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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DANIEL ACEDO,

Plaintiff,

v.

COUNTY OF SAN DIEGO; PAUL
RICHARDS; CARLOS OLMEDA;
CAROLYN COLVIN; CALIFORNIA
DEPARTMENT OF VITAL
STATISTICS; CALIFORNIA
DIRECTOR OF SOCIAL SERVICES;
DIRECTOR OF THE CALIFORNIA
DEPARTMENT OF CHILD SUPPORT
SERVICES; and BOARD OF THE
COUNTY OF SAN DIEGO,

Defendants.

Case No.: 17-CV-2592 JLS (JLB)

**ORDER DENYING MOTION TO
REMAND**

(ECF No. 93)

Presently before the Court is Plaintiff Daniel Acedo’s Motion to Reinstate and Remand to State Court (“Mot.,” ECF No. 93). Plaintiff seeks to have this case remanded to state court three years after it was removed by Defendants based on federal question jurisdiction. (“Notice of Removal” at 4, ECF No. 1.) Since removal, this Court has dismissed Plaintiff’s First Amended Complaint, and Plaintiff filed a Notice of Appeal. (*See* ///

1 ECF No. 83; “Notice of Appeal,” ECF No. 87.) For the following reasons, the Court
2 **DENIES** Plaintiff’s Motion.

3 **BACKGROUND**

4 Plaintiff Daniel Acedo, proceeding pro se, is currently an inmate at California Men’s
5 Colony. *See generally* First Amended Complaint (“FAC”), ECF No. 40. In his FAC,
6 Plaintiff asserted seven causes of action against Defendants Paul Richards, Carolyn Colvin,
7 the California Department of Vital Statistics,¹ the California Director of Social Services,
8 the California Director of the California Department of Child Support Services, and the
9 Board of the County of San Diego. *See generally* FAC.

10 On March 13, 2020, Defendants California Director of the California Department of
11 Child Support Services and California Department of Public Health Statistics requested the
12 Court screen the FAC under 28 U.S.C. § 1915A. *See* ECF No. 80 at 1–2. The Court
13 screened Plaintiff’s FAC and found it had no mandamus jurisdiction over Plaintiff’s single
14 federal claim; accordingly, the Court found it had no discretion to retain supplemental
15 jurisdiction over Plaintiff’s remaining state law claims. ECF No. 83 at 6–7. The Court
16 dismissed Plaintiff’s FAC in its entirety and, finding amendment would be futile, denied
17 leave to amend. *Id.* at 7–8. Plaintiff filed petition for writ of mandamus to the Ninth
18 Circuit, and the notice of appeal was deemed filed on July 16, 2020. *See generally* Notice
19 of Appeal.

20 The Court accepted the present Motion to Reinstate and Remand to State Court *nunc*
21 *pro tunc* to November 2, 2020. *See generally* Mot.

22 **LEGAL STANDARD**

23 “[T]he filing of a notice of appeal generally divests the trial court of jurisdiction.”
24 *In re Silberkraus*, 336 F.3d 864, 869 (9th Cir. 2003). The notice of appeal is “an event of
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27 ¹ The named Defendant, the California Director of California Vital Statistics, does not exist. Instead,
28 relevant records are preserved by the California Department of Public Health Statistics and Informatics.
See ECF No. 80 at 2 n.1.

1 jurisdictional significance” that “confers jurisdiction on the court of appeals and divests
 2 the district court of its control over those aspects of the case involved in the appeal.” *Griggs*
 3 *v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (citing *United States v. Hitchmon*,
 4 587 F.2d 1357 (5th Cir. 1979)). This judge-made rule “promote[s] judicial economy and
 5 avoid[s] the confusion that would ensue from having the same issues before two courts
 6 simultaneously.” *Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166 (9th
 7 Cir. 2001) (citing *Masalosalo v. Stonewall Ins. Co.*, 718 F.2d 955, 956 (9th Cir. 1983); 20
 8 James Wm. Moore, Moore’s Federal Practice, § 303.32[1] (3d ed. 2000)). Any action
 9 taken by the district court during the pendency of an appeal “may not materially alter the
 10 status of the case on appeal.” *Id.* (citing Allan Ides, The Authority of a Federal District
 11 Court to Proceed After a Notice of Appeal Has Been Filed, 143 F.R.D. 307, 322 (1992)).

12 ANALYSIS

13 In the present Motion seeking remand, Plaintiff argues that “[t]he legal malpractice
 14 claim could not have been dismiss[ed] and the Court by clear error and an erroneous view
 15 of the law dismissed rather than remand.” Mot at 1.² Plaintiff asserts that “doctrines of
 16 equitable estoppel and tolling apply however the court did not consider such claim as a
 17 matter of law and under the comity its best that the state court review and remand was
 18 proper recourse” *Id.* at 2.

19 Plaintiff appealed the Court’s August 25, 2020 Order where the Court dismissed
 20 Plaintiff’s FAC in its entirety based on jurisdictional grounds. *See* ECF No. 83; Notice of
 21 Appeal. In his Notice of Appeal, Plaintiff states that he “sought [this Court] to invoke
 22 jurisdiction to compel the director of the [Social Services] to process [Plaintiff’s]
 23 application for child survivor benefits.” Notice of Appeal at 6. Plaintiff argues on appeal
 24 that this Court “has a duty to follow the law and such duty includes taking jurisdiction of
 25 the cause of actions” *Id.* at 7.

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 28 ² Pin citations refer to the CM/ECF page numbers electronically stamped at the top of each page.

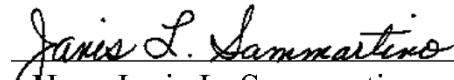
1 Plaintiff's Motion to Remand concerns this Court's jurisdiction over the present
2 action, which is an issue involved in Plaintiff's appeal. Additionally, to grant Plaintiff's
3 requested relief would "materially alter the status of the case on appeal." *Nat. Res. Def.*
4 *Council, Inc.*, 242 F.3d at 1166. This Court's jurisdiction to consider such a request was
5 divested when Plaintiff filed a notice of appeal. *See In re Silberkraus*, 336 F.3d at 869.

6 **CONCLUSION**

7 Accordingly, the Court **DENIES** Plaintiff's Motion to Reinstate and Remand to
8 State Court (ECF No. 93).

9 **IT IS SO ORDERED.**

10 Dated: January 4, 2021

11 
12 Hon. Janis L. Sammartino
13 United States District Judge
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