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

LVGENFEZTER,

No. CIV S-11-0396-FCD-CMK

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

EUGENE DAYTON PRINGLE, JR.,

Defendant.

_____ /

Defendant Pringle filed a notice of removal from Lassen County Superior Court on February 14, 2011. Defendant noted the basis for the removal action as 28 U.S.C. §§ 1331, 1332 and 1441(b), referring to diversity and federal question jurisdiction. Pursuant to 28 U.S.C. § 1446(c)(4), this court is required to examine the notice of removal and determine whether the removal should be permitted or be summarily remanded.

This court has jurisdiction over actions properly removed from State court pursuant to either 28 U.S.C. § 1331 or § 1332. Section 1331 provides this court with original jurisdiction over civil actions arising under the Constitution, laws, or treaties of the United States. Section 1332 provides this court with diversity jurisdiction over civil actions where the amount in controversy exceeds \$75,0000, and is between citizens of different States. Section

1 1441 provides that civil actions brought in a State court for which this court would have either
2 original or diversity jurisdiction are removable.

3 Here, defendant's notice of removal notes that the original action was commenced
4 in the Superior Court of Lassen County based on a California Vehicle Code citation. He claims,
5 rather inapposite, that "[t]his civil action arises under the First, Fourth, Fifth, Ninth and
6 Fourteenth Amendment" He further alleges that "[t]his suit arises under an act of congress
7 regulating 'commercial motor vehicle' and their 'drivers' called 'chauffeurs' and 'operators' and
8 the corresponding State motor vehicle code regulating the same subject matter"

9 It is clear to the undersigned that this court has no jurisdiction to hear this case
10 and this action should be remanded to the State court. Defendant was cited by the California
11 Highway Patrol for violation of the California Vehicle Code. Such action is not a "civil action"
12 arising under the Constitution, as defendant seems to imply. Therefore, this court does not have
13 original jurisdiction to hear this case pursuant to § 1331. Similarly, this is not a "civil action"
14 where this court has diversity jurisdiction based on defendant's residence in Oregon, and the
15 violation occurring in California. In fact this is not a "civil action" at all, and therefore does not
16 fall within this court's removal jurisdiction.

17 Based on the foregoing, the undersigned recommends that this action be
18 summarily remanded to the Lassen County Superior Court.

19 These findings and recommendations are submitted to the United States District
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
21 after being served with these findings and recommendations, any party may file written

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1 objections with the court. Responses to objections shall be filed within 14 days after service of
2 objections. Failure to file objections within the specified time may waive the right to appeal.
3 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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5 DATED: February 25, 2011

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7 **CRAIG M. KELLISON**
8 UNITED STATES MAGISTRATE JUDGE
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