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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 KYLE PETERSEN,

12 Plaintiff,

13 v.

14 MEKISHA BUYARD,

15 Defendant.
16

No. 1:20-cv-00954-DAD-EPG

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING STAYING THIS
ACTION PENDING COMPLETION OF
PLAINTIFF'S APPEAL TO THE NINTH
CIRCUIT

TWENTY-ONE-DAY DEADLINE

17 Plaintiff Kyle Petersen ("Plaintiff"), a federal prisoner proceeding *pro se* and *in forma*
18 *pauperis*, commenced this action by filing a civil-rights complaint pursuant to 42 U.S.C. § 1983
19 on July 9, 2020. (ECF No. 1). Plaintiff's complaint alleges that Defendant Mekisha Buyard
20 ("Defendant"), his former parole agent, violated his Fourth Amendment rights by sending his
21 cellular phones to federal agents in a manner not permitted by his parole conditions.

22 Plaintiff pleaded guilty to federal offenses in a case in this district. Plaintiff's appeal,
23 which is currently pending before the Ninth Circuit, deals with issues that are intertwined with
24 issues in this case. Resolving the issues before the Ninth Circuit may be necessary to determine
25 the issues herein. In addition, the Court has stayed Plaintiffs' three other cases stemming from
26 related searches—including one against Defendant Buyard. Therefore, the Court recommends
27 staying this action pending the resolution of Plaintiff's appeal in his criminal case.

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1 **I. BACKGROUND**

2 **A. Criminal Case**

3 This case relates to Plaintiff’s criminal conviction for child-pornography offenses in
4 *United States v. Peterson*, 1:17-cr-00255-NONE-SKO (E.D. Cal.) (“District Court Criminal
5 Case”).¹ The District Court Criminal Case came about after Defendant searched Plaintiff’s
6 cellular phones during several parole searches. Relevant here, Defendant searched Plaintiff’s
7 Unimax and LG cell phones in 2017 (“Relevant Phones”). Defendant sent the Relevant Phones to
8 Homeland Security Investigation agents Anthony Sims, Jr., and Nicholas Torres for forensic
9 searches. Some of the forensic searches were suppressed pursuant to a stipulation between
10 Plaintiff and the United States.

11 Later, the United States searched the Relevant Phones again, but this time with a warrant
12 (“Subsequent Searches”). Plaintiff moved to suppress the Subsequent Searches. His motion was
13 denied.

14 Plaintiff pleaded guilty but maintained his right to appeal. In his appeal pending before the
15 Ninth Circuit, Plaintiff contends that Defendant’s parole searches were unconstitutional. *United*
16 *States v. Petersen*, No. 19-10246, Dkt. 9 at 37 (9th Cir.) (“Criminal Appeal”) (“It follows,
17 therefore, that the parole searches were unlawful and that the exclusionary rule bars the admission
18 of the evidence that was the fruit of those unlawful searches.”).²

19 **B. Civil Cases**

20 This case is one of four related cases in this district, three of which have already been
21 stayed. *See Petersen v. Sims, Jr.*, 1:20-cv-00884-DAD-EPG (stayed); *Petersen v. Sims*, 1:20-cv-
22 00884-DAD-EPG (stayed); *Petersen v. Buyard*, 1:20-cv-00999-DAD-EPG (stayed).³ In this
23 action, Plaintiff contends that Defendant violated his Fourth Amendment rights by sending the
24 Relevant Phones to Sims and Torres for forensic searches because, as federal agents, any searches
25 they conducted were unauthorized by his parole conditions. (*See* ECF No. 1 at 4-5, 7-8).

26 ¹ The Court takes judicial notice of this case. *See* Fed. R. Evid. 201(b); *United States v. Wilson*, 631 F.2d 118, 119
27 (9th Cir.1980) (recognizing that under Federal Rule of Evidence 201, “a court may take judicial notice of its own
28 records in other cases”).

² The Court takes judicial notice of this case. *See Wilson*, 631 F.2d at 119.

³ The Court takes judicial notice of theses cases. *See Wilson*, 631 F.2d at 119.

1 Defendant filed a motion to dismiss on April 12, 2021 arguing, in part, that her searches were
2 constitutional and that she was entitled to send the phones to parole agents under California law.
3 (ECF No. 23).

4 **C. Briefing for Stay**

5 On February 23, 2021, the Court ordered that the parties provide briefing concerning
6 whether this action should be stayed pending the resolution of the Criminal Appeal. (ECF No.
7 15). Defendant filed such briefing on March 9, 2021. (ECF No. 18). Defendant argued that this
8 action should be stayed because the searches at issue here relate to the issues in the Criminal
9 Appeal. Plaintiff filed his briefing on April 12, 2021. (ECF No. 24). Plaintiff argues that the Court
10 implied that it was considering staying this action under the doctrine of collateral estoppel, which
11 does not apply here.

12 **II. LEGAL STANDARDS FOR A STAY**

13 “[A] district court may stay a case ‘pending before it by virtue of its inherent power to
14 control the progress of the cause so as to maintain the orderly processes of justice[.]’” *Ryan v.*
15 *Gonzales*, 568 U.S. 57, 74 (2013) (quoting *Enelow v. New York Life Ins. Co.*, 293 U.S. 379, 382
16 (1935)).

17 When a plaintiff’s civil-rights lawsuit relates to a pending or potential criminal case,
18 district courts often stay the civil rights action until the criminal case is complete. *See Wallace v.*
19 *Kato*, 549 U.S. 384, 393–94 (2007) (“If a plaintiff files a false-arrest claim before he has been
20 convicted (or files any other claim related to rulings that will likely be made in a pending or
21 anticipated criminal trial), it is within the power of the district court, and in accord with common
22 practice, to stay the civil action until the criminal case or the likelihood of a criminal case is
23 ended.”); *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758, 762 (9th Cir. 1991) (where plaintiff
24 argued statute of limitations did not bar his action because he would have been collaterally
25 estopped from bringing a civil rights action, noting plaintiff “could have filed his civil rights
26 action within the limitations period and then asked the district court to stay that action pending
27 the outcome of his habeas petition. Once his conviction was reversed, there could have been no
28 collateral estoppel effect of any kind on his civil rights claims”); *Rhoden v. Mayberg*, 361 F.

1 App'x 895, 896 (9th Cir. 2010) (unpublished) (vacating dismissal and remanding for entry of stay
2 for civil detainee's civil-rights lawsuit that related to ongoing civil-commitment proceedings).

3 **III. ANALYSIS**

4 The Court recommends staying this action until the Ninth Circuit resolves the Criminal
5 Appeal.

6 Plaintiff argues at the Ninth Circuit that Defendant's searches of his phones were
7 unconstitutional. Criminal Appeal, Dkt. No. 9 at 37. In her pending motion to dismiss, Defendant
8 argues that her searches were constitutional and, therefore, so was her decision to provide the cell
9 phones to Sims and Torres. (ECF No. 23 at 15-20). Thus, the issues in this case are related to the
10 Criminal Appeal. It is possible that a holding by the Ninth Circuit could resolve, or assist the
11 resolution of, Defendants' motion to dismiss. Moreover, entering a stay will ensure this case's
12 conclusion about the searches on the Relevant Phones is consistent with the Ninth Circuit's,
13 should the Ninth Circuit address that issue. Accordingly, the Court recommends entering a stay.
14 *See Wallace*, 549 U.S. at 393-94; *Rhoden*, 361 F. App'x at 896.

15 **IV. CONCLUSION AND RECOMMENDATIONS**

16 For the foregoing reasons, it is HEREBY RECOMMENDED that:

- 17 1. This action be stayed, pending completion of Plaintiff's appeal concerning the
18 searches of his cellular phones; and
- 19 2. Within 30 days of Plaintiff receiving an opinion from the Ninth Circuit concerning his
20 appeal, Plaintiff be ordered to file such opinion together with a statement regarding
21 whether he still wishes to proceed in this action.

22 These findings and recommendations will be submitted to the United States district judge
23 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-one
24 (21) days after being served with these findings and recommendations, the parties may file
25 written objections with the Court. The document should be captioned "Objections to Magistrate
26 Judge's Findings and Recommendations."

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1 The parties are advised that failure to file objections within the specified time may result
2 in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014)
3 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

4
5 IT IS SO ORDERED.

6 Dated: **April 15, 2021**

/s/ Eric P. Groj
7 UNITED STATES MAGISTRATE JUDGE