UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

IMHOTEP SALAT,

Plaintiff,

v.

COUNTY OF SACRAMENTO, et al.,

Defendants.

No. 2:15-cv-00890-MCE-AC

ORDER AND FINDINGS & RECOMMENDATIONS

Plaintiff Imhotep Salat commenced an action for violation of 42 U.S.C. § 1983 in the Clark County Superior Court of Nevada on March 31, 2015. ECF No. 1-1 at 2–8. Defendants removed this action on April 24, 2015, based on federal question jurisdiction. ECF No. 1.

Courts "strictly construe the removal statute against removal jurisdiction," and "the defendant always has the burden of establishing that removal is proper." Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). Furthermore, "jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." Id. A removable action can only be removed to "the district court of the United States for the district and division within which such action is pending." 28 U.S.C. § 1446(a). Defendants quote § 1446(a) in their notice of removal and conveniently omit the foregoing quote, making it seem as though removal to this court is proper. ECF No. 1 at 2. Plaintiff's complaint was not pending in a state court within the Eastern District of California and accordingly, removal to this court was improper.

Based on the foregoing, IT IS HEREBY RECOMMENDED that this action be remanded to the Clark County Superior Court of Nevada.

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)(l). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any response to the objections shall be filed with the court and served on all parties within fourteen days after service of the objections. Local Rule 304(d). Failure to file objections within the specified time may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156–57 (9th Cir. 1991).

In addition, THE COURT HEREBY ORDERS that the June 17, 2015, hearing scheduled for defendants' motion to dismiss, ECF No. 7, is VACATED.

DATED: May 13, 2015

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE