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

FEDERAL NATIONAL
MORTGAGE ASSOCIATION,
et al.,

Plaintiffs,

No. 12-cv-1353 KJM DAD PS

vs.

JOHN H. EUGENE, JR.;
JUDY EUGENE,

ORDER AND
FINDINGS AND RECOMMENDATIONS

Defendants.

_____ /

This civil action was opened when, on May 18, 2012, John Eugene, Jr. and Judy Eugene, proceeding pro se, filed with this court, among other things, a document styled “JUDICIAL NOTICE OF ADJUDICATIVE FACTS.” (Doc. No. 1 at 1.) However, from that filing it is unclear with the Eugenes are attempting to initiate a new action or seeking to remove an action filed against in state court them by the Federal National Mortgage Association (Fannie Mae). The action has therefore been referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

A filing fee of \$350.00 is required to commence a civil action in a federal district court. 28 U.S.C. § 1914(a). The court may authorize the commencement of an action without

1 prepayment of fees or security therefor by a litigant who submits an affidavit demonstrating
2 inability to pay. 28 U.S.C. § 1915(a). Judy Eugene has filed an application to proceed in forma
3 pauperis. (Doc. No. 2.) The court finds, however, that Judy Eugene has failed to make the
4 showing required by 28 U.S.C. § 1915.

5 In this regard, Judy Eugene indicates that she receives wages of \$650 per week,
6 has \$500 in cash or in a checking or savings account, owns “automobiles,” and that her regularly
7 monthly expenses consist only of “utilities.” (Doc. No. 2 at 2.) Although Judy Eugene’s
8 application names two persons who are dependent upon her for support, she does not state how
9 much she contributes to their support. In this regard, Judy Eugene has not demonstrated that she
10 is unable to pay the \$350 filing fee for this action.

11 Moreover, even if she were to make such a showing, the court would not grant her
12 leave to proceed in forma pauperis unless John Eugene, Jr., also demonstrated indigence. In this
13 regard, filing fees must be paid unless each party applies for and is granted leave to proceed in
14 forma pauperis. Accordingly, Judy Eugene’s application to proceed in forma pauperis will be
15 denied.

16 Turning to the documents filed by the Eugenes, the court notes that the Civil
17 Cover Sheet filed by defendants indicates that the origin of this action is “Removed from State
18 Court.” (Doc. No. 1-4 at 1.) It is well established that the statutes governing removal
19 jurisdiction must be “strictly construed against removal.” Libhart v. Santa Monica Dairy Co.,
20 592 F.2d 1062, 1064 (9th Cir. 1979) (citing Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100,
21 108 (1941)). “Federal jurisdiction must be rejected if there is any doubt as to the right of
22 removal in the first instance.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). ““The
23 burden of establishing federal jurisdiction falls on the party invoking removal.”” Harris v.
24 Provident Life & Accident Ins. Co., 26 F.3d 930, 932 (9th Cir. 1994) (quoting Gould v. Mut. Life
25 Ins. Co., 790 F.2d 769, 771 (9th Cir.1986)). Moreover, “the existence of federal jurisdiction
26 depends solely on the plaintiff’s claims for relief and not on anticipated defenses to those

1 claims.” ARCO Env'tl. Remediation, LLC v. Dep't of Health & Env'tl. Quality, 213 F.3d 1108,
2 1113 (9th Cir. 2000). Where it appears that the district court lacks subject matter jurisdiction
3 over a removed case, “the case shall be remanded.” 28 U.S.C. § 1447(c).

4 Here, in addition to roughly 100 pages of exhibits, the Eugenes have filed a
5 largely incoherent document styled “JUDICIAL NOTICE OF ADJUDICATIVE FACTS.” (Doc.
6 No. 1 at 1.) That document refers to “Unlawful Detainer Case Number: 11UD09909.” (Id. at 7.)
7 Moreover, attached to the “JUDICIAL NOTICE OF ADJUDICATIVE FACTS” are several
8 documents from an unlawful detainer action filed in the Sacramento County Superior Court,
9 bearing Case No. 11UD09909, including the Eugenes answer to Fannie Mae’s complaint filed in
10 the Sacramento County Superior Court. (Id. at 15, 22, 25.) Not included with the Eugenes’
11 filing, however, is a copy of the complaint filed in that state court action.

12 Nonetheless, it is evident from the number assigned to the case in state court and
13 the documents filed by the Eugenes that the matter is an unlawful detainer action. The court
14 finds that the Eugenes have failed to demonstrate that Fannie Mae’s state court complaint alleges
15 any claims other than those typically alleged in a garden-variety unlawful detainer action filed by
16 a property owner against the former owner of property located in California, based wholly on
17 California law. The Eugenes have not shown that Fannie Mae’s complaint involves any “claim
18 or right arising under the Constitution, treaties or laws of the United States” that would have
19 permitted Fannie Mae to file this action originally in federal court. See 28 U.S.C. § 1441(b).

20 Accordingly, the court finds that the Eugenes have failed to meet their burden of
21 establishing a basis for federal jurisdiction.

22 IT IS HEREBY ORDERED that Judy Eugene’s application to proceed in forma
23 pauperis (Doc. No. 2) is denied.

24 IT IS HEREBY RECOMMENDED that this action be summarily remanded to the
25 Superior Court of California, County of Sacramento and this case be closed.

26 ////

1 These findings and recommendations are submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
3 days after being served with these findings and recommendations, the Eugenes may file any
4 written objections with the court.¹ A document presenting objections should be titled
5 “Objections to Magistrate Judge’s Findings and Recommendations.”

6 DATED: September 10, 2012.

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10 DALE A. DROZD
11 UNITED STATES MAGISTRATE JUDGE
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25 ¹ If the Eugenes are not attempting to remove the state court action filed against them to
26 this court but instead attempting to initiate a new action of their own, they may so explain in any
objections they elect to file to these findings and recommendations.