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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JACK OTTOVICH,  
Plaintiff,  
v.  
LEO BAUTISTA,  
Defendant.

No. 2:16-cv-2745 MCE CKD PS

FINDINGS AND RECOMMENDATIONS

This action was removed from state court. Removal jurisdiction statutes are strictly construed against removal. See Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 1979). “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” Gaus v. Miles, 980 F.2d 564, 566 (9th Cir. 1992). The party invoking removal bears the burden of establishing federal jurisdiction. Hunter v. Philip Morris USA, 582 F.3d 1039 (9th Cir. 2009). Where it appears the district court lacks subject matter jurisdiction, the case shall be remanded. 28 U.S.C. § 1447(c).

In this case, a removal petition was not even filed. Petitioners<sup>1</sup> simply submitted some state court documents and asserted that the state court action was removed. The state court documents appear to relate to a probate matter that was finalized in 2004. Removal based on

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<sup>1</sup> It appears that petitioners are erroneously captioned on the court’s docket as plaintiffs in the underlying action.

1 federal question jurisdiction is proper only when a federal question is presented on the face of the  
2 plaintiff's properly pleaded complaint. Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987).

3 There is no federal question presented in the probate matter. It also appears that diversity  
4 jurisdiction is lacking. Petitioners have failed to meet the burden of establishing federal  
5 jurisdiction and the matter should therefore be remanded. See generally Singer v. State Farm  
6 Mutual Automobile Insurance Co., 116 F.3d 373, 375-376 (9th Cir. 1997).

7 Petitioners have filed a motion to proceed in forma pauperis. Because the court will  
8 recommend remand of this action, the motion will be denied without prejudice.

9 Accordingly, IT IS HEREBY ORDERED that petitioners' motion to proceed in forma  
10 pauperis (ECF No. 2) is denied without prejudice; and

11 IT IS HEREBY RECOMMENDED that the above-entitled action be summarily remanded  
12 to the Superior Court of California, County of Alameda.

13 These findings and recommendations are submitted to the United States District Judge  
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
15 after being served with these findings and recommendations, any party may file written  
16 objections with the court and serve a copy on all parties. Such a document should be captioned  
17 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
18 shall be served and filed within seven days after service of the objections. The parties are advised  
19 that failure to file objections within the specified time may waive the right to appeal the District  
20 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: December 1, 2016

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24 CAROLYN K. DELANEY  
25 UNITED STATES MAGISTRATE JUDGE

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