

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Lawrence Christopher Smith v. Secretary

Smith v. Secretary · No. No. 1:23-cv-00526-KES-SAB (PC) · Decided April 15, 2025

SUMMARY

The court recommends denying Plaintiff Lawrence Christopher Smith’s motion to transfer venue and motion for summary judgment. It concludes that Smith has not provided an adequate basis for transfer under 28 U.S.C. § 1404(a) and that summary judgment is premature because the complaint has not been screened, service has not been ordered, and discovery has not begun.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 LAWRENCE CHRISTOPHER SMITH, No. 1:23-cv-00526-KES-SAB (PC)
12 Plaintiff, FINDINGS AND RECOMMENDATIONS RECOMMENDING PLAINTIFF’S
MOTION 13 v. FOR CHANGE OF VENUE AND MOTION FOR SUMMARY JUDGMENT BE
DENIED 14 SECRETARY, et al., (ECF No. 47) 15 Defendants. 16 17 Plaintiff is proceeding pro
se and in forma pauperis in this action filed pursuant to 42 18 U.S.C. § 1983.

19 Currently before the Court is Plaintiff’s motion for change of venue and motion for 20
summary judgment, filed March 17, 2025. Plaintiff’s motions should be denied. 21 Plaintiff states
that he seeks a transfer of this action pursuant to 28 U.S.C. ¶ 1404.

Under 22 ¶ 1404(a), an action may be transferred, “for the convenience of parties and witnesses,
in the 23 interest of justice, a district court may transfer any civil action to any other district...
where it 24 might have been brought.” The ultimate determination is subject to the discretion of
the court and 25 must be made on a case-by-case basis. *Jones v. GNC Franchising, Inc.*, 211 F.3d
495, 498 (9th 26 Cir.

2000). Here, Plaintiff states that he seeks to transfer the action to the “district court for the 27
District of Columbia circuit where I will throw myself at the mercy upon the kitty’s.” (ECF No. 28
47 at 3.) Thus, Plaintiff has not provided an adequate basis to transfer this action and his motion 1
should be denied. 2 Plaintiff also attaches a motion for summary judgment in support of his claim
that the 3 action should be transferred.

Any motion for summary judgment is premature. The Court has not 4 yet found that Plaintiff has
stated a cognizable claim for relief, no Defendant has been ordered 5 service, discovery as not yet

commenced, and Defendants have not had an opportunity to pursue 6 discovery. See, e.g., *Baker v. German*, No. 1:16-cv-01873-AWI-SAB (PC), 2017 WL 531937, at 7 *1 (E.D.

Cal. Feb. 9, 2017) (recommending summary judgment be denied where complaint not 8 yet screened and service of complaint not yet authorized), recommendation adopted 2017 WL 9 1427028 (E.D. Cal. Apr. 21, 2017); see also *Dews v. County of Kern*, No. 14-16423, 599 Fed. 10 App'x 681, 682 (9th Cir. Mar. 27, 2015) (finding district court properly denied Dews's motions 11 for summary judgment as premature because a court must first screen a prisoner's complaint); 12 *Williams v. Yuan Chen*, No. S-10-1292 CKD P, 2011 WL 4354533, at * 3 (E.D.

Cal. Sept. 16, 13 2011) (denying plaintiff's summary judgment motion as premature where defendant had not yet 14 filed an answer and the court had not issued a discovery order); *Moore v. Hubbard*, No. CIV S- 15 06-2187 FCD EFB P, 2009 WL 688897, at *1 (E.D. Cal. Mar. 13, 2009) (recommending that pre- 16 discovery motion for summary judgment be denied as premature); *Vining v. Runyon*, 99 F.3d 17 1056, 1058 (11th Cir.

1996) ("A premature decision on summary judgment impermissibly 18 deprives the [defendants] of their right to utilize the discovery process to discover the facts 19 necessary to justify their opposition to the motion"). Consequently, Plaintiff's motion for 20 summary judgment is premature and must be denied. 21 Accordingly, it is HEREBY RECOMMENDED that: 22 1.

Plaintiff's motion for change of venue and motion for summary judgment be 23 DENIED. 24 These Findings and Recommendations will be submitted to the United States District 25 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen 26 (14) days after being served with these Findings and Recommendations, the parties may file 27 written objections with the Court, limited to 15 pages in length, including exhibits.

The 28 document should be captioned "Objections to Magistrate Judge's Findings and 1 | Recommendations." The parties are advised that failure to file objections within the specified 2 | time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 3 | (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

4 5 IT IS SO ORDERED. FA. ee 6 | Dated: _ April 15, 2025 STANLEY A. BOONE 7 United States Magistrate Judge 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28