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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JEAN MOODY,

Plaintiff,

v.

NO. CIV. 2:11-1739 WBS CKD

COUNTY OF SACRAMENTO; DELTA AIR
LINES INC., a Delaware
corporation, and DOES 1-100,

ORDER

Defendants.

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This proceeding was removed from state court by Delta Airlines on June 28, 2011. However, under the terms of 28 U.S.C. § 1441(b), a party may remove an action on the basis of diversity "only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b). At the time of removal, the County of Sacramento, having been served on June 20, 2011, was a properly joined and served defendant, and is a resident of California. See Illinois v. City of Milwaukee, 406

1 U.S. 91, 97 (1972) ("It is well settled that for the purposes of
2 diversity of citizenship, political subdivisions are citizens of
3 their respective States."). Therefore, it would appear that
4 removal under § 1441(b) was improper.

5 The Ninth Circuit has held, however, that the
6 "additional limitation on diversity-based removal jurisdiction
7 [in § 1441(b)] is a procedural, or non-jurisdictional, rule."
8 Lively v. Wild Oats Markets, Inc., 456 F.3d 933, 939 (9th Cir.
9 2006). Under § 1441(c), a motion to remand on the basis of a
10 defect in removal procedure, such as a violation of section
11 1441(b), must be brought within thirty days or the defect is
12 waived. 28 U.S.C. § 1441(c); Lively, 456 F.3d at 942. Because
13 plaintiff failed to object to the improper removal of this
14 proceeding within thirty days, the court is unable to remand the
15 proceeding to the proper forum. Accordingly, the court will
16 retain jurisdiction over the proceeding.

17 IT IS SO ORDERED.

18 DATED: October 21, 2011

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21 WILLIAM B. SHUBB
22 UNITED STATES DISTRICT JUDGE
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