

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
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

G. DANIEL WALKER,
Plaintiff,
v.
CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,
Defendants.

No. 2:17-cv-2124 JAM CKD P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se. On October 12, 2017, defendants Medina, Stainer, Muniz, McCall and Kernan (defendants) removed this action from the Superior Court of Sacramento County pursuant to 28 U.S.C. § 1441(a) which permits removal if a federal court has original jurisdiction over claims brought in a state court. In their notice of removal, defendants assert “this action arises under 42 U.S.C. § 1983 and includes claims under the First and Fourteenth Amendments. . .”

On February 1, 2018, plaintiff’s complaint was dismissed because the complaint failed to state a claim arising under federal law. Plaintiff was informed that if he wished to proceed in this court, he could attempt to state claims arising under federal law in an amended complaint. Plaintiff was also informed that if he chose not to file an amended complaint, this action would be remanded to the Superior Court of Sacramento County where plaintiff may pursue his

////

1 claims arising under California law. See 28 U.S.C. § 1447(c). Plaintiff has not filed an amended
2 complaint.

3 Plaintiff has filed a document in which he asks that this action be stayed until:

4 thirty (30) days after the plaintiff is provided equal access to the
5 Court, including, but not limited to, being capable of reading court
6 orders, clerk's notices, proof reading documents to the Court, and
7 reading and understanding defendants' pleading, and hearing
8 sufficiently to take part in telephonic hearings.

9 The court has reviewed the documents filed in this matter and in plaintiff's other two
10 pending cases: 2:17-cv-2191 TLN AC and 2:17-cv-1764 KJM DB. Plaintiff has recently filed
11 (within the last five or so months) several documents, most of which are type-written and
12 relatively free of grammatical errors. Some of the documents, such as plaintiff's December 28,
13 2017 "Reply to Opposition to Plaintiff's Request for Accommodations Pending Before Judge
14 O'Neill" refer to documents submitted by defendants. There is no indication that any of the
15 documents were prepared by anyone other than plaintiff. In fact, in the "proof of service"
16 attached to his "motion for stay" plaintiff declares that "true and correct" copies of his "motion"
17 were served on various persons. In order to make this declaration, plaintiff had to be capable of
18 reviewing both his motion and the copies.

19 In sum, the record before the court fails to demonstrate that plaintiff cannot proceed with
20 this action absent court-ordered assistance with reading, writing and hearing, and the court finds
21 any suggestion to the contrary to be disingenuous. Accordingly, plaintiff's "motion for a stay"
22 should be denied.

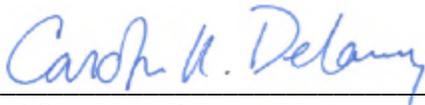
23 Accordingly, IT IS HEREBY RECOMMENDED that:

- 24 1. Plaintiff's "motion for a stay" (ECF No. 12) be denied.
- 25 2. This action be remanded to the Superior Court of Sacramento County; and
- 26 3. This case be closed.

27 These findings and recommendations are submitted to the United States District Judge
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen 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 Findings and

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

4 Dated: March 26, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

9 1
10 walk2124.rem

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28