## 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 FEDERAL NATIONAL MORTGAGE No. 2:14-cv-1982 JAM CKD PS ASSOCIATION, 12 Plaintiff, 13 ORDER AND v. 14 FINDINGS AND RECOMMENDATIONS MARTHA VIELMA, et al., 15 Defendants. 16 17 This action was removed from state court. Removal jurisdiction statutes are strictly 18 19 construed against removal. See Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 20 1979). "Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the 21 first instance." Gaus v. Miles, 980 F.2d 564, 566 (9th Cir. 1992). "The burden of establishing 22 federal jurisdiction falls on the party invoking removal." Harris v. Provident Life and Accident 23 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 24

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. Caterpillar

case shall be remanded. 28 U.S.C. § 1447(c).

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1 Inc. v. Williams, 482 U.S. 386, 392 (1987). However, the exhibits attached to the removal 2 petition establish the state court action is nothing more than a simple unlawful detainer action, 3 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 Singer v. State Farm Mutual Automobile Insurance Co., 116 F.3d 373, 375-376 (9th Cir. 1997). 5 6 Defendant Angelo Vivanco has filed a motion to proceed in forma pauperis. Because the 7 court will recommend remand of this action and defendant Martha Vielma has not joined in the petition to proceed in forma pauperis, the motion will be denied without prejudice. 8 9 Accordingly, IT IS HEREBY ORDERED that the motion to proceed in forma pauperis 10 (ECF No. 2) is denied without prejudice; and 11 IT IS HEREBY RECOMMENDED that the above-entitled action be summarily remanded 12 to the Superior Court of California, County of Sacramento. 13 These findings and recommendations are submitted to the United States District Judge 14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days 15 after being served with these findings and recommendations, any party may file written 16 objections with the court and serve a copy on all parties. Such a document should be captioned 17 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections 18 shall be served and filed within seven days after service of the objections. The parties are advised 19 that failure to file objections within the specified time may waive the right to appeal the District 20 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). 21 Dated: September 2, 2014 22 UNITED STATES MAGISTRATE JUDGE 23 24 25 4 fnma-vielma.ifp.remud

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<sup>&</sup>lt;sup>1</sup> This defendant also did not join in the removal petition.