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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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THOMAS LUDAVICO, Sr.; THOMAS
LUDAVICO, Jr.; ASHLEY
LUDAVICO,

NO. CIV. S-08-1473 FCD/JFM

Plaintiffs,

v.

MEMORANDUM AND ORDER

SACRAMENTO COUNTY, a
government entity; SACRAMENTO
COUNTY SHERIFF'S DEPARTMENT,
a public entity; JOHN
McGINNESS, an individual; et
al.,

Defendants.

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Pending before the court are the following motions:

(1) defendant Elk Grove Unified School District's ("EGUSD")
motion to dismiss and strike plaintiffs Thomas Ludavico, Sr.,
Thomas Ludavico, Jr. and Ashley Ludavico's ("plaintiffs") first
amended complaint (Docket #19); (2) plaintiffs' motion to file a
second amended complaint (Docket #30); (3) EGUSD's motion for
sanctions, pursuant to Fed. R. Civ. P. 11, against plaintiffs for
failure to comply with the court's prior order permitting leave

1 to file a first amended complaint (Docket #37); and (4) the
2 court's order to show cause ("OSC") against plaintiffs' counsel
3 for failure to timely file an opposition or statement of non-
4 opposition to EGUSD's motion for sanctions (Docket #40).¹

5 On March 11, 2009, the court granted EGUSD's motion to
6 dismiss plaintiffs' complaint, but granted plaintiffs leave to
7 amend in certain, specific respects. (Docket #17.) Thereafter,
8 on March 31, 2009, plaintiffs filed their first amended
9 complaint. (Docket #18.) EGUSD moved to dismiss, arguing
10 plaintiffs failed to comply with the court's March 11 Order by
11 not removing dismissed claims for relief, exceeding the scope of
12 the court's order permitting leave to amend in only certain
13 defined respects, and otherwise asserting legally uncognizable
14 claims against the district. (Docket #19.) Plaintiffs opposed
15 EGUSD's motion but also filed a separate motion seeking leave to
16 file a second amended complaint (1) to correct certain
17 deficiencies identified by EGUSD and (2) to name additional
18 County-related defendants, who plaintiffs recently identified as
19 a result of defendant County of Sacramento's production of a
20 crime report of the subject incident. (Docket #30.) After
21 providing plaintiffs' counsel with an opportunity to correct the
22 claimed deficiencies in the first amended complaint, pursuant to
23 the safe-harbor provisions of Rule 11, EGUSD moved for sanctions
24 against plaintiffs in the amount of \$1,885.50, representing the
25 attorneys' fees and costs incurred by the district in filing the

26
27 ¹ Because oral argument will not be of material
28 assistance, the court orders these matters submitted on the
briefs. E.D. Cal. L.R. 78-230(h).

1 motion for sanctions and in opposing plaintiffs' motion for leave
2 to amend. (Docket #37-3.) EGUSD argues Rule 11 sanctions are
3 warranted based on plaintiffs' failure to comply with the court's
4 March 11 Order and for plaintiffs' continued assertion of
5 baseless claims against the district. (Docket #37-2.)
6 Plaintiffs did not respond to the motion for sanctions, and thus,
7 the court issued an OSC on September 21, 2009.

8 Plaintiffs responded to the OSC on October 16, 2009, stating
9 that they had "no legal opposition" to the motion for sanctions
10 but asking the court to not impose sanctions on plaintiffs
11 personally since it was "the fault of plaintiff's counsel . . .
12 who at plaintiffs' direction was to file a dismissal of [EGUSD]
13 from this action prior to [the district] filing [the motion for
14 sanctions]." (Docket #42.) On October 21, 2009, plaintiffs
15 filed a request for voluntary dismissal of EGUSD from this
16 action, in its entirety. (Docket #44); Fed. R. Civ. P. 41(a).

17 That dismissal moots EGUSD's motion to dismiss the first
18 amended complaint; therefore, EGUSD's motion is hereby DENIED as
19 MOOT (Docket #19). EGUSD is dismissed from this action.

20 Plaintiffs' motion to amend is also DENIED as MOOT to the
21 extent it raised issues pertaining to EGUSD; however, the court
22 GRANTS plaintiffs' motion to the extent it pertains to the
23 remaining County defendants.² (Docket #30.) Said defendants
24 filed a statement of non-opposition to the motion. (Docket #34.)

25
26 ² Said defendants are County of Sacramento (erroneously
27 sued as Sacramento County and Sacramento County Sherriff's
28 Department), John McGinness, Daniel Zuniga, Adrian Zuniga, Deputy
Dexter Powe, Deputy Michael Heller (erroneously sued as
"Mueller") and Deputy Schannep (erroneously sued as "Schanap").

1 Therefore, plaintiffs shall file and serve their second amended
2 complaint, asserting claims against the County defendants within
3 20 days of the date of this order. County defendants shall have
4 30 days thereafter to file a response thereto.

5 With respect to EGUSD's motion for Rule 11 sanctions (Docket
6 #37), the court GRANTS the district's motion based on plaintiffs'
7 statement of non-opposition thereto. (Docket #42.) Considering
8 plaintiffs' counsel's request, the court will not impose
9 sanctions personally on plaintiffs but instead directs
10 plaintiffs' counsel, at his sole expense, to pay the requested
11 attorneys' fees and costs of \$1,885.50. Plaintiffs' counsel
12 shall make said payment to EGUSD's counsel within 30 days of the
13 date of this order. Having provided no justification for failing
14 to timely respond to the motion for sanctions, the court also
15 sanctions plaintiffs' counsel \$150.00 pursuant to the OSC (Docket
16 #40). Said amount shall be paid to the court within 30 days of
17 the date of this order.

18 IT IS SO ORDERED.

19 DATED: October 22, 2009



FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE