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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

ABC SAND AND ROCK CO., INC., )  
an Arizona corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MARICOPA COUNTY, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

No. 2:17-cv-0977-HRH

ORDER

On April 3, 2017, defendants removed this case from the Maricopa County Superior Court on the basis of plaintiff’s proposed second amended complaint which asserts claims under 42 U.S.C. §§ 1983 and 1985. While such federal claims would give this court federal question jurisdiction and thus make removal proper under 28 U.S.C. § 1441(a), this court does not currently have jurisdiction because, as defendants admit, “[t]he second amended complaint has yet to be filed[.]”<sup>1</sup> The state court granted plaintiff’s motion for leave to file a second amended complaint on March 21, 2017,<sup>2</sup> but as of April 3, 2017, a second amended complaint had not been filed. “In determining the existence of removal jurisdiction, based

<sup>1</sup>Defendants’ Notice of Removal at 2, Docket No. 1.

<sup>2</sup>Under Advisement Ruling, Docket No. 1-3 at 80.

upon a federal question, the court must look to the complaint as of the time the removal petition was filed.” Kobold v. Good Samaritan Regional Medical Ctr, 832 F.3d 1024, 1045 (9th Cir. 2016) (quoting Abada v. Charles Schwab & Co., 300 F.3d 1112, 1117 (9th Cir. 2002)). Neither plaintiff’s original complaint<sup>3</sup> nor its first amended complaint<sup>4</sup> assert federal claims or provide any other basis for removal. “If there exists a jurisdictional defect in the removal, sua sponte remand is not only permissible, but the district court ‘must remand if it lacks jurisdiction.’” Knutson v. Allis–Chalmers Corp., 358 F. Supp. 2d 983, 990 (D. Nev. 2005) (quoting Kelton Arms Condominium Owners Ass’n, Inc. v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003)). Therefore, the court sua sponte remands this action to state court.

DATED at Anchorage, Alaska, this 5th day of April, 2017.

/s/ H. Russel Holland  
United States District Judge

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<sup>3</sup>Docket No. 1-1 at 2.

<sup>4</sup>Docket No. 1-1 at 76.