

\*\*E-filed 04/28/2010\*\*

1  
2  
3  
4  
5  
6  
7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
9 SAN JOSE DIVISION

10 THERESA D. LARA,

No. C 10-0751 RS

11 Plaintiff,

12 v.

**ORDER GRANTING MOTION TO  
REMAND**13  
14 CEMDAR II ENTERPRISES, et al.,15 Defendants.  
16 \_\_\_\_\_/

17 This action was removed from Santa Clara Superior Court by defendants Santa Clara  
18 County, Sheriff Laurie Smith, and Deputy Sheriff Craig (collectively “the County”). Co-defendants  
19 Edmundo and Jean Damasco, who did not join in the notice of removal, now move to remand.  
20 Pursuant to Civil Local Rule 7-1(b), this matter is suitable for disposition without oral argument.

21 The Damascos’ contention that the County’s removal was untimely fails, because the period  
22 in which removal must be effected runs from *service* or other notice to the defendant of the  
23 complaint, not its mere filing. 28 U.S.C. § 1446 (b).<sup>1</sup> Their contention, however, that remand is  
24 warranted because they never consented to the removal is meritorious. *See Hewitt v. City of*

25  
26 \_\_\_\_\_  
27 <sup>1</sup> Under the “first served” rule, the time for removal expires 30 days after service on *any* defendant.  
28 *United Computer Systems, Inc. v. AT & T Corp.*, 298 F.3d 756, 762-763 (9th Cir. 2002). Thus, it is possible that the County’s removal was untimely, but the Damascos have failed to establish when they or other defendants were served.

1 *Stanton*, 798 F.2d 1230 (9th Cir. 1986) (“All defendants must join in a removal petition with the  
2 exception of nominal parties.”); 28 U.S.C. § 1446(b).

3 The County contends it could not obtain the Damascos’ joinder in the removal notice  
4 because at the time it lacked information as to which defendants, if any, had been served. While  
5 that may have been so, and an appropriate statement to include in the removal notice, it does not  
6 somehow relieve the County from the obligation of obtaining the consent of all served defendants to  
7 the removal within the statutory time frame. *See Prize Frize, Inc. v. Matrix (U.S.) Inc.*, 167 F.3d  
8 1261, 1266 (9th Cir. 1999).

9 Finally, the County requests that it be given leave to amend its removal notice to cure any  
10 defects. Given that the Damascos have brought this motion to remand, it is clear that the County is  
11 not going to succeed in obtaining their consent to the removal, and therefore cannot cure the defect,  
12 even assuming it were not otherwise too late to do so. This action is hereby remanded to Santa  
13 Clara County Superior Court.

14  
15 IT IS SO ORDERED.

16  
17 Dated:04/28/2010



18 RICHARD SEEBORG  
19 UNITED STATES DISTRICT JUDGE  
20  
21  
22  
23  
24  
25  
26  
27  
28