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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Marshall Ben,

10 Plaintiff,

11 v.

12 Union Pacific Railroad Company; Limon
13 Hospitality, LLC; Bruce Rahmani; et al.,

14 Defendants.

No. CV-15-02123-PHX-NVW

**ORDER DISCHARGING PREVIOUS
ORDER TO SHOW CAUSE**

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16 On October 21, 2015, Defendants Limon Hospitality, LLC and Bruce Rahmani
17 filed a Notice of Removal claiming that this Court has original jurisdiction over this
18 action pursuant to 28 U.S.C. § 1332 and that the action is therefore removable pursuant to
19 28 U.S.C. § 1441(a). (Doc. 1 at 3.)


20 On October 29, the Court issued an Order to Show Cause why the action should
21 not be remanded in light of the Notice of Removal's failure to allege subject matter and
22 removal jurisdiction. (Doc. 7.) Regarding subject matter jurisdiction, the Court noted
23 that the Notice of Removal (i) did not allege the principal place of business of Defendant
24 Union Pacific Railroad Company and (ii) did not allege the citizenship of every member
25 of Limon Hospitality, LLC. (*Id.* at 1.) Regarding removal jurisdiction, the Court noted
26 that (i) the Notice of Removal did not allege Union Pacific Railroad Company's consent
27 to removal, (ii) such consent would now seem untimely, and (iii) in any event the action
28 appears nonremovable pursuant to 28 U.S.C. § 1445(a). (*Id.* at 1-2.)

1 On November 4, Limon Hospitality, LLC and Bruce Rahmani filed a Response
2 addressing the Court's concerns. (Doc. 7.) Regarding subject matter jurisdiction, the
3 Response (i) contends that the Notice of Removal's identification of Union Pacific
4 Railroad Company's Nebraska headquarters suffices to allege its principal place of
5 business, and (ii) identifies a Colorado corporation headquartered in Colorado as the sole
6 member of Limon Hospitality, LLC. (*Id.* at 1-2.) These responses satisfy the Court's
7 subject matter jurisdiction concerns.

8 Regarding removal jurisdiction, the Response points out that the potential defects
9 identified in the Court's order—lack of unanimous consent to removal, untimeliness of
10 such consent, and nonremovability under 28 U.S.C. § 1445(a)—are procedural rather
11 than jurisdictional. See *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n.1 (9th Cir.
12 1988) (lack of unanimous consent); *Smith v. Mylan, Inc.*, 761 F.3d 1042, 1045 (9th Cir.
13 2014) (untimeliness); *Feichko v. Denver & Rio Grande W. R. Co.*, 213 F.3d 586, 591
14 (10th Cir. 2000) (nonremovability under 28 U.S.C. § 1445(a)); accord *Vasquez v. N. Cty.*
15 *Transit Dist.*, 292 F.3d 1049, 1062 (9th Cir. 2002) (nonremovability under 28 U.S.C.
16 § 1445(c)). As a result, the Court may remand for these defects only upon a motion to
17 remand made within thirty days after the filing of the Notice of Removal. 28 U.S.C.
18 § 1447(c); see also *Smith*, 761 F.3d at 1044. No such motion has been made, and the
19 thirty-day window has long passed. Plaintiff is deemed to have waived these objections
20 to removal.

21 IT IS THEREFORE ORDERED that the Order to Show Cause (Doc. 7) is
22 discharged.

23 Dated this 18th day of February, 2016.

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Neil V. Wake
26 United States District Judge
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