

1 in Modesto, California. (Unlawful Detainer Complaint, ECF No. 1, pg. 32).¹ The Complaint
2 indicates that the amount at issue “does not exceed \$10,000.” *Id.* A Notice to Pay Rent or Quit
3 attached to the Notice of Removal indicates that Plaintiff believes approximately \$1,705 is owed
4 in arrears. (ECF No. 1, pg. 43).

5 **II. DISCUSSION**

6 **A. The Court Must Address Subject Matter Jurisdiction *Sua Sponte***

7 A district court has “a duty to establish subject matter jurisdiction over [a] removed action
8 *sua sponte*, whether the parties raise[] the issue or not.” *United Investors Life Ins. Co. v. Waddell*
9 *& Reed, Inc.*, 360 F.3d 960, 967 (9th Cir. 2004). The removal statute, 28 U.S.C. § 1441, must be
10 “strictly construed against removal jurisdiction.” *Provincial Gov’t of Marinduque v. Placer*
11 *Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009). A defendant thus “bears the burden of
12 establishing that removal is proper.” *Id.* As a result, any ambiguities should be resolved “in favor
13 of remand to state court.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009). Any
14 defects in the Court’s subject matter jurisdiction require remand; the duty to remand under 28
15 U.S.C. § 1447(c) is “mandatory, not discretionary.” *Bruns v. NCUA*, 122 F.3d 1251, 1257 (9th
16 Cir. 1997).

17 **B. Defendant Fails to Demonstrate that Diversity Jurisdiction Exists**

18 28 U.S.C. § 1332(a) establishes diversity jurisdiction and provides in part: “The district
19 courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds
20 the sum or value of \$75,000 . . . and is between . . . (1) citizens of different States . . .”

21 In a federal action, a defendant “bears the burden of actually proving the facts to support
22 jurisdiction, including the jurisdictional amount.” *Sanchez v. Monumental Life Ins.*, 102 F.3d 398,
23 403 (9th Cir. 1996). In an unlawful detainer action, “the right to possession alone [is] involved –
24 not title to the property.” *Litton Loan Servicing, L.P. v. Villegas*, No. C 10-05478 PJH, 2011 WL
25 204322, at *2 (N.D. Cal. Jan. 21, 2011). Thus, the amount in controversy is not determined by the
26 value of *title* to the property. Nothing indicates that the unlawful detainer complaint in this case

27 ¹ Defendant has attached a wide assortment of documents to the Notice of Removal. Because there is no clear
28 pagination or division between each of the documents, the contents will be cited according to the page numbers
assigned by the ECF system and marked on the upper right hand corner of ECF No.1

1 seeks anywhere near \$75,000. In fact, the face of the unlawful detainer complaint states that
2 damages are less than \$10,000. (Unlawful Detainer Complaint, ECF No. 1.)

3 Moreover, the parties in this instance are not citizens of different states. For the purposes
4 of diversity jurisdiction, a “corporation shall be deemed to be a citizen of every State and foreign
5 state by which it has been incorporated and of the State or foreign state where it has its principal
6 place of business.” 28 U.S.C. § 1332(c)(1). Corporations may thus have “dual citizenship”; even
7 if a corporation has its principal place of business elsewhere, it can be a citizen of the state in
8 which it is incorporated. *Albino v. Standard Ins. Co.*, 349 F.Supp.2d 1334, 1337 (C.D. Cal. 2004).
9 Because Plaintiff is incorporated in California, it is a citizen of California. Defendant is also, by
10 his own admission, a citizen of California.

11 Because the amount in controversy is less than \$75,000 and the parties are both citizens of
12 the same state, no diversity jurisdiction exists.

13 **III. CONCLUSION AND RECOMMENDATION**

14 Defendant's papers fail to establish this Court's subject matter jurisdiction to support
15 removal of the unlawful detainer action. As such, this Court RECOMMENDS that this case be
16 REMANDED to the Superior Court of Stanislaus County, pursuant to 28 U.S.C. § 1447(c).

17 These findings and recommendations will be submitted to the district judge assigned to
18 this case pursuant to the provisions of Title 28 of the United States Code section 636(b)(1).
19 Within fifteen (15) days after being served with these findings and recommendations, the parties
20 may file written objections with the Court. The document should be captioned “Objections to
21 Magistrate Judge's Findings and Recommendations.” The parties are advised that failure to file
22 objections within the specified time may waive the right to appeal the District Court's order.
23 *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

24
25 IT IS SO ORDERED.

26 Dated: June 9, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE