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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESUS BONILLA CASTANEDA,
Plaintiff,
v.
S. DALEY et al.,
Defendants.

No. 1:15-cv-01863-DAD-SAB

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, REMANDING
ACTION TO THE FRESNO COUNTY
SUPERIOR COURT, AND DIRECTING
CLERK OF COURT TO TERMINATE THIS
ACTION

(Doc. Nos. 11, 22, 23)

Plaintiff Jesus Bonilla Castaneda is appearing *pro se* in this civil rights action. Plaintiff declined to consent to magistrate judge jurisdiction over this action pursuant to 28 U.S.C. § 636(c). (Doc. No 8.) Accordingly, this matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302.

Defendants removed this action to this court from the Fresno County Superior Court on December 11, 2015. (Doc. No. 2.) By order dated February 5, 2016, plaintiff's complaint was screened by the court and dismissed with leave to amend. (Doc. No. 10.) Rather than file an amended complaint, on March 7, 2016, plaintiff filed a motion to remand this case back to state court. (Doc. No. 11.) On May 16, 2016, the assigned magistrate judge issued findings and

1 recommendations, recommending that plaintiff’s motion to remand the action back to the Fresno
2 County Superior Court be granted. (Doc. No. 22.) Those findings and recommendations were
3 served on the parties and contained notice that objections thereto were to be filed within thirty
4 days. Plaintiff filed objections on June 16, 2016. (Doc. No. 23.)

5 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
6 *de novo* review of this case. Having carefully reviewed the entire file, including plaintiff’s
7 objections, the court finds the findings and recommendations to be supported by the record and
8 by proper analysis. In his objections, plaintiff contends that he now wishes to allege a new
9 retaliation claim. (*See* Doc. No. 23) No retaliation claim was raised in the original complaint,
10 indeed plaintiff appears to allege that he had not exhausted his administrative remedies with
11 respect to any such claim at the time this action was filed, and the court’s February 5, 2016
12 screening order granted plaintiff leave to amend his original claims—not to add new claims.
13 (Doc. No. 10 at 4–5.) As noted above, in lieu of amending his complaint, plaintiff filed the
14 pending motion to remand this action back to the state court. (Doc. No. 11.) Indeed, in his
15 motion to remand plaintiff specifically states:

16 [T]he overwhelming majority of the Defendants (sic) action include
17 negligence, assault and battery and false imprisonment (plaintiff
18 was intentionally kept in administrative segregation for three
years)[.] A Federal Court cannot exercise supplemental jurisdiction
unless Constitutional violations are also presented.

19 (*Id.* at 4.)¹

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27 ¹ Plaintiff is advised that he must file a complaint in a separate and new action in this court if he
28 wishes to pursue a new and different claim, including any retaliation claim, not raised in his
original complaint filed in this action.

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Accordingly,

1. The May 16, 2016 findings and recommendations (Doc. No. 22) are adopted in full;
2. The instant action is remanded forthwith to the Fresno County Superior Court for lack of subject matter jurisdiction; and
3. The Clerk of the Court is directed to close this action.

IT IS SO ORDERED.

Dated: September 6, 2016



UNITED STATES DISTRICT JUDGE