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

U.S. BANK NATIONAL ASSOCIATION,

Plaintiff,

No. CIV S-09-2936 FCD DAD PS

vs.

PETRA PENA, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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On October 21, 2009, defendants Petra Pena and Nicholas Vazquez, proceeding pro se, filed a Notice of Removal of Case No. 09UD05497 from Sacramento County Superior Court. Defendant Vazquez also filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Defendant Pena has neither paid the required filing fee nor filed an application to proceed in forma pauperis. The proceeding has been referred to the undersigned in accordance with Local Rule 72-302(c)(21) and 28 U.S.C. § 636(b)(1).

The court’s own records reflect that the defendants previously removed the same Case No. 09UD05497 from Sacramento County Superior Court on August 21, 2009.<sup>1</sup> See US Bank Nat’l Ass’n v. Vazquez, et al., Case No. CIV S-09-2333 MCE EFB PS. Defendants cannot

<sup>1</sup> A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 remove a case that has already been removed from state court. Accordingly, this duplicative  
2 action should be dismissed.

3 The undersigned is aware that the assigned magistrate judge has issued findings  
4 and recommendations in Case No. CIV S-09-2333 MCE EFB PS in which he has recommended  
5 remand on the grounds that defendants failed to establish complete diversity among the parties,  
6 failed to demonstrate that the amount in controversy exceeds \$75,000, and filed their notice of  
7 removal untimely. Defendants have filed timely objections to those recommendations,<sup>2</sup> and the  
8 assigned district judge has not yet ruled on the findings and recommendations. Nonetheless,  
9 defendants must continue to litigate the appropriateness of the removal of the state court action in  
10 Case No. CIV S-09-2333 MCE EFB PS.

11 For the reasons set forth above, IT IS RECOMMENDED that:

12 1. Defendant Vazquez's October 21, 2009 application to proceed in forma  
13 pauperis (Doc. No. 3) be denied; and

14 2. This action be dismissed with prejudice as duplicative of Case No. CIV S-09-  
15 2333 MCE EFB PS.

16 These findings and recommendations are submitted to the United States District  
17 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **ten** days  
18 after being served with these findings and recommendations, defendants may file written  
19 objections with the court.

20 DATED: November 10, 2009.

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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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25 <sup>2</sup> The objections filed in Case No. CIV S-09-2333 reveal that defendant Vazquez is also  
26 litigating a foreclosure case in this court, Vazquez v. U.S. Bank National Association, et al. Case  
No. CIV S-09-2143 GEB GGH PS (filed Aug. 3, 2009). A motion to dismiss that case has been  
filed by the named defendants and is set for hearing on December 3, 2009.