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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JAMAR EVANS,

CASE NO. CV F 06-1890 AWI LJO

Plaintiff,

**FINDINGS AND RECOMMENDATIONS TO
DISMISS AND REMAND ACTION**

vs.

DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING,

Defendant.

BACKGROUND

On December 27, 2006, pro se plaintiff Jamar Evans (“plaintiff”) filed his notice to remove to this Court his Fresno County Superior Court action, entitled *Jamar Evans v. Department of Fair Employment & Housing*, Case No. 05 CE CG 01873 MWS (“state action”). Like here, plaintiff is the plaintiff in the state action and similarly names the California Department of Fair Employment & Housing (“DFEH”) as defendant. Plaintiff appears to seek removal to this Court after unfavorable rulings by the Fresno County Superior Court and California Court of Appeal, Fifth District.

DISCUSSION

A plaintiff may not remove a state action to federal court in that the right to remove is vested exclusively in “the defendant or the defendants.” 28 U.S.C. § 1441(a). A plaintiff who has chosen to commence an action in state court cannot later remove to federal court. *Southland Corp. v. Etridge*, 456 F.Supp. 1296, 1300 (C.D. Cal. 1978).

1 Plaintiff is the plaintiff in the state action and is unable to remove the state action to this Court.
2 Plaintiff appears to seek removal after receiving unfavorable state court rulings. As such, this action
3 should be dismissed from this Court and remanded to the Fresno County Superior Court.

4 **RECOMMENDATION AND ORDER**

5 For the reasons discussed above, this Court RECOMMENDS to DISMISS and to REMAND
6 this action on grounds that plaintiff has wrongly removed the state court action to this Court.

7 These findings and recommendations are submitted to the United States district judge assigned
8 to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 72-304. No later than
9 January 19, 2006, plaintiff may file written objections to these findings and recommendations with the
10 Court and in compliance with this Court’s Local Rule 72-304(b). Such a document should be captioned
11 “Objections to Magistrate Judge’s Findings and Recommendations.” The district court will then review
12 the magistrate judge’s ruling, pursuant to 28 U.S.C. § 636(b)(1)(c)). Plaintiff is admonished that failure
13 to file objections within the specified time may waive the right to appeal the district court’s order.
14 *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

15 IT IS SO ORDERED.

16 **Dated:** January 3, 2007
66h44d

/s/ Lawrence J. O'Neill
UNITED STATES MAGISTRATE JUDGE

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