



1           If a case is improperly removed from state to federal court, the federal court has an  
2 independent responsibility to remand that case back to state court. This responsibility derives  
3 from the mandate in 28 U.S.C. § 1447(c) to remand a case “[i]f at any time before final judgment  
4 it appears that the district court lacks subject matter jurisdiction.” 28 U.S.C. § 1447(c).  
5 Moreover, it is the district court’s “duty to establish subject matter jurisdiction over [a] removed  
6 action *sua sponte*, whether the parties raised the issue or not.” *United Investors Life Ins. Co. v.*  
7 *Waddell & Reed, Inc.*, 360 F.3d 960, 967 (9th Cir. 2004). Courts construe removal statutes  
8 strictly against removal and place the burden on defendant to demonstrate that removal is proper.  
9 *Moore–Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241,1244 (9th Cir. 2009) (citing *Gaus v.*  
10 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (“The ‘strong presumption’ against removal means  
11 that the defendant always has the burden of establishing that removal is proper.”)).

12           Here, defendants assert this court has subject matter jurisdiction under 28 U.S.C.  
13 § 1441. Notice Removal 2, ECF No. 1. The duty now lies with the court to determine if federal  
14 jurisdiction exists in this case. 28 U.S.C. § 1447(c). Defendants do not assert that the complaint  
15 itself raises a federal question. *Id.* Instead, defendants assert that a federal question exists  
16 because “Defendant’s [sic] Demurrer, a pleading[,] depend on the determination of Defendant’s  
17 rights and Plaintiff’s duties under federal law.” Notice Removal 2. However, removal cannot be  
18 based only on a defense that raises a federal question. *Vaden v. Discover Bank*, 556 U.S. 49, 54  
19 (2009) (“federal-court jurisdiction cannot be invoked on the basis of a defense or counterclaim”);  
20 *Nationstar, LLC v. Graves*, No. 1:12-CV-02018-AWI, 2012 WL 6720368, at \*2 (E.D. Cal. Dec.  
21 26, 2012) (citations omitted) (remanding unlawful detainer action *sua sponte*). Even if the  
22 defendants’ demurrer to the complaint was relevant for jurisdictional purposes, defendants’ notice  
23 explains that their answer asserted defective notice only under Code of California Civil Procedure  
24 § 1161(2). For these reasons, defendant fails to establish a basis for federal question jurisdiction.

25           The court finds that defendant has not shown any proper basis for removal. Thus,  
26 the court lacks subject matter jurisdiction, the case shall be remanded and defendant’s motion for  
27 *in forma pauperis* status is moot.

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Based on the foregoing, it is HEREBY ORDERED that:

1. This action is REMANDED to Yolo County Superior Court.
2. The motions for *in forma pauperis* status are DENIED as moot.

DATED: March 27, 2017.

  
UNITED STATES DISTRICT JUDGE