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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 MICHAEL BIRD,

12 Plaintiff,

13 vs.

14 P. MITCHELL, et al.,

15 Defendants.
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1:15-cv-00641-AWI-GSA-PC

[Madera County Superior Court Case No. MCV069617]

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
REMANDED TO MADERA COUNTY
SUPERIOR COURT
(Doc. 2.)

OBJECTIONS, IF ANY, DUE WITHIN THIRTY
DAYS

18 **I. BACKGROUND**

19 This is a civil action filed by plaintiff Michael Bird ("Plaintiff"), a state prisoner
20 proceeding pro se. This action was initiated by civil Complaint filed by Plaintiff in the Madera
21 County Superior Court on February 13, 2015 (case #MCV069617). On April 23, 2015,
22 defendants Malakkla and Mitchell ("Defendants") removed the case to federal court by filing a
23 Notice of Removal of Action pursuant to 28 U.S.C. § 1441(a). (Doc. 2.)

24 **II. PLAINTIFF'S ALLEGATIONS IN THE COMPLAINT**

25 Plaintiff is presently incarcerated at Corcoran State Prison in Corcoran, California. The
26 events at issue in the Complaint allegedly occurred at Valley State Prison (VSP) in Coalinga,
27 California, when Plaintiff was incarcerated there. Plaintiff names as defendants P. Mitchell
28 (VSP Medical Appeals Coordinator), Dr. Malakkla (Supervisor of VSP Medical Appeals),

1 California Correctional Health Care Services, and the California Department of Corrections and
2 Rehabilitation. Plaintiff's factual allegations follow, in their entirety:

3 "On June 02, 2014, Plaintiff filed a Health Care Appeal Staff
4 complaint at Valley State Prison. Plaintiff received no Log
5 number nor was it processed (*sic*) by Health Care Appeals. On
6 July 02, 2014, Plaintiff refiled the Staff complaint with Valley
7 State Prison's Health Care Appeals, and was Logged (*sic*) on July
8 17, 2014 LOG No. VSP HC 14002749. On September 11, 2014,
9 Plaintiff filed Health Care Appeal Log No. VSP HC 14002962
about the delay in Appeal Log No. VSP HC 14002749. Plaintiff
did not receive a response (*sic*) from the Second Level till
November 26, 2014, well past the deadline given in the
California Code of Regulations." (Complaint, Doc. 2 at 6-7
¶¶V.9-12.)

10 III. REMOVAL AND REMAND

11 Under 28 U.S.C. § 1441(a), a defendant may remove from state court any action "of
12 which the district courts of the United States have original jurisdiction." 28 U.S.C. § 1441(a).
13 Federal courts "shall have original jurisdiction of all civil actions arising under the Constitution,
14 laws, or treaties of the United States." 28 U.S.C. § 1331. Removal of an action under 28
15 U.S.C. § 1441(b) depends solely on the nature of the plaintiff's complaint, and is properly
16 removed only if "a right or immunity created by the Constitution or laws of the United States
17 [constitutes] an element, and an essential one, of the plaintiff's cause of action." Gully v. First
18 National Bank in Meridian, 299 U.S. 109, 112 (1936). The plaintiff is the master of his or her
19 own complaint and is free to ignore the federal cause of action and rest the claim solely on a
20 state cause of action. Hunter v. Philip Morris USA, 582 F.3d 1039, 1042 (9th Cir. 2009)
21 (quotations and citation omitted).

22 Because of the "Congressional purpose to restrict the jurisdiction of the federal courts
23 on removal," the removal statute is strictly construed against removal.¹ Shamrock Oil & Gas
24 Corp. v. Sheets, 313 U.S. 100, 108-109 (1941); Moore-Thomas v. Alaska Airlines, Inc., 553
25 F.3d 1241, 1244 (9th Cir. 2009). Federal jurisdiction "must be rejected if there is any doubt as
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27 ¹ "At the core of the federal judicial system is the principle that the federal courts are courts of limited
28 jurisdiction." Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 1979).

1 to the right of removal in the first instance.” Id.; 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
3 made to removal, and even if both parties stipulate to federal jurisdiction.” Rains v. Criterion
4 Systems, Inc., 80 F.3d 339, 342 (9th Cir. 1996) (citations omitted).

5 ***Well-Pleaded Complaint***

6 “The presence or absence of federal-question jurisdiction is governed by the well-
7 pleaded complaint rule, which provides that federal jurisdiction exists only when a federal
8 question is presented on the face of the plaintiff’s properly pleaded complaint.” Caterpillar,
9 Inc., v. Williams, 482 U.S. 386, 392 (1987) (internal quotations and citations omitted). “The
10 rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by
11 exclusive reliance on state law.” Id.

12 **IV. DISCUSSION**

13 Defendants state that the Complaint for this action alleges “at page 5 of 6 that there was
14 a denial of ‘equal protection of the law’ and at ¶ 15 a violation of the ‘rights to access to the
15 courts,’” conferring original jurisdiction on the district court pursuant to 28 U.S.C. § 1331.
16 (Notice of Removal, Doc. 2 ¶3.)

17 As stated above, removal of an action under 28 U.S.C. § 1441(b) depends solely on the
18 nature of the plaintiff’s complaint. Gully, 299 U.S. at 112. The court has thoroughly reviewed
19 Plaintiff’s Complaint and finds no reference to the United States Constitution, treaties, or any
20 federal law. Plaintiff has titled his Complaint a “Complaint Against Violations of California
21 Codes of Regulations, Title 15, Division 3.” (Doc. 2 at 4.) Nowhere in the Complaint does
22 Plaintiff specifically refer to the federal Constitution or any of its Amendments, 42 U.S.C. §
23 1983, federal civil rights, or any other federal law in support of his claims. Plaintiff does refer
24 to his “Constitutional Right of Access to the Court,” “due process,” and “equal protection of
25 the Law,” which are rights protected by the United States Constitution. (Complaint, Doc. 2 at
26 5:3, 7:17, 8:16.) However, California’s Constitution also contains protections of these same
27 rights. Cal. Const. art. 1 §7(a) (A person may not be deprived of life, liberty, or property
28 without due process of law or denied equal protection of the laws); Baba v. Bd. Of Sup’rs of

1 City and Cnty of San Francisco, 124 Cal. App. 4th 504, 525, 21 Cal. Rptr. 3d 428, 444 (2004)
2 (Access to the courts is a right guaranteed to all persons by article 1, section 3 of the California
3 Constitution.) Plaintiff's use of language reciting some elements of federal claims, without
4 more, is not enough to confer federal jurisdiction. As such, the nature of Plaintiff's Complaint
5 on its face creates doubt as to the right of removal in the first instance. As stated above,
6 Plaintiff is the master of his own complaint and is free to rest his claims solely on state causes
7 of action. See The Fair, 228 U.S. at 25. Based on these facts, the court finds that Plaintiff's
8 Complaint does not present a claim arising under federal law to warrant subject matter
9 jurisdiction, and therefore the instant action does not implicate a federal interest sufficient to
10 sustain removal of the action to federal court.

11 **V. CONCLUSION AND RECOMMENDATIONS**

12 The court finds that the federal court lacks jurisdiction over Plaintiff's Complaint and
13 the action is not removable. Accordingly, IT IS HEREBY RECOMMENDED that:

- 14 1. This action be remanded to the Madera County Superior Court; and
- 15 2. The Clerk be directed to close the case and serve notice of the remand.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty
18 days after being served with these findings and recommendations, any party may file written
19 objections with the court. Such a document should be captioned "Objections to Magistrate
20 Judge's Findings and Recommendations." Any reply to the objections shall be served and filed
21 within ten days after service of the objections. The parties are advised that failure to file
22 objections within the specified time may waive the right to appeal the District Court's order.
23 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 IT IS SO ORDERED.

25 Dated: April 28, 2015

26 /s/ Gary S. Austin
27 UNITED STATES MAGISTRATE JUDGE