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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DISCOVERY BANK,  
Plaintiff,  
v.  
EUGENE KORTE,  
Defendant.

No. 2:13-cv-1726 GEB CKD PS

FINDINGS AND RECOMMENDATIONS

This action was removed from state court.<sup>1</sup> 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 party invoking removal bears the burden of establishing federal jurisdiction. Hunter v. Philip Morris USA, 582 F.3d 1039 (9th Cir. 2009). 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

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<sup>1</sup> Plaintiff also filed a motion to proceed in forma pauperis. Because the court will recommend that the action be remanded to state court, the court declines to address plaintiff’s motion at this time.

1 federal question is presented on the face of the plaintiff's properly pleaded complaint. Caterpillar  
2 Inc. v. Williams, 482 U.S. 386, 392 (1987). However, the exhibits attached to the removal  
3 petition establish the state court action is nothing more than a simple breach of contract action  
4 and the damages alleged are in the sum of \$3,453.30. The state court action was also filed as a  
5 limited civil case, with damages not exceeding \$10,000. As such, both federal question and  
6 diversity jurisdiction are lacking and the action was improvidently removed from state court.  
7 Defendant has failed to meet his burden of establishing federal jurisdiction and the matter should  
8 therefore be remanded. See generally Singer v. State Farm Mutual Automobile Insurance Co.,  
9 116 F.3d 373, 375-376 (9th Cir. 1997).

10 Accordingly, IT IS HEREBY RECOMMENDED that the above-entitled action be  
11 summarily remanded to the Superior Court of California, County of Solano.

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

20 Dated: August 27, 2013

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22 CAROLYN K. DELANEY  
23 UNITED STATES MAGISTRATE JUDGE

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