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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ROBERT MENA,)	Case No.: 1:13-cv-00650 AWI JLT
)	
Plaintiff,)	ORDER VACATING HEARING ON MOTION TO
)	STAY
v.)	
)	(Doc. 8)
KERN HIGH SCHOOL DISTRICT, et al.,)	
)	
Defendants.)	
)	

Before the Court is Plaintiff’s motion to stay the action. (Doc. 8) The basis for this motion is that Plaintiff is maintaining an action against the defendants in state court based upon the same factual circumstances as this federal court action. Id. at 1-3. However, the state court action does not contain the 42 U.S.C. § 1983 cause of action that this federal action contains. Id. Counsel reports he discovered that his earlier appraisal of the case related to the § 1983 cause of action was incorrect. Id. Initially, he believed Plaintiff could not maintain a § 1983 cause of action to vindicate a First Amendment right. Id. Due to the running of the statute of limitations and his inability to file the motion to amend the state court action to include this claim within the limitation period, Plaintiff filed his second action in this Court. Id.

Now, Plaintiff reports he *intends* to file a motion for leave to file a second amended complaint in state court to include the § 1983 action; however, he has not yet done so. Thus, the Court does not find the motion to stay is ripe and will delay ruling on the matter for 30 days. During this time,

1 Plaintiff SHALL file his motion for leave to amend in the state court action. The Court anticipates
2 that Plaintiff will make this filing as soon as practicable but not later than September 6, 2013. In
3 addition, Plaintiff SHALL file an amendment to his current motion in this Court demonstrating his
4 efforts in state court.

5 **ORDER**

6 Based upon the foregoing, the Court **ORDERS**:

7 1. Plaintiff SHALL file his motion for leave to file a second amended complaint in the
8 state court action no later than **September 6, 2013**;

9 2. No later than **September 27, 2013**, Plaintiff SHALL file an amendment to his motion
10 explaining the current status of his state-court motion;

11 3. The hearing on the motion to stay (Doc. 8) is **VACATED**. The Court will determine
12 whether a hearing is needed after it reviews the amendment to the motion;

13 4. The scheduling conference is **CONTINUED** to **November 6, 2013** at 9:30 a.m.

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15 IT IS SO ORDERED.

16 Dated: August 28, 2013

17 /s/ Jennifer L. Thurston
18 UNITED STATES MAGISTRATE JUDGE
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