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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAVID ROMERO,

Case No. 1:14-cv-1062---SKO

Plaintiff,

**ORDER GRANTING DEFENDANTS'
MOTION TO STAY**

v.

(Doc. 10)

JAMES YATES, et al.,

Defendants.

On August 22, 2014, Defendants filed a motion to stay this case pending the outcome of Plaintiff's current state court criminal proceedings. Defendants assert that resolution of the issues in this case may impugn any conviction rendered in the pending criminal case against Plaintiff David Romero in Madera County Superior Court in violation of *Heck v. Humphrey*, 512 U.S. 477 (1994).

According to Defendants, Plaintiff is currently facing criminal assault charges for twice pointing his handgun at Defendant, off-duty California Highway Patrol Officer James Yates and his wife, causing Officer Yates to fire on Plaintiff. Following his arrest, Plaintiff filed this lawsuit alleging claims of battery, assault, negligence, and a Section 1983 claim against Officer Yates for firing upon him.

Plaintiff's counsel represented to the court that Plaintiff would stipulate to a stay of the action until the resolution of the criminal proceedings against Plaintiff arising out of the same

1 underlying events in this case. In light of this representation, Plaintiff was ordered to file a
2 statement of non-opposition by no later than September 23, 2014. (Doc. 16.) Plaintiff failed to
3 file a statement of non-opposition. Plaintiff also filed no opposition to Defendants' motion.

4 Pursuant to *Wallace v. Kato*, 549 U.S. 384, 393-94 (2007), "[i]f a plaintiff files a false-
5 arrest claim before he has been convicted (or files any other claim related to rulings that will likely
6 be made in a pending or anticipated criminal trial), it is within the power of the district court, and
7 in accord with common practice, to stay the civil action until the criminal case or the likelihood of
8 a criminal case is ended." (citing *Heck*, 512 U.S. at 487-88). Because the underlying facts of this
9 case are intertwined with the criminal proceedings against Plaintiff, a judgment in favor of
10 Plaintiff on his claims presented to this Court may necessarily imply the invalidity of any
11 conviction or sentence ordered in the criminal proceedings. As such, Defendants' motion to stay is
12 supported by good cause. Furthermore, Defendants' motion is unopposed. Therefore, Defendants'
13 motion to stay these proceedings is granted.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Defendant's motion to stay is granted and this action shall be STAYED until the
16 criminal proceedings against Plaintiff in Madera County Superior Court have been
17 resolved; and
- 18 2. Plaintiff shall make attempts to serve Defendant Lancaster and provide the Court
19 with a status update as to service at the October 10, 2014, status conference.

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22 IT IS SO ORDERED.

23 Dated: September 29, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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