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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RABINDRA PRASAD dba PRASAD
CHIROPRACTOR,

Plaintiff,

v.

PRAKASH NARAYAN, PAYAL
NARAYAN, et al.

Defendants.

No. 2:15-cv-2712 KJM AC (PS)

ORDER AND FINDINGS AND
RECOMMENDATIONS

This is a removed action in which removing defendants, proceeding in this action pro se, have filed a counter-complaint against the plaintiff. Defendants have requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. ECF Nos. 2, 3. This proceeding was referred to this court by Local Rule 302(c)(21).

Plaintiffs have submitted the affidavit required by § 1915(a) showing that they are unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a). That is not the end of this court’s inquiry, however, since the federal removal statute directs that if “at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). Because this court lacks subject matter jurisdiction over the removed action,

1 the matter should be remanded back to the state court.

2 I. REMOVAL

3 This court has jurisdiction over a removed action only if this court has original jurisdiction
4 over the underlying action. 28 U.S.C. § 1441(a).

5 II. THE COMPLAINT

6 The underlying complaint here is a Complaint for Malicious Prosecution and Punitive
7 Damages. ECF No. 1 at 36-40. The complaint contains no federal cause of action. Id. In the
8 Notice of Removal (which defendants have labelled “Transfer Case from Sacramento Superior
9 Court”), defendants allege that they reside in Sacramento County, State of California, and that
10 plaintiff is a California chiropractor lawfully conducting business in California.

11 III. ANALYSIS

12 The Notice of Removal does not assert any basis for this court’s original jurisdiction over
13 the underlying complaint. To the contrary, it indicates that plaintiff and defendants are not of
14 diverse citizenship, thus defeating the only available route to federal jurisdiction in such a case,
15 namely, diversity jurisdiction. See 28 U.S.C. § 1332(a)(1).

16 For the reasons set forth above, IT IS HEREBY ORDERED that defendants’ applications
17 to proceed in forma pauperis (ECF Nos. 2, 3), are GRANTED.

18 Furthermore, IT IS HEREBY RECOMMENDED that this action be REMANDED, sua
19 sponte pursuant to 28 U.S.C. § 1447(c), to the California Superior Court, Sacramento County, for
20 lack of federal jurisdiction.

21 These findings and recommendations are submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21)
23 days after being served with these findings and recommendations, any party may file written
24 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
25 Findings and Recommendations.” Any response to the objections shall be filed and served within

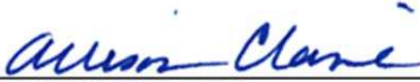
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1 fourteen (14) days after service of the objections. Failure to file objections within the specified
2 time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153
3 (9th Cir. 1991).

4 DATED: January 4, 2016

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6 ALLISON CLAIRE
7 UNITED STATES MAGISTRATE JUDGE
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