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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GERARD JONES,  
Plaintiff,  
v.  
STEVEN POSSON, et al.,  
Defendants.

Case No. [17-cv-01522-PJH](#)

**ORDER REMANDING ACTION TO  
STATE COURT**

Re: Dkt. No. 11

This pro se prisoner’s civil rights action was originally filed in Monterey County Superior Court. Defendants removed the case to this court and the court screened the complaint and dismissed it with leave to amend. The court noted that plaintiff needed to provide more information to support an Eighth Amendment claim regarding his medical treatment.

Plaintiff has filed a motion to amend seeking to dismiss his federal claims and proceed with the state law claims in Monterey County Superior Court. Plaintiff has also included an amended complaint that only contains state law claims. Defendants oppose plaintiff’s motion and seek dismissal of the action with prejudice because plaintiff allegedly failed to comply with the California Tort Claims Act. However, a motion to remand is not the appropriate time to litigate and argue dismissal for failure to comply with the California Tort Claims Act.

Because the amended complaint only contains state law claims and because the court declines to exercise supplemental jurisdiction on the state law claims, the case will be remanded to Monterey County Superior Court so that plaintiff may litigate in his chosen forum. See *Swett v. Schenk*, 792 F.2d 1447, 1450 (9th Cir. 1986) (“it is within the

1 district court's discretion, once the basis for removal jurisdiction is dropped, whether to  
2 hear the rest of the action or remand it to the state court from which it was removed");  
3 *Plute v. Roadway Package System, Inc.*, 141 F. Supp. 2d 1005, 1007 (N.D. Cal. 2001)  
4 (court may remand sua sponte or on motion of a party). Defendants may file the  
5 appropriate motion regarding failure to comply with the California Tort Claims Act in the  
6 Monterey County Superior Court.

7 Plaintiff's motion (Docket No. 11) is **GRANTED** and the action is **REMANDED** to  
8 the Monterey County Superior Court for such other and further proceedings as that court  
9 deems proper. The Clerk shall close the file and send the necessary materials to the  
10 Monterey County Superior Court for the remand. In light of the remand to state court, all  
11 pending motions are dismissed as moot. All further motions must be filed in state court

12 **IT IS SO ORDERED.**

13 Dated: July 21, 2017



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16 PHYLLIS J. HAMILTON  
17 United States District Judge

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**CERTIFICATE OF SERVICE**


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 21, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gerard Jones ID: J-54914  
Correctional Training Facility  
DW-307-Low  
P. O. Box 689  
Soledad, CA 93960-0689

Dated: July 21, 2017

Susan Y. Soong  
Clerk, United States District Court

By:   
Kelly Collins, Deputy Clerk to the  
Honorable PHYLLIS J. HAMILTON