

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

VICTORIA VALENCIA,
Plaintiff,
v.
MICHAEL VALENCIA,
Defendant.

Case No. 17-cv-06581-BLF

**ORDER ADOPTING MAGISTRATE
JUDGE’S REPORT AND
RECOMMENDATION; AND
REMANDING ACTION TO THE
SANTA CLARA COUNTY SUPERIOR
COURT**

[Re: ECF 5]

Defendant Michael Valencia, proceeding *pro se*, removed this unlawful detainer action from the Santa Clara County Superior Court on November 14, 2017. Notice of Removal, ECF 1. The Notice of Removal asserts federal subject matter jurisdiction based on federal questions raised in his demurrer to Plaintiff’s state court complaint. *Id.* at 2.

On November 17, 2017, Magistrate Judge Howard R. Lloyd, to whom the case originally was assigned, issued an order which granted Defendant’s motion for leave to proceed *in forma pauperis*, directed the Clerk of the Court to reassign the case to a district judge, and included a Report and Recommendation (“R&R”) that the case be remanded to the superior court for lack of subject matter jurisdiction. R&R, ECF 5.

When a magistrate judge issues an R&R regarding a case-dispositive matter, a party may file “specific written objections” to the R&R within 14 days after being served with the R&R. Fed. R. Civ. P. 72(b)(2). If the party is served with the R&R by mail, that 14-day period is extended by 3 days. *See* Fed. R. Civ. P. 6(d) (“When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . , 3 days are added

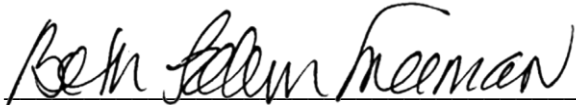
1 after the period would otherwise expire.”). “The district judge must determine de novo any part of
2 the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3).
3 “When no timely objection is filed, the court need only satisfy itself that there is no clear error on
4 the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72, Adv. Comm.
5 Notes to 1983 Amend.; *see also Grasdalen v. Shartle*, No. CV 15-0299-TUC-JGZ (BGM), 2016
6 WL 4138274, at *1 (D. Ariz. Aug. 4, 2016) (district court reviews for clear error where no
7 objections are filed); *Evony, LLC v. Aeria Games & Entm’t, Inc.*, No. C 11-0141 SBA, 2014 WL
8 12658953, at *1 (N.D. Cal. June 12, 2014) (same).

9 Defendant was served with the R&R by mail on November 17, 2017. Certificate of
10 Service, ECF 6. He therefore had until December 4, 2017 to file objections. No objections have
11 been filed. Accordingly, this Court reviews Judge Lloyd’s R&R only for clear error. This Court
12 finds no error in Judge Lloyd’s determination that this Court lacks subject matter jurisdiction over
13 the action. Accordingly, the Court hereby ADOPTS Judge Lloyd’s R&R and REMANDS the
14 case to the Santa Clara County Superior Court.

15 Defendant is advised that subsequent attempts to remove this unlawful detainer action to
16 federal court may result in sanctions.

17 **IT IS SO ORDERED.**

18
19 Dated: December 5, 2017

20 
21 BETH LABSON FREEMAN
22 United States District Judge
23
24
25
26
27
28