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

U.S. BANK NATIONAL ASSOCIATION,
SUCCESSOR IN INTEREST TO THE
FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
DOWNEY SAVINGS AND LOAN
ASSOCIATION, F.A.,

Plaintiff,

No. CIV S-11-1979 KJM EFB PS

vs.

JERRY P. HUCKABY,

Defendant.

ORDER AND
FINDINGS AND RECOMMENDATIONS

On July 27, 2011, defendant, proceeding pro se, filed a notice of removal of this unlawful detainer action from the Superior Court of the State of California for Sacramento County. Dckt. No. 1. This case is before the undersigned in accordance with 28 U.S.C. § 636(b)(1) and Eastern District of California Local Rule 302(c)(21).

This court has an independent duty to ascertain its jurisdiction and may remand sua sponte for lack of subject matter jurisdiction. See 28 U.S.C. § 1447(c). “The burden of establishing federal jurisdiction is on the party seeking removal, and the removal statute is strictly construed against removal jurisdiction.” *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988). “Federal jurisdiction must be rejected if there is any doubt as to the right

1 of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). As
2 explained below, defendant has failed to meet their burden.

3 Defendant’s notice of removal is predicated upon the court’s federal question
4 jurisdiction. Dckt. No. 1 at 2 (citing 28 U.S.C. §§ 1441, 1446). Defendant contends that “[t]he
5 complaint presents federal questions.” *Id.* However, a review of the complaint reveals that
6 plaintiff does not allege any federal claims; instead, plaintiff alleges only unlawful detainer
7 under state law. Dckt. No. 1-2 at 3-5 (Compl.). Therefore, because defendant has not
8 adequately established that plaintiff’s complaint alleges a federal claim,¹ the court lacks subject
9 matter jurisdiction and must remand the case.² *See* 28 U.S.C. § 1447(c).

10 Accordingly, IT IS HEREBY ORDERED that the status (pretrial scheduling) conference
11 currently set for hearing on December 7, 2011, is vacated.³

12 IT IS FURTHER RECOMMENDED that the above-captioned case be REMANDED to
13 the Superior Court of the State of California in and for the County of Sacramento.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned

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19 ¹ Nor has defendant established that this court has diversity jurisdiction.

20 ² It is also unclear whether the notice of removal was timely. Section 1446(b) requires a
21 notice of removal to be “filed within thirty days after the receipt by the defendant, through
22 service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which
23 the defendant if such initial pleading has then been filed in court and is not required to be served on
24 the defendant, whichever period is shorter.” 28 U.S.C. § 1446(b). Here, defendant notes that the
25 complaint was filed in state court “[o]n May 25, 2011,” but does not indicate when he was
26 served with or otherwise received a copy of the complaint. Dckt. No. 1 at 1.

³ As a result, the parties are not required to submit status reports as provided in the July
27, 2011 order. *See* Dckt. No. 2. However, if the recommendation of remand herein is not
adopted by the district judge, the undersigned will reschedule the status conference and require
the parties to submit status reports.

1 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
2 shall be served and filed within fourteen days after service of the objections. Failure to file
3 objections within the specified time may waive the right to appeal the District Court’s order.
4 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th
5 Cir. 1991).

6 SO ORDERED.

7 Dated: September 21, 2011.


8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
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