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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KEVIN ILOFF,

Plaintiff,

v.

C. HERRERA, et al.,

Defendants.

CASE NO. 1:08-cv-01508-AWI-YNP PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT THIS ACTION BE
REMANDED TO FRESNO COUNTY
SUPERIOR COURT

OBJECTIONS DUE WITHIN 30 DAYS

This is a civil action brought by Plaintiff Kevin Iloff, a state prisoner proceeding pro se. This action was removed from Fresno County Superior Court by Defendants on October 7, 2008. (Doc. #1.) On October 29, 2008, Plaintiff filed an opposition against removal of this action from state court. (Doc. #7.) Plaintiff opposes removal because federal jurisdiction is inconvenient for him due to the high caseload possessed by judges in the Eastern District of California.

While the Court finds Plaintiff’s arguments against removal unavailing, review of Plaintiff’s complaint raises serious questions as to this Court’s jurisdiction over Plaintiff’s claims. Defendants contend that removal was proper under 28 U.S.C. § 1441(b) because this Court has original jurisdiction over Plaintiff’s claims under 28 U.S.C. § 1331. (Notice of Removal of Action under 28 U.S.C. § 1441(b) (Federal Question) 2:4-6.) Section 1441(b) provides that “[a]ny civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties.” Section 1331 provides that “[t]he district courts shall have

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1 original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United
2 States.

3 The removal statute is strictly construed against removal and “federal jurisdiction ‘must be
4 rejected if there is any doubt as to the right of removal in the first instance.’” Duncan v. Stuetzle,
5 76 F.3d 1480, 1485 (9th Cir. 1996) (citing Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)).
6 Although Plaintiff did not specifically raise jurisdiction as an issue in his objections, the Court must
7 examine the issue. FW/PBS, Inc. v. City of Dalls, 493 U.S. 215, 231 (1990) (“The federal courts
8 are under an independent obligation to examine their own jurisdiction”); Rains v. Criterion Systems,
9 Inc., 80 F.3d 339, 343 (9th Cir. 1996) (court must consider whether federal jurisdiction exists even
10 if no objection was made to removal and even if both parties stipulate to federal jurisdiction).

11 In the notice of removal, Defendants state that “[t]his is a civil action for Defendants’
12 allegedly discriminatory treatment of Plaintiff and denial of his First Amendment right to practice
13 his religion.” (Notice of Removal 2:3-4.) Plaintiff’s complaint was filed in state court on a state
14 civil claim form. Plaintiff’s form complaint does not contain any statement of facts or any statement
15 of his causes of action. Plaintiff writes on his claim form that he suffered “[d]enial of the ability to
16 practice [his] religion, Civil Rights violation, Discrimination under the color of authority.” (Notice
17 of Removal Ex. A at 4.) Plaintiff’s complaint does not contain any reference to the First Amendment
18 or the U.S. Constitution and there is no reference to any federal statutes.

19 “The presence or absence of federal-question jurisdiction is governed by the well-pleaded
20 complaint rule, which provides that federal jurisdiction exists only when a federal question is
21 presented on the face of the plaintiff’s properly pleaded complaint.” Caterpillar, Inc., v. Williams,
22 482 U.S. 386, 392 (1987) (internal quotations and citations omitted). “The rule makes the plaintiff
23 the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.”
24 Id. Defendant’s contention that this action arises under federal law is not supported by a review of
25 Plaintiff’s complaint. Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1065 (9th Cir. 1979)
26 (existence of federal jurisdiction determined by the complaint at the time of removal). Plaintiff’s
27 complaint makes no reference to any federal causes of action. Plaintiff filed his complaint in state
28 court and clearly opposes litigating his claims in federal court.

1 The Court finds that it lacks subject matter jurisdiction over this action. Accordingly, the
2 Court HEREBY RECOMMENDS that this action be remanded to the Fresno County Superior Court.

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4 IT IS SO ORDERED.

5 **Dated:** April 13, 2010

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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