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28UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADAJOHN KEPHART, an individual; THELMA  
LOUISE KEPHART, an individual,

Plaintiffs

v.

ROTECH HEALTHCARE, INC., a foreign  
corporation; VITAL CARE, INC., a foreign  
corporation,

Defendants

Case No.:2:15-cv-00859-JAD-NJK

**Order Denying Motion to Reconsider  
Remand Order**

[ECF 32]

On December 7, 2015, I found that the defendants had failed to meet their burden of establishing that this court has jurisdiction over the subject matter of this case, and I remanded this case back to the Eighth Judicial District Court, Clark County, Nevada.<sup>1</sup> Defendants now ask me to reconsider that remand order, arguing that I have authority to do so under either FRCP 59(e) or 60(b).<sup>2</sup> Defendants are mistaken. Remand orders based on a lack of subject-matter jurisdiction are not reviewable on appeal or otherwise. Defendants' motion for reconsideration is thus procedurally improper and is denied.

**Discussion**

Section 1447(c) of title 28 of the United States Code contemplates remand based on a lack of subject-matter jurisdiction or a defect in the removal procedure.<sup>3</sup> When a federal court relies on a ground enumerated in 28 U.S.C. § 1447(c) to remand an action back to the state court whence it was removed, 28 U.S.C. § 1447(d) plainly provides that the remand order is "not reviewable on appeal or

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<sup>1</sup> ECF 31.

<sup>2</sup> ECF 32.

<sup>3</sup> See *Augon-Schulte v. Guam Election Commn.*, 469 F.3d 1236, 1240 (9th Cir. 2006).

1 otherwise.”<sup>4</sup> The state court can, in fact, proceed with the case once the remand order is entered and  
2 a certified copy of that order is mailed to the state court by the clerk of this court.<sup>5</sup>

3 I remanded this case back to state court because I found that subject-matter jurisdiction was  
4 lacking—defendants had not met their burden to establish that the amount in controversy exceeds  
5 \$75,000.<sup>6</sup> Jurisdiction over this action revested in the state court when, on December 7, 2015, the  
6 remand order was entered on the docket in this case and the clerk of this court mailed a copy of that  
7 order to the state court. I simply do not have the authority to reconsider that remand order.<sup>7</sup>  
8 Defendants’ motion for reconsideration is thus procedurally defective and must be denied.

9 In remanding this case, I essentially concluded that this case was not removable at the time  
10 that defendants filed their petition for removal. When a case is not immediately removable but the  
11 defendant later receives a document that puts it on notice “that the case is one which is or has  
12 become removable,” the proper procedure is to file “a notice of removal . . . within 30 days after  
13 receipt” of the document establishing that the case is or has become removable.<sup>8</sup> If defendants  
14 believe they received a document establishing that the state-court case is or has become  
15 removable, they must follow the procedure outlined in 28 U.S.C. § 1446(b)(3) and be mindful that  
16 *this* case has been closed.

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22 <sup>4</sup> *Atlantic Nat. Trust LLC v. Mt. Hawley Ins. Co.*, 621 F.3d 931, 934 (9th Cir. 2010) (quoting 28  
23 U.S.C. § 1447(d)).

24 <sup>5</sup> 28 U.S.C. § 1447(c).

25 <sup>6</sup> ECF 31 at 5–6.

26 <sup>7</sup> *See* 28 U.S.C. § 1447(d).

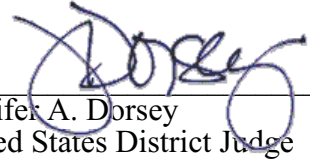
27 <sup>8</sup> *See* 28 U.S.C. § 1446(b)(3).

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**Conclusion**

ACCORDINGLY, IT IS HEREBY ORDERED that defendants' motion to reconsider the order remanding case to state court [ECF 32] is **DENIED**.

DATED this 21st day of December, 2015



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Jennifer A. Dorsey  
United States District Judge