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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
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8 **EUGENE E. FORTE,**

9 **Plaintiff**

10 **v.**

11 **COUNTY OF MERCED, et al.,**

12 **Defendants.**

CASE NO. 1:11-CV- 0318 AWI BAM

**INFORMATIONAL ORDER ON
PLAINTIFF'S REQUEST FOR
INVESTIGATION AND ORDER ON
MOTION TO STAY PROCEEDINGS**

Doc. #'s 265 & 269

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15 **I. Informational Order on Request for Investigation**

16 On September 23, 2014, Magistrate Judge McAuliffe issued an order that: (1) granted the
17 motion of defendants County of Merced, et al. to compel, (2) denied Defendants' motion to
18 dismiss without prejudice, (3) denied the motion of plaintiff Eugene Forte ("Plaintiff") for judicial
19 notice and (4) stayed discovery pending Plaintiff's production of a supplemental Rule 26
20 disclosure which was ordered to be filed and served not later than October 14, 2014. On October
21 8, 2014, Plaintiff filed a document titled "Amended Request for Investigation by Senior Judge
22 Anthony Ishii of Overt Prejudice by Magistrate Judge McAuliffe" (the "Motion to Investigate").

23 This is to inform Plaintiff that complaints about judicial conduct are governed by federal
24 statute and that District courts are without authority to deviate from the prescribed procedure. See
25 Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364. Under this act, any complaint
26 regarding the conduct of a district judge or magistrate judge is to be filed with the clerk of the
27 court of appeals for the circuit in which the district court is located. 28 U.S.C. § 351(a). Each
28 judicial circuit has developed rules and procedures for the filing of complaints concerning judicial

1 conduct. To access information regarding the procedure to be followed in this circuit, Plaintiff is
2 directed to:

3 <http://uscourts.gov/RulesAndPolicies/ConductAndDisability/JudicialConductDisability.aspx>

4 Follow the lead to the Ninth Circuit for applicable rules and procedures.

5 Plaintiff is cautioned that the rules and procedures required by this circuit require that a
6 complainant acknowledge that he/she realizes that any order issued by the judge being complained
7 of remains in full force and effect regardless of the outcome of the complaint. In short, this
8 procedure may not be used to circumvent or reverse an order or admonition of the court. To the
9 extent that Plaintiff may have intended by his Motion to Investigate to request reconsideration of
10 the Magistrate Judge's order of September 23, 2014, any such request is DENIED.

11 **II. Order on Motion to Stay Proceedings**

12 On October 23, 2014, Plaintiff filed a motion to stay proceedings, Docket Number 269 (the
13 "Motion to Stay"). Plaintiff's purpose behind filing the motion to stay is to provide Plaintiff
14 "adequate time to prepare and file a supplemental pleading to manifest injustice." Doc. # 269 at
15 1:26-27. The purpose of the proposed "supplemental pleading" is to reinstate claims against
16 erstwhile defendants that were long ago dismissed with prejudice from this action. Specifically,
17 Plaintiff seeks to "supplement" the complaint to allege essentially the same claims that were
18 previously dismissed on prior Defendants Morse, Turner, Fincher and others that Plaintiff alleges
19 were behind the "fraud on the court" that resulted in the dismissal of the criminal charges that had
20 been pending against Plaintiff in Merced County Superior Court. Despite repeated denials of
21 similar motions in the past – most recently in the Magistrate Judge's order of September 23 – and
22 despite repeated explanations of why the claims Plaintiff seeks to supplement are not cognizable in
23 this court; Plaintiff persists.

24 The court's prior rejection of Plaintiff's claims against those he feels were responsible for
25 the dismissal of his criminal claims in Superior Court is based on two legal principles that have
26 not changed since the claims were originally dismissed. First, federal district courts have no
27 authority to supervise, control, or correct the legal or factual errors of state superior courts. To the
28 extent a litigant may seek relief from what he or she perceives to be a faulty, fraudulent, unlawful

1 or otherwise wrongful superior court decision, relief is available only from the state appellate
2 court except for one very limited circumstance. Federal district courts can provide relief from
3 proceedings in state courts if, and only if, the state court proceedings resulted in violations of
4 either the United States Constitution or a federal statute. See 42 U.S. § 1983. This concept of
5 “federalism” was adequately explained to Plaintiff in the court’s order of March 25, 2013, Docket
6 Number 118, and need not be repeated here. Second, Plaintiff has never articulated the
7 infringement of a constitutional or statutory federal right arising from the dismissal of the criminal
8 claims against him in the Superior Court. Plaintiff’s current Motion to Stay “to supplement his
9 pleading” is no exception.

10 Plaintiff’s major contention with regard to the proceedings in the Merced Superior Court is
11 that the previously dismissed Defendants conspired to commit fraud on the court by implementing
12 a scheme to use incompetent or “jury-rigged” testimony to persuade the Superior Court to dismiss
13 the criminal charges against Plaintiff based on a false finding that Plaintiff was not competent to
14 defend himself in a criminal proceeding pursuant to Cal. Pen. Code § 1370.2. The court has
15 previously explained that a defendant in a criminal case has no constitutional right to the
16 continuation of a prosecution against him. In the court’s order of January 31, 2014, the court
17 made clear that, for purposes of the Constitution or federal statute, there is no requirement that a
18 criminal prosecution, once instituted, be continued to and through trial. See Doc. # 202 at 4-5. In
19 the same order, the court also explained the limitations and narrowness of the Superior Court’s
20 ruling that Plaintiff was incompetent to stand trial as a *defendant in a criminal matter* and further
21 explained that this determination, like the discontinuance of his criminal prosecution, does not
22 raise any issue harm under the Constitution or under federal statute. Id. The court has previously
23 explained, and now reiterates, that of all the harms that Plaintiff has alleged, the ones that are
24 cognizable in this court are current claims under the Fourth Amendment for arrest without
25 probable cause and unreasonable seizure.

26 From the content of Plaintiff’s current Motion to Stay and from the content of prior similar
27 motions, it appears to the court that Plaintiff is of the opinion that it is not so important what injury
28 was suffered, but rather how the injury came to be inflicted. Thus, in the present motion, it seems

1 as though Plaintiff believes he can revive the previously dismissed claims against the previously
2 dismissed Defendants by alleging facts to show that the proceedings in the Superior Court that
3 resulted in the termination of the criminal cases against him and the finding of Plaintiff's
4 incapacity to stand trial were a result of "fraud on the court." This is not the case. Plaintiff has
5 previously accused this court of being uncaring about the malfeasance of the actors involved with
6 his criminal cases and the fraud that was perpetrated by them in achieving the declaration of his
7 incompetence to stand trial. The court has previously informed Plaintiff, and now does so again,
8 that this court cannot address Plaintiff's claims arising from the dismissal of the criminal cases
9 against him in Superior Court because this court lacks the jurisdiction to do so. Whether this court
10 is in agreement with, or utterly outraged by, the decisions of the Superior Court makes no
11 difference at all. This court cannot go where its jurisdictional powers do not exist.

12 Because further supplementation or amendment of Plaintiff's First Amended Complaint to
13 add the claims and the defendants that Plaintiff has specified in his Motion to Stay is futile for the
14 reasons discussed above, the court will deny the motion.

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16 THEREFORE, for the reasons discussed above Plaintiff's Motion to Stay is hereby
17 DENIED. The Magistrate Judge's order of September 23, 2014, remains in full force and effect.

18 IT IS SO ORDERED.

19 Dated: October 28, 2014

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22 SENIOR DISTRICT JUDGE
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