

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
78 EASTERN DISTRICT OF CALIFORNIA
910 DAVID LEON, CASE NO. 1:08-cv-01950-DLB PC
11 Plaintiff, ORDER REMANDING ACTION TO
12 v. FRESNO COUNTY SUPERIOR COURT
13 JAMES YATES, et al., (Doc. 4)
14 Defendants.
15

16 **Motion to Remand**17 This is a civil action filed by plaintiff David Leon (“plaintiff”), a state prisoner proceeding
18 pro. The action was removed from the Fresno County Superior Court to this Court by defendant
19 Yates (“defendant”) on December 19, 2008. On January 7, 2009, plaintiff filed a motion to remand.
20 (Doc. 4). Defendant filed an opposition on January 9, 2009. (Docs. 4, 5)21 Under 28 U.S.C. § 1441(a), a defendant may remove from state court any action “of which
22 the district courts of the United States have original jurisdiction.” Federal courts “shall have original
23 jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”
24 28 U.S.C. § 1331. Because of the “Congressional purpose to restrict the jurisdiction of the federal
25 courts on removal,” the removal statute is strictly construed against removal.¹ Shamrock Oil & Gas
26 Corp. v. Sheets, 313 U.S. 100, 108-109, 61 S.Ct. 868, 872 (1941); Duncan v. Stuetzle, 76 F.3d 1480,
27 1485 (9th Cir. 1996). Federal jurisdiction “must be rejected if there is any doubt as to the right of

28 ¹ “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 removal in the first instance.” Duncan, 76 F.3d at 1485; Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th
2 Cir. 1992). Courts “must consider whether federal jurisdiction exists, even if no objection is made
3 to removal, and even if both parties stipulate to federal jurisdiction.” Rains v. Criterion Systems,
4 Inc., 80 F.3d 339, 342 (9th Cir. 1996) (citations omitted).

5 In his notice of removal, defendant contends that plaintiff has alleged a denial of adequate
6 medical care, thereby constituting a violation of Plaintiff’s Eighth Amendment and state law rights.
7 (Doc. 1, p.2:3-4.) “The presence or absence of federal-question jurisdiction is governed by the well-
8 pleaded complaint rule, which provides that federal jurisdiction exists only when a federal question
9 is presented on the face of the plaintiff’s properly pleaded complaint.” Caterpillar, Inc., v. Williams,
10 482 U.S. 386, 392 (1987) (internal quotations and citations omitted). “The rule makes the plaintiff
11 the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.”
12 Id.

13 Defendant’s contention that this action arises under federal law is not supported by a review
14 of plaintiff’s complaint. Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1065 (9th Cir. 1979)
15 (existence of federal jurisdiction determined by the complaint at the time of removal). In his
16 amended complaint, plaintiff requests that the Court exercise its pendent or supplemental jurisdiction
17 that arises over the federal jurisdiction or law, statute or constitution. (Doc. 1-3, Exh.A). However,
18 plaintiff lists negligence and premises liability as the causes of action, and the court does not find
19 any federal claims upon which this court has subject matter jurisdiction. Although plaintiff could
20 have brought this action in this Court pursuant to 42 U.S.C. § 1983 and alleged that defendant
21 violated his rights under the United States Constitution, he did not do so. Plaintiff’s decision to file
22 suit in state court utilizing a state civil complaint form alleging state law claims demonstrates that
23 plaintiff exercised his right to rely exclusively on state law. Caterpillar, Inc., 482 U.S. at 392.

24 This Court lacks subject matter jurisdiction over this action and accordingly, this Court
25 hereby recommends that this action be remanded to the Fresno County Superior Court and that the
26 Court’s clerk serve a copy of this order on the Fresno County Superior Court and to serve the parties
27 in the customary manner.

28 These Findings and Recommendations will be submitted to the United States District Judge

1 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fifteen (15)**
2 **days** after being served with these Findings and Recommendations, the parties may file written
3 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
4 Findings and Recommendations.” The parties are advised that failure to file objections within the
5 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d
6 1153 (9th Cir. 1991).

7 **Plaintiff’s Request for Sanctions, Costs and Fees**

8 Plaintiff has also requested an investigation to determine whether defense counsel has acted
9 in violation of Rule 11(b)(1) for removing this action. Plaintiff has also requested costs and attorney
10 fees.

11 The Court does not find that sanctions or costs are warranted against defendant nor his
12 counsel in this case. The confusion over federal jurisdiction arises from plaintiff’s wording in his
13 amended complaint. Further, plaintiff’s request for attorney’s fees is without merit. Plaintiff is
14 representing himself in this action. Because plaintiff is not represented by an attorney, he is not
15 entitled to recover attorney’s fees if he prevails. Gonzales v. Kangas, 814 F.2d 1411, 1412 (9th Cir.
16 1987).

17 Based on the foregoing, plaintiff’s request for sanctions, costs and attorneys fees are
18 HEREBY DENIED.

19
20 IT IS SO ORDERED.

21 Dated: February 4, 2009

22 /s/ Dennis L. Beck
23 UNITED STATES MAGISTRATE JUDGE
24
25
26
27
28