case is resolved.
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13 ORDER

14 For the reasons stated above, it is HEREBY ORDERED that:

- 15 1. Plaintiff's request that he not be sanctioned is GRANTED;
- 16 2. Plaintiff's request for sanctions is DENIED;
- 17 3. Plaintiff's motion to remand the consolidated action to state court is DENIED;
- 18 4. Plaintiff's motion to remove the stay is DENIED; and
- 19 5. Plaintiff is ORDERED to file a status report with the Court not later than **ninety**
20

21 **days after the service of this order, and every ninety days thereafter** regarding the
22 status of his criminal charges.

23 IT IS SO ORDERED.

24
25 Dated: October 24, 2011

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE