

1 states that he never referred to Section 1983, that Defendants' filings were untimely, that
2 phrases or words should not, in and of themselves, make an action into a federal civil rights
3 suit, among other things.

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5 As the Magistrate Judge explained in the Findings and Recommendation, Plaintiff's
6 Complaint alleges that Defendants violated the Fifth and Fourteenth Amendments and
7 several federal statutes. Plaintiff states that these claims can be dealt with in the state
8 court and are also contained in the state constitution, which is true. However, the claims
9 can also be dealt with in federal court because they are federal questions, which makes
10 removal proper.

11
12 Plaintiff requests that this Court issue a certificate of appealability and grant him the
13 opportunity to amend his complaint. It appears that Plaintiff may be requesting permission
14 to file an interlocutory appeal. See 28 U.S.C. § 1292(b). To warrant an interlocutory
15 appeal, Plaintiff must demonstrate that (1) there is a controlling question of law, (2) that
16 there are substantial grounds for difference of opinion, and (3) that an immediate appeal
17 may materially advance the ultimate termination of the litigation. In re Cement Antitrust
18 Litigation, 673 F.2d 1020, 1026 (9th Cir. 1982). Plaintiff has not demonstrated any of the
19 requirements and the Court fails to find that the order at issue in this action involves a
20 controlling question of law to which there is a substantial ground for a difference of opinion.
21 Therefore, the request to file an interlocutory appeal is DENIED.

22
23 As to Plaintiff's request to amend, the Court notes that it is required to screen
24 complaints brought by prisoners seeking relief against a governmental entity or officer or
25 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court has not yet
26 screened Plaintiff's Complaint. Once the Court has screened the complaint, he *may* be
27

1 given the chance to amend. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir.1987) (pro
2 se litigant must be given leave to amend his or her complaint unless it is absolutely clear
3 that the deficiencies of the complaint could not be cured by amendment). Thus, at this
4 time, Plaintiff's request to amend his complaint is DENIED.

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6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(c) and Local Rule 305,
7 this Court has conducted a de novo review of this case. Having carefully reviewed the
8 entire file, the Court finds the Findings and Recommendation to be supported by the record
9 and by proper analysis. Thus, the Motion to Remand the Action to State Court is DENIED.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The Findings and Recommendation, filed August 29, 2011, is adopted in full;
- 12 2. Plaintiff's request for permission to file an interlocutory appeal is DENIED;
- 13 and
- 14 3. Plaintiff's request to amend his complaint is DENIED.IT IS SO ORDERED.

15 **Dated:** September 20, 2011

16 /s/ Lawrence J. O'Neill
17 UNITED STATES DISTRICT JUDGE