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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LIONEL TATE, SR.,
Plaintiff,
v.
L. CHAVEZ, et al.,
Defendants.

No. 2:16-cv-2336 CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

On September 29, 2016, defendants Chavez, Myers and the California Department of Corrections and Rehabilitation removed this action pursuant to 28 U.S.C. § 1441 from the Superior Court of Solano County. Defendants’ asserted basis for removal is that plaintiff asserts claims arising under federal law. See id. & § 1331.

Plaintiff objects to removal. Essentially, plaintiff asserts it was not his intent to assert a claim arising under Federal law in his August 18, 2016 amended complaint (ECF No. 1-6).

In the amended complaint, plaintiff does not identify a specific cause of action arising under federal law. He does, within the context of the claims identified, assert his right to equal protection of the laws was violated, suggesting a violation of the Fourteenth Amendment. He also asserts that he was retaliated against for filing inmate grievances, suggesting a violation of the First Amendment. In his objections to removal, however, plaintiff asserts he used terms “equal protection” and “retaliation” in reference to acts prohibited under the California

1 Constitution, not the United States Constitution.

2 In light of the foregoing, the court will recommend that this action be remanded to the
3 Superior Court of Solano County due to lack of subject matter jurisdiction. Even if the court
4 construed plaintiff's amended complaint liberally¹ to state a claim for relief under federal law,
5 plaintiff has essentially requested that such claims be dismissed.

6 Accordingly, IT IS HEREBY ORDERED that a district court judge be assigned to this
7 case.

8 IT IS HEREBY RECOMMENDED that:

9 1. Any claim arising under federal law in plaintiff's August 18, 2016 amended complaint
10 be deemed voluntarily dismissed; and

11 2. Plaintiff's August 18, 2016 amended complaint be remanded to the Superior Court of
12 Solano County.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
15 after being served with these findings and recommendations, any party may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
18 objections shall be served and filed within fourteen days after service of the objections. The
19 parties are advised that failure to file objections within the specified time may waive the right to
20 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: January 20, 2017

22 
23 _____
24 CAROLYN K. DELANEY
25 UNITED STATES MAGISTRATE JUDGE

26 1/tate2336.rem

27 _____
28 ¹ District courts must generally liberally construe the pleadings of pro se prisoner plaintiffs.
Resnick v. Hayes, 213 F.3d 443, 448 (9th Cir. 2000).