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4 UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
6 OAKLAND DIVISION  
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8 ILCG HOLDINGS, LLC,

9 Plaintiff,

10 vs.

11 ROBERT EBERWEIN, FEDELINA  
12 ROYBAL DE AGUERO, and DOES 1-5,

13 Defendants.

Case No: C 17-03945 SBA

**ORDER REMANDING ACTION**

14 On July 5, 2017, Plaintiff ILCG Holdings, LLC (“Plaintiff”) filed an unlawful  
15 detainer action against Defendants Robert Eberwein and Fedelina Roybal De Aguero  
16 (collectively “Defendants”) in Mendocino County Superior Court. Compl., Dkt. 1 at pp. 6-  
17 9. Plaintiff alleges that, on June 1, 2017, it recorded a Grant Deed for the real property  
18 located at 42265 Little Lake Road in Mendocino, California, following a foreclosure sale.  
19 On July 12, 2017, Defendants, who are acting pro se, filed a notice of removal, Dkt. 1,  
20 along with an application to proceed in forma pauperis (“IFP”), Dkt. 2. Defendants  
21 removed the action on the basis of diversity jurisdiction.

22 A district court has “a duty to establish subject matter jurisdiction over the removed  
23 action sua sponte, whether the parties raised the issue or not.” United Inv’rs Life Ins. Co. v.  
24 Waddell & Reed, Inc., 360 F.3d 960, 967 (9th Cir. 2004); accord Attorneys Tr. v.  
25 Videotape Comput. Prods., Inc., 93 F.3d 593, 594-95 (9th Cir. 1996) (lack of subject matter  
26 jurisdiction may be raised at any time by either party or by the court sua sponte). The  
27 federal removal statute permits the removal of an action which could have been brought  
28 originally in federal court. See 28 U.S.C. § 1441(a). “The burden of establishing federal

1 jurisdiction is on the party seeking removal, and the removal statute is strictly construed  
2 against removal jurisdiction.” Prize Frize Inc. v. Matrix Inc., 167 F.3d 1261, 1265 (9th Cir.  
3 1999). A district court must remand a case to state court “if at any time before the final  
4 judgment it appears that the district court lacks subject matter jurisdiction.” 28 U.S.C. §  
5 1447(c); Kelton Arms Condo. Owners Ass’n v. Homestead Ins. Co., 346 F.3d 1190, 1192  
6 (9th Cir.2003) (“the district court must remand if it lacks jurisdiction”) (citing Sparta  
7 Surgical Corp. v. Nat’l Ass’n Sec. Dealers, Inc., 159 F.3d 1209, 1211 (9th Cir. 1998)).

8 A defendant may remove an action to federal court based on federal question  
9 jurisdiction or diversity jurisdiction. Hunter v. Philip Morris USA, 582 F.3d 1039, 1042  
10 (9th Cir. 2009) (citing 28 U.S.C. § 1441). As stated above, Defendants removed the instant  
11 action on the basis of diversity jurisdiction.<sup>1</sup> District courts have diversity jurisdiction over  
12 all civil actions “where the matter in controversy exceeds the sum or value of \$75,000,  
13 exclusive of interest and costs, and is between . . . citizens of different States.” 28 U.S.C.  
14 § 1332(a). The amount in controversy is determined by the amount of damages or the  
15 value of the property that is the subject matter of the action. Hunt v. Wash. State Apple  
16 Advert. Comm’n, 432 U.S. 433 (1977). The diversity statute is strictly construed, and any  
17 doubts are resolved against finding jurisdiction. Kantor v. Wellesley Galleries, Ltd., 704  
18 F.2d 1088, 1092 (9th Cir. 1983).

19 Here, Plaintiff commenced the state court action as a “Limited Civil Action” in  
20 which the amount demanded does not exceed \$10,000. The damages sought in the  
21 Complaint consist of the “reasonable value for the use and occupancy of the Property in the  
22 sum of \$80.00 per day.” Compl. ¶ 10. Plaintiff alleges that such sum began accruing on  
23 April 5, 2017, i.e., 90 days after Defendants received service of a notice to vacate and  
24 surrender possession. Id. ¶¶ 7-8. Thus, when the action was removed, the accrual period

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26 <sup>1</sup> Although not advanced by Defendants, the Court notes that federal question  
27 jurisdiction is lacking. The Complaint alleges a single cause of action for unlawful detainer  
28 Muhammad v. N. Richmond Senior Housing, Inc., No. C 15-00629 WHO, 2015 WL  
1154209, at \*2 (N.D. Cal. Mar. 13, 2015) (citations omitted).

1 was ninety-eight days. At a rate of \$80.00 per day, accrued damages totaled \$7,840—well  
2 below the \$75,000 jurisdictional minimum. Remand therefore is warranted. See Gaus v.  
3 Miles, Inc., 980 F.2d 564, 567 (9th Cir. 1992) (lack of specific facts demonstrating that the  
4 amount in controversy at the time of removal met the jurisdictional minimum justified  
5 remand); see, e.g., Louden, LLC v. Martin, No. C 12-05972 SBA, 2012 WL 6020059, \*2  
6 (N.D. Cal. Dec. 3, 2012) (remanding unlawful detainer action on the ground that the  
7 plaintiff limited its demand to \$10,000). Accordingly,

8 IT IS HEREBY ORDERED THAT the instant action is REMANDED to Mendocino  
9 County Superior Court. In view of the remand, Defendants’ application to proceed IFP is  
10 DENIED as moot. The Clerk shall terminate all pending matters and close the file.

11 IT IS SO ORDERED.

12 Dated: 7/20/2017

  
13 SAUNDRA BROWN ARMSTRONG  
14 Senior United States District Judge  
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