

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TERRYLYN MCCAIN,

Plaintiff,

No. 2:09-cv-3418 GEB JFM PS

vs.

SAN JOAQUIN COUNTY
SUPERIOR COURT,

Defendant.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff has filed a notice of removal of a state criminal prosecution. Pursuant to 28 U.S.C. § 1446(c)(3), where the notice of removal demonstrates that removal should not be permitted, the court shall make an order for summary remand. It appears from the notice of removal and the exhibits attached thereto that defendant is a private citizen. Although certain defendants in state criminal prosecutions are entitled to remove the action to federal court, defendant is not a person so authorized pursuant to 28 U.S.C. § 1442 *et seq.*

Accordingly, IT IS HEREBY RECOMMENDED that the above-entitled action be summarily remanded to the San Joaquin County Superior Court.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned “Objections to Magistrate Judge’s

1 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
2 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
3 F.2d 1153 (9th Cir. 1991).

4 DATED: December 22, 2009.

5
6 
7 UNITED STATES MAGISTRATE JUDGE

8 /001;mccain.remd

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26