

1 Plaintiff chose to file this action in state court. As the plaintiff, he has no right to remove
2 the same action to federal court. *In re Walker*, 375 F.2d 678, 678 (9th Cir. 1967) (“No right
3 exists in favor of a person who, as plaintiff, has filed an action in the state court, to cause the
4 removal of such action to a federal court.”); *Am. Int’l Underwriters (Phil.), Inc. v. Cont’l Ins. Co.*,
5 843 F.2d 1253, 1260 (9th Cir. 1988) (“The right to remove a state court case to federal court is
6 clearly limited to defendants.”).

7 As the removal was improper, remand of this action to the state court is required. *See*
8 *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (where subject matter
9 jurisdiction is lacking, district court required to remand action to state court).

10 Accordingly, the Clerk of the Court is HEREBY DIRECTED to randomly assign a
11 District Judge to this action.

12 Furthermore, it is HEREBY RECOMMENDED that this action be REMANDED to the
13 Court of Appeal of the State of California, Fifth Appellate District, Case No. F085571 (Tuolumne
14 County Superior Court, Case No. CV63312).

15 These Findings and Recommendation will be submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
17 **(14) days** after being served with these Findings and Recommendation, the parties may file
18 written objections with the court. The document should be captioned “Objections to Magistrate
19 Judge’s Findings and Recommendation.” The parties are advised that failure to file objections
20 within the specified time may result in the waiver of the “right to challenge the magistrate’s
21 factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing
22 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23
24 IT IS SO ORDERED.

25 Dated: June 2, 2023

26 /s/ Barbara A. McAuliffe
27 UNITED STATES MAGISTRATE JUDGE
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