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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

MICHAEL JAMES,

Plaintiff,

v.

JAMES YATES, et al.,

Defendants

CASE NO. 1:08-cv-01706 DLB PC

ORDER DENYING MOTION TO REMAND

(Doc. 6)

This is a civil action filed by plaintiff Michael A. James (“plaintiff”), a state prisoner proceeding pro. Plaintiff filed a first amended complaint in Fresno County Superior Court on October 8, 2008. This action was removed from the Fresno County Superior Court to this Court by defendant Yates (“defendant”) on November 7, 2008. On December 5, 2008, Plaintiff filed an “objection” to the notice of removal. (Doc. 6). Plaintiff argues that state court is the proper venue for his claim and that the removal should be denied as a matter of justice and expedience. Defendant did not file a response. The Court construes Plaintiff’s “objection” as a motion to remand this action back to state court. The motion is deemed submitted. Local Rule 78-230.

Under 28 U.S.C. § 1441(a), a defendant may remove from state court any action “of which the district courts of the United States have original jurisdiction.” Federal courts “shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Because of the “Congressional purpose to restrict the jurisdiction of the federal

1 courts on removal,” the removal statute is strictly construed against removal.<sup>1</sup> Shamrock Oil & Gas  
2 Corp. v. Sheets, 313 U.S. 100, 108-109, 61 S.Ct. 868, 872 (1941); Duncan v. Stuetzle, 76 F.3d 1480,  
3 1485 (9th Cir. 1996). Federal jurisdiction “must be rejected if there is any doubt as to the right of  
4 removal in the first instance.” Duncan, 76 F.3d at 1485; Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th  
5 Cir. 1992). Courts “must consider whether federal jurisdiction exists, even if no objection is made  
6 to removal, and even if both parties stipulate to federal jurisdiction.” Rains v. Criterion Systems,  
7 Inc., 80 F.3d 339, 342 (9th Cir. 1996) (citations omitted).

8 In his notice of removal, defendant contends that the action appears to state a cause of action  
9 for violation of Plaintiff’s Eighth Amendment rights. (Doc. 1:7-8.) “The presence or absence of  
10 federal-question jurisdiction is governed by the well-pleaded complaint rule, which provides that  
11 federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s  
12 properly pleaded complaint.” Caterpillar, Inc., v. Williams, 482 U.S. 386, 392 (1987) (internal  
13 quotations and citations omitted). “The rule makes the plaintiff the master of the claim; he or she  
14 may avoid federal jurisdiction by exclusive reliance on state law.” Id.

15 Defendant’s contention that this action arises under federal law is supported by a review of  
16 plaintiff’s first amended complaint. Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1065 (9th  
17 Cir. 1979) (existence of federal jurisdiction determined by the complaint at the time of removal).  
18 Although plaintiff claims negligence and intentional tort as the causes of action, Plaintiff proceeds  
19 to argue that defendants are not entitled to qualified immunity because Plaintiff’s Eighth Amendment  
20 rights were violated, and that “[v]iolation of the Eighth Amendment guarantee can never be justified.  
21 It is not a ‘maybe’ or ‘sometime’ proposition”. (See Doc. 1-4, Plaintiff’s First Amended Complaint,  
22 p.13:7-9; p.15:13-15).

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28 <sup>1</sup> “At the core of the federal judicial system is the principle that the federal courts are courts of limited  
jurisdiction.” Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 1979).

1 Plaintiff has not sufficiently argued lack of subject matter jurisdiction or any other defect in  
2 the removal process as grounds for remand. 28 U.S.C. 1447(c). Accordingly, Plaintiff's objection,  
3 construed as a motion to remand, is HEREBY ORDERED DENIED.

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5 IT IS SO ORDERED.

6 **Dated: February 4, 2009**

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE