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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANCISCO SIERRA,

Plaintiff,

v.

M.E. SPEARMAN, et al.,

Defendants.

No. 1:17-cv-01691-DAD-EPG

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN CLAIMS AND DEFENDANTS

(Doc. Nos. 19, 24)

Plaintiff Francisco Sierra is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 4, 2019, the assigned magistrate judge screened plaintiff’s first amended complaint and issued findings and recommendations, recommending that this action proceed on plaintiff’s claim against defendant Thompson for retaliation in violation of the First Amendment, against defendant Castellanos for cruel and unusual punishment in violation of the Eighth Amendment, and that all other claims and defendants be dismissed. (Doc. No. 19.) The findings and recommendations were served on plaintiff and contained notice that any objections were to be filed within twenty-one days after service. (*Id.* at 18.) After seeking and receiving two extensions of time in which to file objections, plaintiff filed objections on June 28, 2019. (Doc.

1 No. 24.) Contained within those objections is a motion for leave to remand those causes of action
2 that the magistrate judge recommended be dismissed.

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
4 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,
5 including plaintiff's objections, the court finds the findings and recommendations to be supported
6 by the record and by proper analysis.

7 The court first addresses plaintiff's objections to the findings and recommendations. The
8 magistrate judge previously screened the original complaint and found that it stated some
9 cognizable claims, but that those claims did not arise out of the same transaction or occurrence
10 and could thus not be brought in the same lawsuit. (*See* Doc. No. 11.) In that screening order, the
11 magistrate judge provided plaintiff with instructions on how to properly construct an amended
12 complaint. Plaintiff did not heed the direction given and, as the magistrate judge has noted in the
13 pending findings and recommendations, "[t]he material factual allegations in the FAC are largely
14 identical to the factual allegations in the [original] Complaint." (Doc. No. 19 at 3.) Thus, the
15 magistrate judge recommended dismissal after finding that plaintiff had failed to correct the
16 deficiencies already identified in the screening order.

17 With respect to whether his claims are related to one another, in his objections plaintiff
18 merely cites to legal authority, and makes no effort to explain how the claims presented in his
19 complaint arise from the same transaction or occurrence. Here, the magistrate judge applied the
20 correct legal standard. The court also agrees with the magistrate judge that many of plaintiff's
21 claims are entirely unrelated to one another. The FAC alleges claims against twenty-three
22 separate defendants who work at three different prisons, with the various incidents alleged in the
23 FAC being several months apart. Accordingly, the undersigned agrees with the magistrate
24 judge's conclusion that plaintiff has failed to allege a connection between the named defendants
25 sufficient to meet the requirements of Federal Rule of Civil Procedure 20(a)(2), because of which
26 certain of his claims must be dismissed.

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1 In addition, although plaintiff has requested “leave to remand all claims against Avalos
2 [and] Wright” (Doc. No. 24 at 1), plaintiff has not offered any argument or authority in support of
3 this request. *See United States v. Graf*, 610 F.3d 1148, 1166 (9th Cir. 2010) (“Arguments made
4 in passing and not supported by citations to the record or to case authority are generally deemed
5 waived.”). Nonetheless, the court will address plaintiff’s request in light of his *pro se* status. As
6 this court and other have previously concluded, federal courts lack the authority to remand a case
7 to state court if it was originally filed in federal court. *See Martinez v. Nestle Dreyer’s Ice Cream*
8 *Co.*, No. 1:18-cv-01582-DAD-JLT, 2019 WL 2918025, at *1 (E.D. Cal. July 8, 2019); *see also*
9 *Bradgate Assocs., Inc. v. Fellows, Read & Assocs., Inc.*, 999 F.2d 745, 751 (3rd Cir. 1993)
10 (reviewing a district court’s order to remand a consolidated case and holding that “the district
11 court should have remanded the removed case to state court and dismissed the case [plaintiff]
12 originally filed in federal court.”); *Ngoc Lam Che v. San Jose/Evergreen Cmty. Coll. Dist.*
13 *Found.*, No. 17-cv-00381-BLF, 2017 WL 2954647, at *3 (N.D. Cal. July 11, 2017) (“As an initial
14 matter, this Court could not remand Che’s state law claim even if it were to dismiss Che’s ADA
15 claim, because this action was originally filed in federal court.”); *Harbord v. Bean*, No. C 17-349
16 RSL, 2017 WL 2081072, at *1 (W.D. Wash. May 15, 2017) (“[T]his Court lacks the authority to
17 remand a case that originated in federal court.”), *aff’d*, No. 17-35498, 2017 WL 6345784 (9th Cir.
18 Oct. 12, 2017); *Fuse v. Ariz. Bd. of Regents*, No. CV 07-2351-PHX-FJM, 2009 WL 837645, at *1
19 (D. Ariz. Mar. 27, 2009) (“[W]e cannot remand plaintiff’s claims to state court because this
20 action was originally filed in federal court.”). Construing plaintiff’s request as a motion to
21 remand, that motion must be denied.

22 For the reasons set forth above,

- 23 1. The findings and recommendations issued on March 4, 2019 (Doc. No. 19) are
24 adopted in full;

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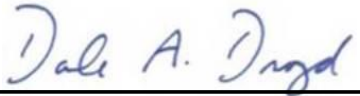
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- 2. This case shall proceed on plaintiff's claims against defendant Thompson for retaliation in violation of the First Amendment and against defendant Castellanos for cruel and unusual punishment in violation of the Eight Amendment; and
- 3. All other claims and defendants are dismissed.

IT IS SO ORDERED.

Dated: October 8, 2019


UNITED STATES DISTRICT JUDGE