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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAN FREY,
Plaintiff,
v.
MARK SMITHEY, et al.,
Defendants.

No. 2:14-cv-2317 TLN CKD PS

FINDINGS AND RECOMMENDATIONS

Plaintiff are proceeding in this action pro se. Plaintiffs have requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 302(c)(21).

Plaintiffs have submitted the affidavits required by § 1915(a) showing that plaintiffs are unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

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 party invoking removal bears the burden of establishing federal jurisdiction. Hunter v. Philip Morris USA, 582 F.3d 1039

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1 (9th Cir. 2009). Where it appears the district court lacks subject matter jurisdiction, the case shall
2 be remanded. 28 U.S.C. § 1447(c).

3 In conclusory fashion, the removal petition alleges the complaint is subject to federal
4 question jurisdiction. Removal based on federal question jurisdiction is proper only when a
5 federal question is presented on the face of the plaintiff's properly pleaded complaint. Caterpillar
6 Inc. v. Williams, 482 U.S. 386, 392 (1987). However, the exhibits attached to the removal
7 petition establish the state court action is nothing more than a simple unlawful detainer action,
8 and the state court action is titled as such. Defendants have failed to meet their burden of
9 establishing federal jurisdiction and the matter should therefore be remanded. See generally
10 Singer v. State Farm Mutual Automobile Insurance Co., 116 F.3d 373, 375-376 (9th Cir. 1997).

11 Accordingly, IT IS HEREBY ORDERED that plaintiffs' motions to proceed in forma
12 pauperis are granted; and

13 IT IS HEREBY RECOMMENDED that the above-entitled action be summarily remanded
14 to the Superior Court of California, County of Stanislaus, Modesto Division.

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

23 Dated: October 8, 2014

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26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE

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