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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA
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8 NATHANIEL MARCUS GANN,
9 Plaintiff,
10 v.
11 KOKOR, et al,
12 Defendants.

Case No. 1:18-cv-00084-AWI-BAM (PC)

FINDINGS AND RECOMMENDATIONS
REGARDING PLAINTIFF'S MOTION TO
REMAND

(ECF No. 6)

FOURTEEN (14) DAY DEADLINE

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14 **I. Background**

15 Plaintiff Nathaniel Marcus Gann (“Plaintiff”) is a state prisoner proceeding pro se in this
16 civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action in Kings County
17 Superior Court on August 16, 2017. On January 16, 2018, Defendants Cryer, Enenmoh, Kokor,
18 and Lewis (collectively “Defendants”) removed the action and requested that the Court screen the
19 complaint under 28 U.S.C. § 1915A(a) and that Defendants be allowed thirty days from the
20 screening of the complaint to file a responsive pleading. (ECF No. 2.)

21 On January 25, 2018, Plaintiff filed an objection to the removal. (ECF Nos. 5, 6.)
22 Plaintiff contends that the complaint is first and foremost a state tort claim, and Defendants’
23 removal of this action to federal court is merely a tactic used to prevent Plaintiff from recovering
24 on his state tort claims. Plaintiff also objects to Defendants’ request for screening on the basis
25 that state tort claims are not required to be screened. (*Id.*)

26 The Court construed Plaintiff’s objection to the removal as a motion to remand and
27 directed Defendants to file a response. (ECF No. 7.) Defendants filed a response on January 31,
28 2018, (ECF No. 9), and Plaintiff filed a reply on February 12, 2018, (ECF No. 13). The motion is

1 deemed submitted. Local Rule 230(l).

2 **II. Discussion**

3 Under 28 U.S.C. § 1441(a), a defendant may remove from state court any action “of
4 which the district courts of the United States have original jurisdiction.” District courts “shall
5 have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the
6 United States.” 28 U.S.C. § 1331. The removal statute is strictly construed, and Defendants bear
7 the burden of establishing grounds for removal. Syngenta Crop Protection, Inc. v. Henson, 537
8 U.S. 28, 32 (2002); Provincial Gov’t of Marinduque v. Placer Dome, Inc., 582 F.3d 1083, 1087
9 (9th Cir. 2009). As a threshold matter, courts “must consider whether federal jurisdiction exists,
10 even if no objection is made to removal, and even if both parties stipulate to federal jurisdiction,”
11 Rains v. Criterion Systems, Inc., 80 F.3d 339, 342 (9th Cir. 1996) (citations omitted), and “federal
12 jurisdiction ‘must be rejected if there is any doubt as to the right of removal in the first instance.’”
13 Duncan v. Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996) (quoting Gaus v. Miles, Inc., 980 F.2d
14 564, 566 (9th Cir. 1992)).

15 “The presence or absence of federal-question jurisdiction is governed by the well-pleaded
16 complaint rule, which provides that federal jurisdiction exists only when a federal question is
17 presented on the face of the plaintiff’s properly pleaded complaint.” Caterpillar, Inc., v. Williams,
18 482 U.S. 386, 392 (1987) (internal quotations and citations omitted). “The rule makes the
19 plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on
20 state law.” Caterpillar, Inc., 482 U.S. at 392.

21 In this instance, the portion of Plaintiff’s complaint attached to the notice of removal
22 specifically alleges a claim for cruel and unusual punishment, and violations of the Eighth
23 Amendment.¹ (ECF No. 2, pp. 19, 22.) Plaintiff further concedes in his motion to remand that
24 the rights violated by Defendants, though “primarily a state tort issue,” also “overlap with several
25 federal constitutional rights.” (ECF No. 6, p. 2.) Therefore, the Court has subject matter
26 jurisdiction over this action.

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¹ The Court notes for the parties that there appear to be several pages missing from the attached copy of the
complaint. (See ECF No. 2, pp. 21–22.)

1 Plaintiff also objects to Defendants' request for screening of the complaint pursuant to 28
2 U.S.C. § 1915A. Plaintiff argues that none of the defendants are "officers" or government
3 entities, and therefore his claims should not be subject to screening, regardless of the source of
4 employment of the defendants. (ECF No. 13, p. 2.) Plaintiff's objection is unavailing. Pursuant
5 to 28 U.S.C. § 1915A(a), the Court is required to screen complaints in which a prisoner seeks
6 redress from "a governmental entity or officer or employee of a governmental entity." As
7 employees of CDCR, defendants are entitled to screening of Plaintiff's complaint.

8 Plaintiff's further objections regarding Defendants' removal of this action in order to
9 prevent the advancement of Plaintiff's state law claims are unpersuasive. If, after screening the
10 complaint, the Court finds that Plaintiff has stated a cognizable claim under federal law, the Court
11 may exercise supplemental jurisdiction over Plaintiff's state law claims that form part of the same
12 case or controversy. 28 U.S.C. § 1337(a).

13 **III. Conclusion and Recommendation**

14 Plaintiff has not demonstrated that he is entitled to remand. Accordingly, it is HEREBY
15 RECOMMENDED that Plaintiff's motion to remand, (ECF No. 6), be DENIED.

16 These Findings and Recommendation will be 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 **fourteen**
18 (**14** days after being served with these Findings and Recommendation, the parties may file
19 written objections with the court. The document should be captioned "Objections to Magistrate
20 Judge's Findings and Recommendation." The parties are advised that failure to file objections
21 within the specified time may result in the waiver of the "right to challenge the magistrate's
22 factual findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing
23 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

24 IT IS SO ORDERED.
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26 Dated: February 16, 2018

27 /s/ *Barbara A. McAuliffe*
28 UNITED STATES MAGISTRATE JUDGE