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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 GUILLERMO GARCIA,

12 Plaintiff,

13 vs.

14 B. A. LACEY, et al.,

15 Defendants.
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1:15-cv-00774-AWI-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
MOTION FOR REMAND BE DENIED
(Doc. 4.)

OBJECTIONS, IF ANY, DUE WITHIN THIRTY
DAYS

18 **I. BACKGROUND**

19 This is a civil action filed by plaintiff Guillermo Garcia ("Plaintiff"), a state prisoner
20 proceeding pro se. This action was initiated by civil Complaint filed by Plaintiff in the
21 Tuolumne County Superior Court on October 31, 2011 (case #CV57059). On or about April
22 27, 2015, Plaintiff filed an amended complaint.¹ (Doc. 2, Exh. E.) On May 20, 2015,
23 defendants Lacey, Lackner, Baldwin, Koenig, Chavez, Quinn, Wattle, Tennison, and
24 Kavanaugh ("Defendants") removed the case to federal court by filing a Notice of Removal of
25 Action under 28 U.S.C. § 1441. (Doc. 2.) Defendants also filed a request for screening of the
26 complaint by the court. (Id.)
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28 ¹ Defendants state that the amended complaint alleged, for the first time, violations of Plaintiff's
civil rights under the United States Constitution and 42 U.S.C. § 1983. (Doc. 2 ¶3.)

1 On June 8, 2015, Plaintiff filed an opposition to Defendants’ Notice of Removal and
2 Request for Screening. (Doc. 4.) The Court construes Plaintiff’s opposition as a motion to
3 remand this case to the Tuolomne County Superior Court. Defendants have not filed an
4 opposition.

5 **II. REMOVAL AND REMAND**

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

17 Because of the “Congressional purpose to restrict the jurisdiction of the federal courts
18 on removal,” the removal statute is strictly construed against removal.² Shamrock Oil & Gas
19 Corp. v. Sheets, 313 U.S. 100, 108-109 (1941); Moore-Thomas v. Alaska Airlines, Inc., 553
20 F.3d 1241, 1244 (9th Cir. 2009). A plaintiff objecting to the removal may file a motion asking
21 the district court to remand the case to state court. Caterpillar, Inc. v. Lewis, 519 U.S. 61, 69
22 (1996). “The burden of establishing federal jurisdiction falls on the party invoking removal.”
23 Harris v. Provident Life and Accident Ins. Co., 26 F.3d 930, 932 (9th Cir.1994) (quoting Gould
24 v. Mut. Life Ins. Co. of New York, 790 F.2d 769, 771 (9th Cir.1986)). Federal jurisdiction
25 “must be rejected if there is any doubt as to the right of removal in the first instance.” Id.; Gaus
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27 ² “At the core of the federal judicial system is the principle that the federal courts are courts of
28 limited jurisdiction.” Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 1979).

1 v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). Courts “must consider whether federal
2 jurisdiction exists, even if no objection is made to removal, and even if both parties stipulate to
3 federal jurisdiction.” Rains v. Criterion Systems, Inc., 80 F.3d 339, 342 (9th Cir. 1996)
4 (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 **III. PLAINTIFF’S MOTION FOR REMAND**

13 Plaintiff opposes Defendants’ Notice of Removal, arguing that “1. This court has
14 dismissed plaintiff’s request to [a]mend such civil violations under Garcia v. M. Mix 1:10-cv-
15 02097 BAM (PC) [and] 2. This court does not have jurisdiction under 42 U.S.C. § 1983.”
16 (Motion, Doc. 4 at 1.) Plaintiff asserts that this court dismissed his claims for retaliation, cell
17 searches, confiscation of property, harassment, and discrimination, against defendant F.X.
18 Chavez and B. A. Lacey in his prior case no. 1:10-cv-02097. Plaintiff argues that most of his
19 complaint for the present action alleges destruction of his personal property, because the court
20 mentioned in case 1:10-cv-2097 that “Plaintiff has an adequate post-deprivation remedy
21 available under California law.” (Id. at 2:16-17.) Plaintiff also argues that his complaint
22 contains documents relating to state laws that are irrelevant and should be excluded from this
23 court.

24 Plaintiff requests the court to strike certain portions of his complaint which refer to
25 deliberate indifference or cruel and unusual punishment under the United States Constitution,
26 or anything arising under § 1983. Plaintiff argues that the court has the authority to strike
27 improper matters or non-conforming pleadings under California Code of Civil Procedure §§
28 435 & 436. Plaintiff asserts that he seeks to proceed only under California law. Plaintiff also

1 argues that he is entitled to recover punitive damages under California Code of Civil Procedure
2 § 3294.

3 **IV. DISCUSSION**

4 As stated above, removal of an action under 28 U.S.C. § 1441(a) depends solely on the
5 nature of the plaintiff's complaint. Gully, 299 U.S. at 112. This case now proceeds on
6 Plaintiff's amended complaint filed in state court and removed to federal court. The court has
7 thoroughly reviewed Plaintiff's amended complaint and finds claims which Plaintiff has based
8 on violation of the United States Constitution and Plaintiff's right therein to be free of cruel and
9 unusual punishment. (Doc. 2-1 at 107-112 ¶¶242, 247, 252, 254, 259(1)). This is sufficient to
10 confer federal jurisdiction. Plaintiff's arguments that the case should be remanded because this
11 court rejected similar claims in a prior case, or because he is entitled to recover punitive
12 damages in state court, have no merit.

13 Plaintiff does not deny that the amended complaint contains federal claims. In fact,
14 Plaintiff has submitted a list of twenty separate paragraphs taken from the amended complaint
15 which refer to deliberate indifference, cruel and unusual punishment, the United States
16 Constitution, and the Eighth Amendment. (Doc 4 at 9.) Plaintiff requests that the court strike
17 these references to federal law from the amended complaint. However, this court's jurisdiction
18 over the amended complaint depends on the nature of the amended complaint at the time it was
19 removed to federal court. The Ninth Circuit has "long held that post-removal amendments to
20 the pleadings cannot affect whether a case is removable, because the propriety of removal is
21 determined solely on the basis of the pleadings filed in state court." Williams v. Costco
22 Wholesale Corp., 471 F.3d 975, 976 (9th Cir. 2006) (citing see Sparta Surgical Corp. v. Nat'l
23 Ass'n of Sec. Dealers, Inc., 159 F.3d 1209, 1213 (9th Cir. 1998); O'Halloran v. Univ. of Wash.,
24 856 F.2d 1375, 1379 (9th Cir. 1988)). Here, the nature of Plaintiff's amended complaint on its
25 face creates no doubt as to the right of removal in the first instance. The court finds that
26 Plaintiff's amended complaint plainly presents claims arising under federal law to warrant
27 subject matter jurisdiction, and therefore the instant action implicates a federal interest
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1 sufficient to sustain removal of the action to the federal court. Therefore, Plaintiff's motion for
2 remand should be denied.

3 **V. CONCLUSION AND RECOMMENDATIONS**

4 The court finds that federal jurisdiction exists over Plaintiff's complaint, and the action
5 is removable. Accordingly, **IT IS HEREBY RECOMMENDED** that Plaintiff's motion to
6 remand, filed on February 23, 2015, be DENIED.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty
9 days after being served with these findings and recommendations, any party may file written
10 objections with the court. Such a document should be captioned "Objections to Magistrate
11 Judge's Findings and Recommendations." Any reply to the objections shall be served and filed
12 within ten days after service of the objections. The parties are advised that failure to file
13 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
14 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
15 (9th Cir. 1991)).

16
17 IT IS SO ORDERED.

18 Dated: July 19, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE