



1 must be filed within fourteen days of receipt thereof and must “specifically identify the portions of  
2 the findings, recommendation or report to which objection is made and the reason and authority  
3 therefor.” Civ. L.R. 72-3(a). “The district judge must determine de novo any part of the  
4 magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3). “The  
5 district judge may accept, reject, or modify the recommended disposition; receive further  
6 evidence; or return the matter to the magistrate judge with instructions.” *Id.*

7 **III. DISCUSSION**

8 As noted, the nature of the criminal action against Defendant is unclear. Mr. Hiranek  
9 claims that in connection with that action, he has been “subjected to denial of access to State Court  
10 facilities, harassment, torture, intimidation, unlawful search and seizure, unlawful interrogation,  
11 unlawful detention, unlawful confiscation of property, obstruction and perversion of course of  
12 justice, shadowing, eviction from the facility, forcibly removed, et al.” Not. of Removal at 1, ECF  
13 1.<sup>1</sup> He asserts that these actions were taken against him as a result of his “racial minority [status]  
14 and ethnic background,” which he identifies as “Asian Indian.” *Id.* On these bases, Defendant  
15 removed a pending state court criminal action against him to the Northern District of California  
16 under “all applicable removal statutes, including but not limited to 28 U.S.C. § 1443(1), § 1651  
17 [All Writs Act], § 2201, [and] 42 U.S.C. § 2000a-3.” *Id.*

18 Of those statutes, only 28 U.S.C. § 1443(1) potentially authorized removal. That statute  
19 provides for removal of a criminal prosecution “[a]gainst any person who is denied or cannot  
20 enforce in the courts of such State a right under any law providing for the equal civil rights of  
21 citizens of the United States, or of all persons within the jurisdiction thereof.” 28 U.S.C. §  
22 1443(1). “A petition for removal under § 1443(1) must satisfy the two-part test articulated by the  
23 Supreme Court in *Georgia v. Rachel*, 384 U.S. 780, 788-92, 794-804, 86 S. Ct. 1783, 16 L. Ed. 2d  
24 925 (1966) and *City of Greenwood, Miss. v. Peacock*, 384 U.S. 808, 824-28, 86 S. Ct. 1800, 16 L.  
25 Ed. 2d 944 (1966).” *Patel v. Del Taco, Inc.*, 446 F.3d 996, 998 (9th Cir. 2006). “First, the  
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<sup>1</sup> The Court notes that Defendant appears on the Vexatious Litigant List maintained by the  
28 California Courts, available at <http://www.courts.ca.gov/12272.htm>. It may be that his perceived  
“denial of access to State Court facilities” related to his status as a vexatious litigant.

1 petitioners must assert, as a defense to the prosecution, rights that are given to them by explicit  
2 statutory enactment protecting equal racial civil rights.” *Id.* (quotation marks and citation  
3 omitted). “Second, petitioners must assert that the state courts will not enforce that right, and that  
4 allegation must be supported by reference to a state statute or a constitutional provision that  
5 purports to command the state courts to ignore the federal rights.” *Id.* (quotation marks and  
6 citation omitted).

7 Defendant’s Notice of Removal does not meet either prong. Where comprehensible, the  
8 Notice of Removal makes bare allegations of raced-based discrimination, unsupported by facts  
9 suggesting that, for example, the criminal prosecution and exclusion from public facilities was  
10 motivated by Defendant’s race or ethnicity. Moreover, Defendant “point[s] to no formal  
11 expression of state law that prohibits [him] from enforcing [his] civil rights in state court nor [does  
12 he] point to anything that suggests that the state court would not enforce [his] civil rights in the  
13 state court proceedings.” *Patel*, 446 F.3d at 999.

14 **IV. ORDER**

15 Accordingly, the Court adopts the R&R<sup>2</sup> and REMANDS this case to the Santa Clara  
16 County Superior Court for lack of subject matter jurisdiction.

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18 Dated: November 25, 2014



BETH LABSON FREEMAN  
United States District Judge

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26 <sup>2</sup> As pointed out by Defendant, the R&R relied upon outdated authority for the proposition that  
27 removal “brings the state prosecution to an immediate halt.” R&R at 2 (quoting *Davis v. Sup. Ct.*  
28 *of State of Cal.*, 464 F.2d 1272, 1273 (9th Cir. 1972)). Effective January 2012, “[t]he filing of a  
notice of removal of a criminal prosecution shall not prevent the State court in which such  
prosecution is pending from proceeding further, except that a judgment of conviction shall not be  
entered unless the prosecution is first remanded.” 28 U.S.C. § 1455(b)(3). The Court nonetheless  
adopts the R&R because remand is appropriate under the analysis set forth above.