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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	DEREK McCULLUM,	No. 2:14-cv-2524 JAM CKD PS
12	Plaintiff,	
13	v.	ORDER AND
14	ANITA TROTTY,	FINDINGS AND RECOMMENDATIONS
15	Defendant.	
16		
17	Defendant is proceeding in this action pro se. Defendant has requested authority pursuant	
18	to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by	
19	Local Rule 302(c)(21).	
20	Defendant has submitted the affidavit required by § 1915(a) showing that defendant is	
21	unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in	
22	forma pauperis will be granted. 28 U.S.C. § 1915(a).	
23	This action was removed from state court. Removal jurisdiction statutes are strictly	
24	construed against removal. See Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir.	
25	1979). "Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the	
26	first instance." Gaus v. Miles, 980 F.2d 564, 566 (9th Cir. 1992). The party invoking removal	
27	bears the burden of establishing federal jurisdiction. <u>Hunter v. Philip Morris USA</u> , 582 F.3d 1039	
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Dated: November 3, 2014

(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 federal question is presented on the face of the plaintiff's properly pleaded complaint. Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). However, the exhibits attached to the removal petition establish the state court action is nothing more than a simple unlawful detainer action, and the state court action is titled as such. Defendant also asserts that diversity jurisdiction is proper. However, it is evident from the pleadings that both plaintiff and defendant are citizens of the same state. Diversity jurisdiction is therefore lacking. Defendant has failed to meet her burden of 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).

Accordingly, IT IS HEREBY ORDERED that defendant's request to proceed in forma pauperis (ECF No. 2) is granted; and

IT IS HEREBY RECOMMENDED that the above-entitled action be summarily remanded to the Superior Court of California, County of San Joaquin.

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

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CAROLYN K. DELANEY

UNITED STATES MAGISTRATE JUDGE