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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 MEHDI VOSSOUGH, |
12 | Plaintiff, |
13 v. |
14 | AIG PROPERTY CASUALTY |
15 | COMPANY, NATIONAL UNION |
16 | FIRE INSURANCE COMPANY OF |
17 | PITTSBURGH PENNSYLVANIA, |
18 | and DOES 1 through 20, inclusive, |
19 | Defendants. |

Case No.: 17cv0247 BTM BGS

**ORDER DISCHARGING ORDER
TO SHOW CAUSE**

[ECF NO. 6]

20 On February 27, 2017, the Court issued an order requiring defendant
21 National Union Fire Insurance Company of Pittsburgh Pennsylvania (“National
22 Union”) to Show Cause why this action should not be remanded to state court
23 (the “OSC”) for failure to state in its notice of removal whether defendant AIG
24 Property Casualty Company (“AIG”) had been served, and if so, whether it joined
25 in or consented to removal. (ECF No. 6.) For the reasons below, the OSC will
26 be discharged.

27 On February 8, 2017, National Union removed this insurance bad faith
28 action from San Diego Superior Court on the assertion of diversity jurisdiction

1 pursuant to 28 U.S.C. § 1441(b). However, its notice of removal failed to
2 address whether AIG has been served, and if so, whether it joined in or
3 consented to removal. Since all defendants in the state court action must join the
4 petition for removal, see, e.g., Hewitt v. City of Stanton, 798 F.2d 1230, 1233 (9th
5 Cir. 1986), the Court issued an OSC requiring National Union to explain why AIG
6 was omitted from the notice of removal.

7 On March 6, 2017, National Union filed a timely response to the OSC.
8 (ECF No. 7.) National Union stated that AIG was served with the summons and
9 complaint on January 9, 2017, the same day as National Union; that AIG had, in
10 fact, consented to removal; and that National Union's failure to include AIG's
11 consent in the removal notice was an oversight. (ECF No. 7.) Also on March 6,
12 2017, AIG filed a joinder in the notice of removal. (ECF No. 8.) AIG's joinder
13 indicates that at the time the action was removed on February 8, 2017, it was
14 attempting to negotiate a dismissal, that it did actually consent to removal and
15 National Union's failure to address AIG's consent in the removal notice was an
16 oversight.

17 The OSC gave Plaintiff until March 13, 2017, to file a responsive brief, but
18 Plaintiff elected not to file a response, nor has Plaintiff moved to remand or
19 otherwise objected to the Court's exercise of removal jurisdiction over this action.

20 As the Court indicated in its OSC, failure to join all properly served
21 defendants in a removal petition renders the removal procedurally defective. See
22 Emrich v. Touche Ross & Co., 846 F.2d 1190, 1193 n.1 (9th Cir. 1988).

23 However, non-jurisdictional procedural requirements for removal may be waived
24 by the plaintiff. Kelton Arms Condominium Owners Assoc., Inc. v. Homestead
25 Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003); Smith v. Mylan Inc., 761 F.3d
26 1042, 1044-46 (9th Cir. 2014). If the plaintiff waives procedural defects in the
27 removal process, the Court may not address them by remanding the action sua
28 sponte. Smith, 761 F.3d. at 1046; 28 U.S.C. § 1447(c) (addressing post-removal

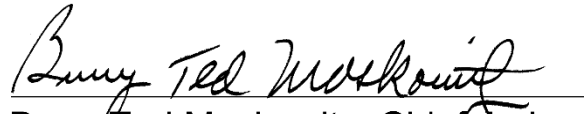
1 authority to remand). Here, the plaintiff did not respond to the OSC, move to
2 remand, or otherwise register any opposition to removal, and thus has “implicitly
3 waived any procedural defect in removal.” Id. Therefore, the Court may not
4 remand this action sua sponte on the basis of the procedural flaws in National
5 Union’s notice of removal. Id.

6 Also, “the district court may allow the removing defendants to cure the
7 defect by obtaining joinder of all defendants prior to the entry of judgment.”
8 Destfino v. Reiswig, 630 F.3d 952, 957 (9th Cir. 2011); see Soliman v. Phillip
9 Morris Inc., 311 F.3d 966, 970 (9th Cir. 2002). Here, since Plaintiff does not
10 object, the Court accepts AIG’s belated joinder as having cured the deficiency in
11 National Union’s removal notice.

12 Accordingly, the Order to Show Cause is DISCHARGED.

13 IT IS SO ORDERED:

14 Dated: April 21, 2017

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16 Barry Ted Moskowitz, Chief Judge
17 United States District Court
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