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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KATHLEEN EMERSON, et al.,

Plaintiffs,

v.

KRISTA MITCHELL,

Defendant.

No. 2:18-cv-2200 TLN DB

FINDINGS AND RECOMMENDATIONS

On August 13, 2018, defendant Krista Mitchell filed a notice of removal of this action from the Yolo County Superior Court, along with a motion to proceed in forma pauperis. (ECF Nos. 1 & 2.) At that time defendant was proceeding in this action pro se. Accordingly, the matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

On October 3, 2018, the undersigned issued findings and recommendations, recommending that defendant’s motion to proceed in forma pauperis be denied and that this action be summarily remanded to the Yolo County Superior Court for lack of subject matter jurisdiction. (ECF No. 8.) On October 15, 2018, attorney Susan Wallace appeared on behalf of the defendant. (ECF No. 13.) Accordingly, on October 17, 2018, the undersigned issued an order referring this matter back to the assigned District Judge pursuant to Local Rule 302(c)(21). (ECF No. 16.)

1 On November 20, 2018, the assigned District Judge issued an order referring the
2 resolution of defendant’s motion to proceed in forma pauperis to the undersigned. (ECF No. 19.)
3 As stated in the findings and recommendations issued on October 3, 2018, it appears that the
4 court lacks subject matter jurisdiction over this action. (ECF No. 8 at 4.) Accordingly,
5 defendant’s request to proceed in forma pauperis should be denied. See Deo v. Guzman, No.
6 2:15-cv-1824 TLN KJN, 2015 WL 5330445, at *3 (E.D. Cal. Sept. 11, 2015) (remanding due to
7 lack of subject matter jurisdiction and denying motion to proceed in forma pauperis); Federal Nat.
8 Mortg. Ass’n v. Rodriguez, Civil No. 13cv528 AJB (RBB), 2013 WL 941800, at *1 (S.D. Cal.
9 Mar. 11, 2013) (“the Court sua sponte REMANDS the action to San Diego Superior Court for
10 lack of subject matter jurisdiction and DENIES as moot Defendant Vicky Rodriguez’ application
11 to proceed in forma pauperis”); Federal National Mortgage Association v. Jaime, No. C 12-4496
12 JSW, 2012 WL 13055884, at *1 (N.D. Cal. Oct. 22, 2012) (“Because . . . the Court lacks federal
13 subject matter jurisdiction, the Court denies the IFP application.”); Bent Tree Holdings, LLC v.
14 Kyser, Civ. No. S-11-3078 MCE GGH PS, 2012 WL 159616, at *2 (E.D. Cal. Jan. 18, 2012)
15 (“Given the court’s conclusion that it lacks subject matter jurisdiction in this matter, the request to
16 proceed in forma pauperis will be denied.”).

17 Accordingly, for the reasons stated above and in the October 3, 2018 findings and
18 recommendations, IT IS HEREBY RECOMMENDED that defendant’s August 13, 2018 motion
19 to proceed in forma pauperis (ECF No. 2) be denied.

20 These findings and recommendations will be submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
22 days after these findings and recommendations are filed, any party may file written objections
23 with the court. A document containing objections should be titled “Objections to Magistrate
24 Judge’s Findings and Recommendations.” Any reply to the objections shall be served and filed
25 within 14 days after service of the objections. The parties are advised that failure to file

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1 objections within the specified time may, under certain circumstances, waive the right to appeal
2 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: November 27, 2018

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6 DEBORAH BARNES
7 UNITED STATES MAGISTRATE JUDGE
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