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

JASON EARL JONES,

Plaintiff,

vs.

WILLIAM ADAMS, et al.,

Defendants.

CASE No. 1:12-cv-01432-LJO-MJS (PC)

FINDINGS AND RECOMMENDATIONS  
DENYING WITHOUT PREJUDICE  
PLAINTIFF'S MOTION FOR REMAND  
AND DENYING PLAINTIFF'S MOTION  
FOR SANCTIONS

(ECF Nos. 5, 8)

FOURTEEN (14) DAY DEADLINE

**I. PROCEDURAL HISTORY**

Plaintiff Jason Earl Jones is a state prisoner proceeding pro se in this action originally filed on November 3, 2011 in Kern County Superior Court.<sup>1</sup> (ECF No. 1, Ex. A.) All Defendants except Defendant Adams have been served. (ECF No. 1 at 2.) Defendants Borrero, Gricewich, Phillips, Tarnoff, Wilson and State of California ("Defendants") removed this action from state court based upon federal question jurisdiction on August 27, 2012. (Id.) Plaintiff declined Magistrate Judge jurisdiction.

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<sup>1</sup> Jason Earl Jones v. State of California, et al., Kern County Superior Court Case No. S-1500-cv-275419-SPC.

1 (ECF No. 4.)

2 Plaintiff filed a motion for remand on September 17, 2012. (ECF No. 5.)

3 Defendants filed a statement of non-opposition to Plaintiff's motion for remand on  
4 September 21, 2012.<sup>2</sup> (ECF No. 7.) Plaintiff filed a motion for sanctions on September  
5 26, 2012 pursuant to Fed. R. Civ. P 11(b) for Defendants' improper removal. (ECF No.  
6 8.) Defendants filed opposition to the motion for sanctions on October 3, 2012. (ECF  
7 No. 9.) The motions for remand and for sanctions are now before the Court.

8 **II. SUMMARY OF COMPLAINT**

9 Plaintiff's Complaint alleges causes of action arising at Kern Valley State Prison  
10 ("KVSP") for civil rights and state law violations including denial of access to court, due  
11 process, equal protection, imposition of cruel and unusual punishment, retaliation for  
12 exercise of constitutional rights, deliberate indifference to medical needs and prison  
13 conditions, interference with prison mail, transgressions relating to rules violations,  
14 prison programming, prison records, libel, general negligence and medical negligence.  
15 (Notice of Removal, Ex. A. at 7, 9-28.)

16 Named as Defendants are corrections and medical staffers at KVSP, the  
17 California Department of Corrections and Rehabilitation ("CDCR") and the State of  
18 California. (Id. at 3-28.)

19 Plaintiff seeks monetary, declaratory and injunctive relief. (Id. at 3.)

20 **III. ARGUMENT**

21 **A. Remand**

22 Plaintiff argues removal was defective in that this action does not arise under §  
23 1983. The alleged civil rights violations, according to Plaintiff are incidental to state law  
24 causes of action and arise under the California Constitution rather than the U.S.

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26 <sup>2</sup> Defendants condition their non-opposition on "the understanding that [Plaintiff] is abandoning  
27 any federal claims that he may have asserted and he is limiting his lawsuit to state law claims upon  
remand." Statement of Non-Opposition at 2:1-3.

1 Constitution, such that there is no federal question jurisdiction. Defendants are  
2 “racketeers” and any action against them would be brought under 18 U.S.C. § 1964, a  
3 statute not alleged in the Complaint.<sup>3</sup>

4 Defendants argue Plaintiff’s Complaint sets forth federal claims such that  
5 removal was proper under 28 U.S.C. 1441(a) based upon alleged 42 U.S.C. § 1983  
6 violations of the First, Eighth, and Fourteenth Amendments of the U.S. Constitution.

7 **B. Sanctions**

8 Plaintiff claims Defendants’ removal of this action was frivolous, was based upon  
9 intentional misstatements and was for the purpose of delay such that Rule 11(b)  
10 sanctions are appropriate.

11 Defendants contend Plaintiff’s motion is conclusory, lacks facts suggesting that  
12 removal was unreasonable and thus is insufficient to show an improper and frivolous  
13 filing. G.C. and K.B. Investments, Inc. v. Wilson, 326 F.3d 1096, 1109 (9th Cir. 2003).  
14 They point out that Plaintiff checked the “Civil Rights” box on the first page of his  
15 Complaint; labels his first, second, fifth, sixth, seventh, eighth, and ninth causes of  
16 action as “civil rights” claims; and states that Defendants violated his rights to equal  
17 protection, freedom from cruel and unusual punishment, and retaliated for his exercise  
18 of constitutional rights. These allegations, according to Defendants reasonably  
19 implicate rights under the First, Eighth and Fourteenth Amendments of the U.S.  
20 Constitution that may be litigated under 42 U.S.C. § 1983.

21 **IV. ANALYSIS**

22 **A. Removal to Federal Court was Proper**

23 The Complaint in this case facially supports subject matter jurisdiction in federal  
24 court because Plaintiff alleges violation of his federal constitutional rights. 28 U.S.C. §  
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26 <sup>3</sup> Plaintiff requests judicial notice of Jason Earl Jones v. State of California, et al., E.D. Cal. Case  
27 No. 1:11-cv-02104-AWI-DLB (PC), a prisoner civil rights action awaiting screening of alleging racketeering  
and civil rights claims against non-parties arising at KVSP.

1 1441. A defendant may remove any civil action brought in state court over which the  
2 federal court would have original jurisdiction. 28 U.S.C. § 1441(a). That is, a civil action  
3 that originally could have been brought in federal court may be removed from state to  
4 federal court. A federal court has original jurisdiction “of all civil actions arising under the  
5 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

6 “The presence or absence of federal-question jurisdiction is governed by the  
7 well-pleaded complaint rule, which provides that federal jurisdiction exists only when a  
8 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”  
9 Caterpillar, Inc., v. Williams, 482 U.S. 386, 392 (1987). “The rule makes the plaintiff the  
10 master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on  
11 state law,” id., and existence of federal jurisdiction is determined by the complaint at the  
12 time of removal. Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1065 (9th Cir.  
13 1979).

14 A case arises under federal law when an essential element of the plaintiff’s  
15 cause of action involves a right or immunity created by a federal statute. Lapoint v. Mid-  
16 Atlantic Settlement Services, Inc. 256 F.Supp.2d 1, 3 (D.D.C. 2003) (citing Franchise  
17 Tax Bd. of State of Cal. v. Construction Laborers Vacation Trust for Southern Cal., et  
18 al., 463 U.S. 1, 8-11 (1983)).

19 Here, Plaintiff does not directly allege federal constitutional violations in his  
20 Complaint, but his civil rights causes of action arise under the First, Eighth and  
21 Fourteenth Amendments of the U.S. Constitution. Plaintiff argues that his claims  
22 actually arise under the California Constitution. However, he does not cite sections of  
23 the California Constitution consistent with such claims and he can not in any event bring  
24 viable claims for damages under what should have been the correctly cited sections.  
25 Javor v. Taggart, 98 Cal.App.4th 795, 807 (Cal.App. 2 Dist. 2002) (“It is beyond  
26 question that a plaintiff is not entitled to damages for a violation of the due process  
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1 clause or the equal protection clause of the state Constitution”); see also Giraldo v.  
2 California Dep’t of Corr. and Rehab., 168 Cal.App.4th 231, 253-57 (Cal.Ct. App. 2008)  
3 (citing Katzberg v. Regents of the University of California, 29 Cal.4th 300, 329 (2002))  
4 (there is no private cause of action for damages for violation of the cruel and unusual  
5 punishments clause of the California Constitution at article 1, section 17); id. at 329  
6 (2002) (no implied right to seek damages and no available constitutional tort action for  
7 violation of California Constitution article 1, section 7(a)) (due process); Creighton v.  
8 City of Livingston, 628 F.Supp.2d 1199, 1218-19 (E.D. Cal. 2009) (no constitutional tort  
9 action for damages for violation of California Constitution article 1 section 2(a)) (free  
10 speech).

11       Such claims may be made in federal court pursuant to 42 U.S.C. § 1983. The  
12 federal court has subject matter jurisdiction over such claims even if Plaintiff does not  
13 explicitly cite to the federal statute in his Complaint. “Actions of which the District Courts  
14 have original jurisdiction are not subject to remand irrespective of whether the plaintiff  
15 intended to allege a federal or state claim, if a federal cause of action exists.” Lennard  
16 v. Local 282 Pension Trust Fund, 391 F.Supp. 554, 557 (D.C.N.Y. 1975) (citing Francis  
17 H. Leggett & Co., v. O’Rourke, 237 F.Supp. 561 (S.D.N.Y. 1964)); see also Johnson v.  
18 Jumelle, 359 F.Supp. 361, 363 (D.C.N.Y. 1973) (where case properly removed to  
19 federal court, the jurisdiction of the state court ceased and not even the consent of all  
20 the parties could divest federal jurisdiction and confer state court jurisdiction absent  
21 statutory authority); Hearst Corp. v. Shopping Center Network, Inc., 307 F.Supp. 551,  
22 555-56 (D.C.N.Y. 1969) (plaintiff’s disclaiming any desire or intention to recover on  
23 anything other than a purely state cause of action not sufficient cause for remand).  
24 “Original jurisdiction does not mean exclusive jurisdiction.” Lennard, 391 F.Supp. at  
25 557.

26       Plaintiff’s state law claims do not preclude removal because a federal court may  
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1 exercise supplemental jurisdiction over closely related state law claims. See 28 U.S.C.  
2 § 1367(a); Darnell v. Starks, 258 F.Supp. 31, 32 at n.2 (D.C.Or. 1966).

3 Defendants properly and timely removed the action from state court within 30  
4 days of receiving notice of the filing of this action.<sup>4</sup> 28 U.S.C. § 1446(b). Plaintiff's  
5 motion to remand should be denied.

6 **B. Sanctions are not warranted**

7 Inasmuch as Defendants' removal of this action was reasonable, Defendants of  
8 course should not be sanctioned for such removal.

9 The standard for triggering a sanction under Rule 11 is objective  
10 unreasonableness, Margo v. Weiss, 213 F.3d 55, 65 (2d Cir. 2000), i.e. whether a  
11 reasonable attorney, upon an objectively reasonable inquiry into the facts and law,  
12 would have concluded the position taken was well-founded. Truesdell v. Southern  
13 California Permanente Medical Group, 209 F.R.D. 169, 174 (C.D. Cal. 2002). A court  
14 considering Rule 11 sanctions should consider whether a position taken was frivolous,  
15 legally unreasonable, or without factual foundation, even if not filed in bad faith. Id.

16 Here Plaintiff makes the rather bare assertion that removal was frivolous. The  
17 Court finds the removal proper. Plaintiff has identified no sanctionable activity on the  
18 part of any Defendant. See In re Wal-Mart Employee Litigation, 271 F.Supp.2d 1080,  
19 1085 (E.D. Wis. 2003) (no Rule 11 sanction where removing party had non-frivolous  
20 argument for removal); see also Costantini v. Guardian Life Ins. Co. of America, 859  
21 F.Supp. 89, 91 (S.D.N.Y. 1994) (no Rule 11 sanctions where removal supported by an  
22 underlying factual predicate).

23 Plaintiff's motion for Rule 11(b) sanctions should be denied.

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27 <sup>4</sup> In cases involving multiple defendants, all defendants who have been served must consent to  
removal under 28 U.S.C. § 1441(a). Lapoint, 256 F.Supp.2d at 2.

1 **V. FINDINGS AND RECOMMENDATIONS**

2 Accordingly, the undersigned hereby RECOMMENDS the following:

- 3 1. Plaintiff's motion for remand (ECF No. 5) be DENIED without prejudice,  
4 and  
5 2. Plaintiff's motion for sanctions (ECF No. 8) be DENIED.

6 These Findings and Recommendations are submitted to the United States  
7 District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. §  
8 636(b)(1). Within fourteen (14) days of entry of this order, any party may file written  
9 objections with the court and serve a copy on all parties. Such a document should be  
10 captioned "Objections to Magistrate Judge's Findings and Recommendations." Any  
11 reply to the objections shall be served and filed within ten (10) days after service of the  
12 objections. The parties are advised that failure to file objections within the specified  
13 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d  
14 1153 (9th Cir. 1991).

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18 IT IS SO ORDERED.

19 Dated: October 23, 2012

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE