

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
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

LARRY WATKINS,	)	SA CV 99-339 AHS (ANx)
)	
Plaintiff,	)	AMENDED ORDER: (1) REMANDING
	)	CLAIMS 1, 3, 4, 5, AND 6
v.	)	OF FIRST AMENDED COMPLAINT
	)	TO STATE COURT;
CALIFORNIA DEP'T OF CORRECTIONS,	)	(2) DISMISSING CLAIM 2 OF
et al.,	)	FIRST AMENDED COMPLAINT
	)	WITH PREJUDICE, AS ASSERTED
Defendants.	)	AGAINST INDIVIDUAL
	)	DEFENDANTS

I.

SUMMARY

The Court concludes that the Eleventh Amendment will not permit Claims 1, 3, 4, 5, and 6 of the First Amended Complaint ("FAC") to be brought in federal court either against the California Department of Corrections ("CDC") or against the individual defendants in their official capacities. Moreover, the Court declines to exercise supplemental jurisdiction over those claims as they relate to the individual defendants in their personal capacities. Accordingly, Claims 1, 3, 4, 5, and 6 of the FAC are remanded to state court.

1 On February 10, 1999, defendants CDC and Michael Mays
2 removed the action to this Court on the grounds that plaintiff's
3 claim under Section 1983 presented a federal question. The CDC
4 and Michael Mays declared that, as of that date, service of
5 process had not been effected on the other individual defendants.

6 On May 14, 1999, the CDC and Michael Mays filed their
7 first motion to dismiss based in part on the CDC's asserted
8 immunity from suit under the Eleventh Amendment. On June 21,
9 1999, plaintiff moved to file an FAC. Noting that no defendant
10 had yet filed a responsive pleading, and that plaintiff therefore
11 was entitled to one amendment as of right, the Court granted
12 plaintiff's motion on July 1, 1999. Accordingly, the motion of
13 the CDC and Michael Mays was denied without prejudice.

14 On July 2, 1999, plaintiff filed the FAC. It is
15 substantially identical to the original complaint except that at
16 Claim 2, in place of plaintiff's original cause of action under
17 Section 1983, it substitutes a cause of action based on Title VII
18 (42 U.S.C. §§ 2000e, 2000e-2, and 2000e-3).

19 On July 12, 1999, defendants CDC and Michael Mays filed
20 the instant motion to dismiss Claims 1, 3, 4, 5, and 6 as against
21 the CDC and as against Mays in his official capacity. As with
22 the first motion to dismiss, this motion is based on the CDC's
23 asserted Eleventh Amendment immunity from suit in the federal
24 courts. Defendants also move to dismiss Claim 2 as against
25 Michael Mays in his individual capacity on the grounds that Title
26 VII does not impose liability on the individual agents of
27 defendant employers.

28 //

1 437-46, 1 L. Ed. 440 (1793), an early decision holding that such
2 immunity did not exist. See id.; see also Hans v. Louisiana, 134
3 U.S. 1, 10 S. Ct. 504, 33 L. Ed. 842 (1890) (first articulating
4 theory that Eleventh Amendment merely "overruled" Chisholm).
5 Consequently, the Eleventh Amendment is now viewed as having
6 restored a principle that was inherent in the Founder's original
7 understanding of our constitutional framework -- namely that, as
8 part of their retained sovereignty, the states are immune from
9 suit by individual citizens except to the extent that the states
10 voluntarily waive their immunity. See Alden, 119 S. Ct. at 2251.
11 That principle is broader than the literal terms of the Eleventh
12 Amendment itself.

13 Seventy years after the adoption of the Eleventh
14 Amendment, the ratification of the Fourteenth Amendment
15 established a narrow limitation to the states' constitutionally-
16 grounded sovereign immunity. Under Section 5 of the Fourteenth
17 Amendment, Congress has the power to abrogate state immunity by
18 creating private causes of action against the states to redress
19 Fourteenth Amendment violations. See Fitzpatrick v. Bitzer, 427
20 U.S. 445, 96 S. Ct. 2666, 49 L. Ed. 2d 614 (1976). Together,
21 voluntary waiver and valid abrogation pursuant to Section 5 of
22 the Fourteenth Amendment constitute the only circumstances under
23 which individuals may directly sue states in federal court. See
24 College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense
25 Bd., --- U.S. ---, 119 S. Ct. 2219, --- L. Ed. 2d --- (1999).¹

26
27 ¹ Private litigants may, of course, obtain injunctive
28 relief against state officials under the doctrine of Ex Parte
Young, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908). Such
suits, however, are not brought against the state itself.

(continued...)

1 In this case, Defendants concede that plaintiff's Title
2 VII claim (Claim 2) is brought pursuant to a valid abrogation of
3 state immunity. See Fitzpatrick v. Bitzer, 427 U.S. at 447-48.
4 Claims 1, 3, 4, 5, and 6, however, are founded on state-law
5 causes of action and may be asserted in this Court against the
6 CDC only to the extent that the CDC has waived its immunity from
7 suit.²

8 Generally, a state will be found to have waived its
9 Eleventh Amendment immunity under either of two circumstances.
10 First, the state may make a clear and unequivocal declaration
11 that it intends to submit to the jurisdiction of a federal court;
12 a general legislative waiver of sovereign immunity is not
13 sufficient for these purposes. See College Sav. Bank, 119 S. Ct.
14 at 2226; Port Auth. Trans-Hudson Corp. v. Feeney, 495 U.S. 299,
15 306-07, 110 S. Ct. 1868, 109 L. Ed. 2d 264 (1990). Second, the
16 state may "voluntarily invoke the jurisdiction" of the federal
17 court by, e.g., defending an action in federal court and
18 "voluntarily submitting its rights to judicial determination" by
19 the federal tribunal. See College Sav. Bank, 119 S. Ct. at 2226;
20 //

21
22
23 ¹(...continued)
24 "Indeed, the basic rationale behind the Ex Parte Young doctrine
25 is to allow parties to enforce their federal rights in state or
26 federal court by suing government officials for prospective
relief, because the state itself cannot be sued without its
consent." In re Mitchell, 209 F.3d 1111, 1120 (9th Cir. Apr. 21,
2000).

27 ² It is beyond dispute that the CDC is an arm of the
28 State of California and, as such, is presumptively entitled to
Eleventh Amendment immunity. See Taylor v. List, 880 F.2d 1040,
1045 (9th Cir. 1989).

1 Gunter v. Atlantic Coast Line R.R. Co., 200 U.S. 273, 284, 26 S.
2 Ct. 252, 50 L. Ed. 477 (1906).

3 Plaintiff contends that the CDC waived the immunity it
4 would enjoy as an arm of the State of California through the act
5 of voluntarily removing this action to federal court. In effect,
6 plaintiff argues that the act of removal constituted the second
7 form of waiver discussed above -- a voluntary invocation of
8 federal jurisdiction with the intent to submit the state's rights
9 to adjudication in the federal forum. The question whether this
10 Court may assert jurisdiction as to Claims 1, 3, 4, 5, and 6 of
11 the FAC thus reduces to the question whether, by removing this
12 action to federal court on the basis of the federal question
13 presented in Claim 2, the CDC may be viewed as having voluntarily
14 submitted to a federal adjudication of its rights with respect to
15 all of plaintiff's claims.³

16 In assessing plaintiff's argument, the Court is guided
17 by two considerations. First, as noted above, recent
18 developments in the Supreme Court's Eleventh Amendment
19 jurisprudence evince a renewed emphasis on the importance of
20 state sovereign immunity within our constitutional framework.
21 The Court's decision in College Savings Bank exemplifies this
22 trend. In that case, the Supreme Court overruled the
23 "constructive waiver" doctrine and explained that Congress does
24 not have the power to exact a "voluntary" waiver of Eleventh
25

26
27 ³ Relevant case law strongly suggests the propriety of
28 assessing defendants' assertion of Eleventh Amendment immunity on
a claim-by-claim basis rather than with regard to plaintiff's
case as a whole. See Mitchell, 209 F.3d 1111; Kruse v. Hawai'i,
68 F.3d 331 (9th Cir. 1995).

1 Amendment immunity as the price for allowing states to
2 participate in otherwise lawful activity. See College Sav. Bank,
3 119 S. Ct. at 2231 (overruling Parden v. Terminal R. of Ala.
4 Docks Dep't, 377 U.S. 184 (1964)). Although the overruling of
5 Parden does not bear directly on whether a state waives its
6 Eleventh Amendment immunity by removing a case to federal court,
7 it suggests that the lower courts should be slow to impose an
8 "implied" waiver of sovereign immunity as the price for allowing
9 a state to exercise any of its rights -- including its statutory
10 right of removal under 28 U.S.C. § 1441.

11 Second, relevant case law makes it clear that in
12 determining whether a state has "voluntarily invoked the
13 jurisdiction" of a federal court, the most important factor to
14 consider is whether the state has actively litigated the merits
15 of its case before the federal tribunal. See Gunter, 200 U.S. at
16 289 (defense of lawsuit on merits); Clark v. Barnard, 108 U.S.
17 436, 2 S. Ct. 878, 27 L. Ed. 780 (1883) (state as interpleader
18 claimant); Hill v. Blind Indus. and Servs. of Md., 179 F.3d 754
19 (9th Cir. 1999) (participation in extensive pretrial activities
20 and assertion of immunity at first day of trial), amended, 2000
21 WL 95898 (9th Cir. Jan. 31, 2000); Sutton v. Utah State School
22 for the Deaf and Blind, 173 F.3d 1226 (10th Cir. 1999) (removal
23 followed by defense on the merits); Gallagher v. Continental Ins.
24 Co., 502 F.2d 827 (10th Cir. 1974) (removal followed by defense
25 on the merits).

26 The reason for construing a state's decision actively
27 to litigate its case as an implied waiver of immunity is clear.
28 If a state were allowed first to litigate the merits of its case

1 but then to assert immunity after becoming dissatisfied with the
2 proceedings, the state could make unfair offensive use of its
3 Eleventh Amendment shield. Such conduct would "undermine the
4 integrity of the judicial system." Hill, 179 F.3d at 756. When
5 a state seeks to abuse its Eleventh Amendment immunity merely to
6 obtain an improper tactical advantage, the federal courts may
7 prevent that abuse by construing the state's earlier invocation
8 of federal jurisdiction as an implied waiver of the state's
9 Eleventh Amendment rights.

10 After careful consideration of the foregoing points,
11 the Court concludes that the act of removing a case to a federal
12 forum does not automatically waive a state's Eleventh Amendment
13 immunity with respect to all of the claims in the case. Where
14 the state has removed a case to federal court in order to ensure
15 that the federal claims in the case are adjudicated by a federal
16 tribunal, but has all the while made clear its intention to
17 assert sovereign immunity as to the other, state-law claims, the
18 state has not unequivocally indicated its consent to have the
19 state-law claims adjudicated in a federal forum.⁴ Nor has the
20 state been guilty of the kind of abusive tactical maneuvering
21 that would make it proper for a court to find an "implied" waiver
22 of immunity with respect to the state-law claims. Bearing these
23 facts in mind, this Court now joins the other district courts
24 that have held that a state does not automatically waive its
25 sovereign immunity merely by the act of removal. See, e.g.,
26 Neiberger v. Hawkins, 70 F. Supp. 2d 1177 (D. Colo. Nov. 12,

27
28 ⁴ Under 28 U.S.C. § 1441, only whole "civil actions"
may be removed. The removal defendant may not limit removal to
specific claims.

1 1999) (removal of a case to federal court does not constitute a
2 full waiver of Eleventh Amendment immunity when, upon removal,
3 the state expressly reserves its Eleventh Amendment rights).⁵
4 This conclusion is consistent with recent Ninth Circuit precedent
5 regarding the implied waiver of Eleventh Amendment immunity in
6 other litigation contexts. See In re Mitchell, 209 F.3d 1111,
7 1117-18 (9th Cir. Apr. 21, 2000) (holding that state tax agencies
8 did not waive Eleventh Amendment immunity in adversary
9 proceedings brought by bankruptcy debtor where agencies delayed
10 one month in asserting immunity as to one of debtor's claims;
11 "integrity of judicial process" was not undermined).

12 In the case at bar, plaintiff filed a complaint against
13 the CDC in state court, and the CDC removed. Within less than
14 three months, before litigating any issue on the merits,
15 defendants' first motion to dismiss made clear the CDC's
16 intention to assert Eleventh Amendment immunity. Although the
17 CDC's first motion was mooted by plaintiff's filing of the FAC,
18 the CDC renewed its claim of sovereign immunity through its
19 second motion to dismiss. The CDC did not postpone its assertion
20 of Eleventh Amendment immunity until after becoming dissatisfied
21 with the course of pretrial proceedings or trial. The CDC has

22
23 ⁵ The Court recognizes that there is some authority for
24 the proposition that a state's voluntary removal of a case to
25 federal court may constitute an automatic waiver of Eleventh
26 Amendment immunity. See Wisconsin Dep't of Corrections v.
27 Schacht, 524 U.S. 381, 393, 118 S. Ct. 2047, 141 L. Ed. 2d 364
28 (1998) (Kennedy, J., concurring); California Mother Infant Prog.
v. California Dep't of Corrections, 41 F. Supp. 2d 1123 (S.D.
Cal. 1999) (S.D. Cal. Feb. 24, 1999). However, these opinions
issued prior to recent decisions in which the Supreme Court has
articulated an expanded conception of state sovereign immunity.
See, e.g., Alden, 119 S. Ct. 2240 (June 23, 1999); College Sav.
Bank, 119 S. Ct. 2219 (June 23, 1999).

1 merely sought to ensure that the federal claims asserted against
2 it will be adjudicated in a federal forum. In light of the
3 principles outlined above, the Court concludes that the CDC has
4 not waived its Eleventh Amendment immunity with respect to Claims
5 1, 3, 4, 5, and 6 of the FAC. Accordingly, those claims may not
6 be brought in federal court either against the CDC or against the
7 individual defendants in their official capacities.

8
9 **B. Remand of State-Law Claims against CDC**

10 Having concluded that Claims 1, 3, 4, 5, and 6 of the
11 FAC may not be asserted against the CDC in federal court, the
12 Court turns to the proper disposition of those claims. Although
13 defendants request that the claims be dismissed, it is well-
14 settled that the preferable course of action is to remand those
15 claims barred by the Eleventh Amendment to the state court from
16 which they were removed. See Gamboa v. Rubin, 80 F.3d 1338 (9th
17 Cir. 1996); Roach v. West Virginia Reg'l Jail and Correctional
18 Facility Auth., 74 F.3d 46 (4th Cir. 1996); Henry v. Metropolitan
19 Sewer Dist., 922 F.2d 332 (6th Cir. 1990); Wright, Miller &
20 Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3524
21 (Supp. 1999). Accordingly, defendants' motion to dismiss Claims
22 1, 3, 4, 5, and 6 is denied. To the extent that those claims are
23 asserted against the CDC or against the individual defendants in
24 their official capacities, they are remanded to Los Angeles
25 County Superior Court.

26 //

27 //

1 **C. Individual Liability under Title VII**

2 It is firmly established that liability under Title VII
3 is limited to employers and does not extend to an employer's
4 individual agents. See Miller v. Maxwell's Int'l, Inc., 991 F.2d
5 583 (9th Cir. 1991). Accordingly, Claim 2 must be dismissed with
6 prejudice as against the individual defendants.

7
8 **D. Remand of State-Law Claims against Individual Defendants**

9 Having dismissed Claim 2 as against the individual
10 defendants, the Court finds it inappropriate to exercise
11 supplemental jurisdiction over the state-law claims brought
12 against those defendants in their personal capacities. See 28
13 U.S.C. § 1367(c)(3). Accordingly, the Court concludes that, to
14 the extent Claims 1, 3, 4, 5, and 6 are asserted against the
15 individual defendants in their personal capacities, those claims
16 also should be remanded.

17
18 **IV.**

19 **CONCLUSION**

20 For the reasons set forth above, Claims 1, 3, 4, 5, and
21 6 of the FAC may not be asserted in federal court against the CDC
22 or against the individual defendants in their official
23 capacities. Moreover, there is no reason to retain supplemental
24 jurisdiction over those claims to the extent that they are
25 asserted against the individual defendants in their personal
26 capacities. Accordingly, those claims are ordered remanded to
27 state court forthwith.

28 //

