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

WELLS FARGO BANK, N.A.,

Plaintiff,

No. CIV S-11-240 GEB GGH (TEMP) PS

vs.

LUIS FRANCO,

Defendant.

FINDINGS AND RECOMMENDATIONS

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This action was removed from state court. Removal jurisdiction statutes are strictly construed against removal. See Geographic Expeditions Inc. v. Estate of Lhotka, 599 F.3d 1102, 1107 (9th Cir. 2010); 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 burden of establishing federal jurisdiction falls on the party invoking removal.” Harris v. Provident Life and Accident Ins. Co., 26 F.3d 930 (9th Cir.1994) (quoting Gould v. Mut. Life Ins. Co. of New York, 790 F.2d 769, 771 (9th Cir.1986)). Where it appears the district court lacks subject matter jurisdiction, the case shall be remanded. 28 U.S.C. § 1447(c).

In conclusory fashion, the removal petition alleges the complaint is subject to federal question jurisdiction. However, the exhibits attached to the removal petition establish the

1 state court action is nothing more than a simple unlawful detainer action, and the state court  
2 action is titled as such. Defendant has failed to meet his burden of establishing federal  
3 jurisdiction and the matter should therefore be remanded. See generally Singer v. State Farm  
4 Mutual Automobile Insurance Co., 116 F.3d 373, 375-376 (9th Cir. 1997).

5 Accordingly, IT IS HEREBY RECOMMENDED that the above-entitled action be  
6 summarily remanded to the Superior Court of California, County of San Joaquin.

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

15 DATED: February 1, 2011

16 /s/ Gregory G. Hollows  
17 UNITED STATES MAGISTRATE JUDGE

18 JMM  
19 franco.remud