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

BANK OF NEW YORK MELLON,

Plaintiff,

No. CIV S-11-3205 GEB CKD PS

vs.

NIKOLAY KUT, et al.,

Defendants.

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 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. Removal based on federal question jurisdiction is proper only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.

1 Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). However, the exhibits attached to the
2 removal petition establish the state court action is nothing more than a simple unlawful detainer
3 action, and the state court action is titled as such. Defendants have failed to meet their burden of
4 establishing federal jurisdiction and the matter should therefore be remanded. See generally
5 Singer v. State Farm Mutual Automobile Insurance Co., 116 F.3d 373, 375-376 (9th Cir. 1997).

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

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

16 Dated: December 6, 2011

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18 CAROLYN K. DELANEY
19 UNITED STATES MAGISTRATE JUDGE

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