

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALBERT HERNANDEZ  
Plaintiff,  
vs.  
TULARE COUNTY CORRECTIONAL  
CENTER, et al.,  
Defendants.

No. 1:16-cv-00413-AWI-EPG  
ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS  
ORDER DENYING MOTION FOR REMAND  
(Doc. Nos. 12, 17)

This is a civil action filed by plaintiff Albert Hernandez (“Plaintiff”), a state prisoner proceeding *pro se*. This action was initiated by civil Complaint filed by Plaintiff in the Tulare County Superior Court on January 11, 2016 (case #264158). On March 25, 2016, defendant Corizon Health Services removed the case to federal court by filing a Notice of Removal of Action under 28 U.S.C. § 1441. Doc. No. 1. On March 23, 2016, defendants Tulare County Correction Center and Sheriff Mike Boudreaux consented to the removal of the case. Doc. Nos. 1, 2, 3.

On May 9, 2016, Plaintiff filed a “Motion to Retain Venue,” which was construed as a motion to remand this case to the Tulare County Superior Court. Doc. No. 12. Plaintiff seeks a remand on the grounds of “Convenience of Witnesses and Promotion of the Ends of Justice CCP §396(b).” *Id.* Plaintiff has submitted a list of five prospective witnesses who reside in Tulare County, asserting that it would be burdensome and inconvenient to the witnesses if this case remains in federal court. *See id.* at p. 7. These witnesses all appear to be inmates within the California Department of Corrections. *See id.*

1           On August 19, 2016, the Magistrate Judge filed a Findings and Recommendation  
2 (“F&R”), in which she recommended that Plaintiff’s motion be denied. Doc. No. 17. The F&R  
3 found that the Complaint alleged claims under 42 U.S.C. § 1983 for violation of federal  
4 constitutional rights. See id. The F&R concluded that, because there was a federal question  
5 present, this Court had subject matter jurisdiction and that remand was improper. See id.

6           On September 8, 2016, Plaintiff filed an objection to the F&R. Doc. No. 19. Plaintiff  
7 reasserts that venue is more appropriate in Tulare County due to the convenience of the witnesses  
8 and the promotion of the ends of justice. See id. Plaintiff also states that the filing of his “motion  
9 to retain venue” in Tulare County was delayed by the Tulare County Superior Court clerk, who  
10 later responded to Plaintiff’s filing by stating that the Superior Court no longer had jurisdiction to  
11 hear the motion. See id. Plaintiff asserts that this violated his due process rights. See id.

12           In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a  
13 *de novo* review of this case.

14           First, to the extent that Plaintiff is contending that subject matter jurisdiction is lacking, he  
15 is incorrect. The Complaint’s second cause of action expressly cites and relies on 42 U.S.C. §  
16 1983 and the Fourth, Eighth, and Fourteenth Amendments of the United States Constitution. See  
17 Doc. No. 1-1. By alleging a claim under § 1983 (a federal statute), a federal question is present  
18 within the Complaint, which means that this Court has federal question jurisdiction. See  
19 Williams v. Ragnone, 147 F.3d 700, 702-03 (8th Cir. 1998).

20           Second, Plaintiff is relying California Code of Civil Procedure § 369(b). That section  
21 reads, “If the superior court lacks jurisdiction of an appeal or petition, and a court of appeal or the  
22 Supreme Court would have jurisdiction, the appeal or petition shall be transferred to the court  
23 having jurisdiction upon terms as to costs or otherwise as may be just, and proceeded with as if  
24 regularly filed in the court having jurisdiction.” Cal. Code Civ. P. § 396(b). This statute has no  
25 application to this case because this case is no longer in the California state court system, and this  
26 Court is not a California superior court. Because this case is now in the federal system, any  
27 possible remand or transfer is governed by federal law. Plaintiff’s citation to and reliance on  
28 California Code of Civil Procedure § 396(b) is improper and unavailing.

1 Third, assuming that Plaintiff is attempting to obtain a remand through the doctrine of  
2 *forum non conveniens* (because he discusses inconvenience to witnesses), he cites no authority  
3 that has applied the doctrine in a situation like this case. Further, Plaintiff's showing of  
4 inconvenience is limited to listing five witnesses, each of whom is a prison inmate. Simply  
5 listing these five names does not demonstrate inconvenience. This is especially true since Tulare  
6 County is within the Fresno Division of the Eastern District of California.

7 Fourth, there is no due process issue from Plaintiff's attempt to file documents in the  
8 Tulare County Superior Court after removal. Once Defendants filed a notice of removal with the  
9 Tulare County Superior Court, the case was removed to this Court and the Tulare County  
10 Superior Court was divested of jurisdiction. See 28 U.S.C. § 1446(d); Resolution Trust Corp. v.  
11 Bayside Developers, 43 F.3d 1230, 1238 (9th Cir. 1994). Additionally, Plaintiff was not harmed  
12 by his erroneous attempt because his motion to remand has been fully considered in this Court.

13 Having carefully reviewed the entire file, the Court finds that Plaintiff's objections are  
14 without merit. Therefore, Plaintiff's objections are overruled.

15  
16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. The August 19, 2016, Findings and Recommendation (Doc. No. 17) is ADOPTED;
- 18 2. Plaintiff's motion for "remand" (Doc. No. 12) is DENIED; and
- 19 3. This matter is referred to the Magistrate Judge for further proceedings.

20  
21 IT IS SO ORDERED.

22 Dated: November 15, 2016

  
23  
24  
25  
26  
27  
28  
\_\_\_\_\_  
SENIOR DISTRICT JUDGE