

1 & Reed, Inc., 360 F.3d 960, 967 (9th Cir. 2004). The removal statute, 28 U.S.C. § 1441, is
2 strictly construed against removal jurisdiction. *Geographic Expeditions, Inc. v. Estate of Lhotka*,
3 599 F.3d 1102, 1107 (9th Cir. 2010); *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582
4 F.3d 1083, 1087 (9th Cir. 2009). It is presumed that a case lies outside the limited jurisdiction of
5 the federal courts, and the burden of establishing the contrary rests upon the party asserting
6 jurisdiction. *Geographic Expeditions*, 599 F.3d at 1106–07; *Hunter v. Philip Morris USA*, 582
7 F.3d 1039, 1042 (9th Cir. 2009). In addition, “the existence of federal jurisdiction depends solely
8 on the plaintiff’s claims for relief and not on anticipated defenses to those claims.” *ARCO Envtl.*
9 *Remediation, LLC v. Dep’t of Health & Envtl. Quality*, 213 F.3d 1108, 1113 (9th Cir. 2000).
10 “The strong presumption against removal jurisdiction” means that “the court resolves all
11 ambiguity in favor of remand to state court.” *Hunter*, 582 F.3d at 1042; *Gaus v. Miles, Inc.*, 980
12 F.2d 564, 566 (9th Cir. 1992). That is, federal jurisdiction over a removed case “must be rejected
13 if there is any doubt as to the right of removal in the first instance.” *Geographic Expeditions*, 599
14 F.3d at 1107; *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996); *Gaus*, 980 F.2d at 566. “If
15 at any time prior to judgment it appears that the district court lacks subject matter jurisdiction, the
16 case shall be remanded.” 28 U.S.C. § 1447(c); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 932 (9th
17 Cir. 2001). Remand under 28 U.S.C. § 1447(c) “is mandatory, not discretionary.” *Bruns v.*
18 *NCUA*, 122 F.3d 1251, 1257 (9th Cir. 1997); see also *California ex. rel. Lockyer v. Dynegy, Inc.*,
19 375 F.3d 831, 838 (9th Cir. 2004). Where it appears, as it does here, that the district court lacks
20 subject matter jurisdiction over a removed case, “the case shall be remanded.” 28 U.S.C.
21 § 1447(c).

22 “The presence or absence of federal question jurisdiction is governed by the ‘well-pleaded
23 complaint rule,’ which provides that federal jurisdiction exists only when a federal question is
24 presented on the face of the plaintiff’s properly pleaded complaint.” *California v. United States*,
25 215 F.3d 1005, 1014 (9th Cir. 2000); see also *Dynegy*, 375 F.3d at 838; *Duncan*, 76 F.3d at 1485.
26 Under the well-pleaded complaint rule, courts look to what “necessarily appears in the plaintiff’s
27 statement of his own claim in the bill or declaration, unaided by anything in anticipation of
28 avoidance of defenses which it is thought the defendant may interpose.” *California*, 215 F.3d at

1 1014. Accordingly, “a case may not be removed on the basis of a federal defense . . . even if the
2 defense is anticipated in the plaintiff’s complaint and both parties concede that the federal defense
3 is the only question truly at issue.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987);
4 *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002); see also *Vaden v.*
5 *Discover Bank*, 556 U.S. 49, 70 (2009) (“It does not suffice to show that a federal question lurks
6 somewhere inside the parties’ controversy, or that a defense or counterclaim would arise under
7 federal law.”).

8 Here, defendants David Mullet and Jenny Mullet have not shown that removal of this
9 action to this federal court is appropriate. The complaint filed by plaintiff is a straight-forward
10 unlawful detainer action that is based entirely on state law. As stated above, defendants rely
11 solely on their answer to the complaint in attempting to establish federal jurisdiction. Defendants
12 seek to base removal of this case on what appears to be a type of federal defense. This is
13 improper, since the defensive invocation of federal law cannot form the basis of this court’s
14 jurisdiction. See *Vaden*, 556 U.S. at 70; *Caterpillar*, 482 U.S. at 392; *Wayne*, 294 F.3d at 1183;
15 *California*, 215 F.3d at 1014.


16 Because there is no federal question appearing in plaintiff’s complaint, defendants have
17 failed to properly invoke this court’s jurisdiction. Remand to the Fresno County Superior Court
18 is appropriate and mandatory. 28 U.S.C. § 1447(c); *Geographic Expeditions*, 599 F.3d at 1107;
19 *Bruns*, 122 F.3d at 1257.

20 Accordingly,

- 21 1. This action is REMANDED forthwith to the Fresno County Superior Court, pursuant
22 to 28 U.S.C. § 1447(c), for lack of subject matter jurisdiction;
- 23 2. Defendants motions motion to proceed in forma pauperis (Doc. Nos. 3–4) are
24 DENIED as moot; and
- 25 3. The court DIRECTS the Clerk of the Court to close this action.

26 IT IS SO ORDERED.

27 Dated: March 8, 2016

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UNITED STATES DISTRICT JUDGE