

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF CALIFORNIA

3  
4 **MARISELLA SOSA,**

5 **Plaintiff**

6 **v.**

7 **COUNTY OF FRESNO,**  
8 **CORRECTIONAL OFFICER JESSICA**  
9 **KAMPEN, and DOES 1 through 20,**  
10 **inclusive,**

11 **Defendants**

**CASE NO. 1:13-CV-2027 AWI GSA**

**ORDER DENYING MOTION TO  
DISMISS AND REMANDING CASE**

(Doc. No. 6)

12 On December 11, 2014, the County of Fresno removed this matter from the Fresno County  
13 Superior Court. The complaint that was removed was the Third Amended Complaint (“TAC”).  
14 On December 20, 2014, the County filed a motion to dismiss the TAC. On January 20, 2014,  
15 Plaintiff filed an opposition. As part of the opposition, Plaintiff states that, although the County of  
16 Fresno and Officer Kampen appear in the style of the TAC, neither the County nor Officer  
17 Kampen are actually parties. That is, “The TAC does not name the County as a defendant.” Doc.  
18 No. 7 at 2:6-8. Because the County is not a party, Plaintiff states that removal was improper and  
19 indicates that the Court should remand the case. See id. at 2:20-3:13. In reply, the County states  
20 that it was served with the TAC and that its name still appears, so it reasonably believed it was a  
21 party. However, the County states that the Plaintiff is master of her complaint and if Plaintiff  
22 states that the County is not a party, then the Court can rely on that representation and remand this  
23 case back to state court. The County argues that the remand should be without prejudice to the  
24 ability of any subsequently named Doe defendant to remove to this Court.

25 *Discussion*

26 The TAC is somewhat ambiguous. There are allegations that mention the County, but the  
27 relief requested is only against Doe Defendants. However, the County is correct that the Plaintiff  
28 is the master of her complaint. See Duncan v. Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996). The  
Court will take Plaintiff at her word and hold that the County is not a party to the TAC. See Doc.

1 No. 7 at 2:6-8. Since the County is not a party, let alone a defendant, the County could not  
2 remove this case. See 28 U.S.C. § 1441; Housing Auth. of Atlanta v. Millwood, 472 F.2d 268,  
3 272 (5th Cir. 1973); Gross v. Deberardinis, 722 F.Supp.2d 532, 534-35 (D. Del. 2010); Newman  
4 & Cahn, LLP v. Sharp, 388 F.Supp.2d 115, 117 (E.D. N.Y. 2005). Removal by a non-party does  
5 not invoke a district court's removal jurisdiction. See Housing, 472 F.2d at 272; Juliano v.  
6 Citigroup, N.A., 626 F.Supp.2d 317, 319 (E.D. N.Y. 2009).

7 Because all doubts are construed against removal jurisdiction, Geographic Expeditions,  
8 Inc. v. Estate of Lhotka, 599 F.3d 1102, 1107 (9th Cir. 2010), and the County is not a party to the  
9 TAC, see Doc. No. 7 at 2:6-8, this Court's jurisdiction has not been invoked. See Housing, 472  
10 F.2d at 272; Juliano, 626 F.Supp.2d at 319. As a result, the Court must remand this matter. 28  
11 U.S.C. § 1447(c); Gibson v. Chrysler Corp., 261 F.3d 927, 932 (9th Cir. 2001); Bruns v. NCUA,  
12 122 F.3d 1251, 1257 (9th Cir. 1997). However, because the County's confusion was  
13 understandable, the Court will not impose sanctions for wrongful removal.<sup>1</sup> See 28 U.S.C. §  
14 1447(c); Martin v. Franklin Capital Corp., 546 U.S. 132, 136 (2005) (fees under § 1447(c) are  
15 discretionary).

16  
17 **ORDER**

18 Therefore, IT IS HEREBY ORDERED that:

- 19 1. The previously set hearing date of February 3, 2014, is VACATED;  
20 2. Defendant's motion to dismiss is DENIED as moot; and  
21 3. Pursuant to 28 U.S.C. § 1447(c), this case is REMANDED and the Clerk shall return this  
22 case to the Fresno County Superior Court forthwith.

23 IT IS SO ORDERED.

24 Dated: February 3, 2014

25   
26 SENIOR DISTRICT JUDGE

27  
28 \_\_\_\_\_  
<sup>1</sup> Because the County's mistake was reasonable, no prejudice to a subsequent removal is intended.