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17 UNITED STATES DISTRICT COURT  
 18 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION  
 19

20 CLAUDIA APOLINAR and  
 21 EMMANUEL PEREZ-PEREZ,

22 Plaintiffs,

23 v.  
24

25 POLYMER80, INC., a Nevada  
 corporation, and DOES ONE through  
 26 FIFTY,

27 Defendants.  
28

Case No. 2:21-cv-08401-PA-PVC

**PLAINTIFFS' MEMORANDUM OF  
 POINTS AND AUTHORITIES IN  
 SUPPORT OF THEIR MOTION TO  
 REMAND**

Judge: Hon. Percy Anderson  
 Date: December 20, 2021  
 Time: 1:30 p.m.  
 Crtrm.: 9A

Trial Date: Not yet assigned

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**INTRODUCTION**

Claudia Apolinar and Emmanuel Perez-Perez, deputies for the Los Angeles County Sheriff’s Department, filed this lawsuit in Los Angeles Superior Court against Nevada-based Polymer80, Inc. after they were shot and grievously wounded by an unserialized, home-assembled Polymer80 ghost gun. Their initial complaint detailed their extensive physical injuries, their required medical treatment, and their emotional scars, and it revealed that their injuries had prevented them from returning to work. Despite the obvious availability of federal diversity jurisdiction, Polymer80 initially chose not to remove the case.

Instead, only after this action was reassigned to a judge who had recently ruled against Polymer80 in a separate but related lawsuit—and forty-six days after it had been served with the complaint—did Polymer80’s counsel suddenly ask plaintiffs’ counsel whether the amount in controversy here exceeded \$75,000, the federal jurisdictional threshold. Plaintiffs’ counsel replied that it did. Now, claiming that federal jurisdiction was not apparent until the receipt of that communication from plaintiffs’ counsel, Polymer80 seeks to remove this case from a state-court judge it disfavors into this court.

This dilatory gamesmanship should be rejected. Under the removal statute, Polymer80 had thirty days from receipt of the initial complaint to remove this case. It plainly missed that deadline, and its argument that federal jurisdiction was not apparent can be readily dismissed. This case should be remanded to state court.

**BACKGROUND**

Polymer80, Inc. manufactures, advertises, and sells do-it-yourself kits for home assembly of ghost guns—firearms that are sold without background checks and lack serial numbers and are therefore nearly impossible for law enforcement to

1 trace. Compl. ¶¶ 10–11, ECF No. 1-1. On September 12, 2020, Los Angeles County  
2 Sheriff’s deputies Claudia Apolinar and Emmanuel Perez-Perez, plaintiffs here,  
3 were shot and severely wounded by a convicted felon wielding a Polymer80 ghost  
4 gun—which plaintiffs allege was sold in violation of federal and state gun laws and  
5 was illegal to possess in California. Compl. ¶¶ 1–2, 9, 12–14, 19–21.

6 Plaintiffs’ initial complaint recounts a detailed and vivid factual presentation  
7 of precisely how this shooting inflicted serious, lasting injuries on both plaintiffs.  
8 Compl. ¶¶ 2–6, 34–41. As it sets forth, Apolinar was shot in her jaw and in both  
9 arms. Compl. ¶¶ 4, 34–35. To recover, she spent six days in the intensive-care unit,  
10 and her jaw was wired shut. Compl. ¶¶ 34, 36. A bullet sliced her tongue in half, and  
11 she suffered broken bones in each arm. Compl. ¶¶ 34–35. Her tongue is now  
12 permanently damaged, and she continues to suffer nerve damage in her face. Compl.  
13 ¶ 34. Further, her relationship with her young son has been impaired, and her  
14 injuries prevent her from engaging in many of the activities that she and her son  
15 previously pursued together. Compl. ¶ 37.

16 As for Perez, he was shot five times, including in his head, in his arm, and in  
17 his hand. Compl. ¶ 38. His humerus was broken in three places, which required  
18 surgery and the insertion of three plates; a bone in his hand was shattered, which  
19 also required surgery; and he suffered a concussion and a brain bleed. Compl.  
20 ¶¶ 38–39. Treatment for his injuries involved a bone graft from his hip, and he still  
21 requires additional surgery on his hand. Compl. ¶ 39. Additionally, he now suffers  
22 from flashbacks and is receiving mental-health support for his trauma. Compl. ¶ 40.

23 In the year since the shooting, because of their injuries, neither Apolinar nor  
24 Perez has been able to return to work. Compl. ¶ 41.

25 Plaintiffs filed their detailed complaint in Los Angeles Superior Court, which  
26 they served on Polymer80, along with the summons, on August 12, 2021. *See* Proof  
27 of Service of Summons, Aug. 12, 2021, ECF No. 1-4; *see also* Notice of Removal at

1 3, ECF No. 1 (confirming date of service). Stating claims of negligence and public  
 2 nuisance under California law, the complaint alleges that Polymer80 illegally sold  
 3 gun-assembly kits to Californians in violation of federal and state gun laws, without  
 4 serial numbers or background checks, and despite knowing that, once assembled, the  
 5 guns would be illegal to own in California. Compl. ¶¶ 71–89. The complaint also  
 6 alleges that the man who shot the plaintiffs chose a Polymer80 ghost gun because he  
 7 knew that it would be difficult to trace. Compl. ¶ 44. The complaint seeks to hold  
 8 Polymer80 responsible for the plaintiffs’ above-described “physical pain, mental  
 9 suffering, loss of enjoyment of life, anxiety, and emotional distress.” Compl. ¶ 99.  
 10 And the complaint asserts that Polymer80 is liable for the plaintiffs’ “lost future  
 11 income, lost earning capacity, and past and future medical expenses and related  
 12 expenses.” Compl. ¶ 100. Accordingly, the complaint seeks economic and  
 13 noneconomic damages, punitive and exemplary damages, and attorney’s fees.  
 14 Compl. at 29–30.<sup>1</sup>

15 On August 24, 2021, plaintiffs served on Polymer80 an amended complaint,  
 16 *see* Proof of Service of Summons, Aug. 24, 2021, ECF No. 1-4; *see also* Notice of  
 17 Removal at 3 (confirming date of service), which adds the allegation that Polymer80  
 18 also violated California’s Unfair Competition Law, *see* First Am. Compl. ¶¶ 95–  
 19 114, ECF No. 1-1. The amendments to the complaint do not modify the allegations  
 20 surrounding the nature of plaintiffs’ injuries or the relief requested. *See id.* at 1–2,  
 21 9–10, 33–35.

22 On August 27, 2021, this action was reassigned within the Los Angeles  
 23 Superior Court to the Honorable Daniel S. Murphy, before whom Polymer80 is  
 24

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25 <sup>1</sup> In compliance with California law, the complaint does not demand a specific dollar  
 26 amount of damages. *See* Cal. Civ. Proc. Code § 425.10(b) (“where an action is brought to  
 27 recover actual or punitive damages for personal injury or wrongful death, the amount  
 28 demanded shall not be stated”).



1 already defending a related lawsuit, brought by the State of California. *See* Min.  
2 Order, Aug. 27, 2021, 10:44 AM, ECF No. 1-4. That lawsuit, like this one, includes  
3 the claim that Polymer80’s sale of ghost-gun kits creates a public nuisance.  
4 *Compare* First Am. Compl. ¶¶ 127–30, with Complaint for Injunctive Relief,  
5 Statutory Penalties, and Abatement ¶¶ 96–102, *California v. Polymer80, Inc.*, No.  
6 21STCV06257 (Cal. Super. Ct. Feb. 17, 2021). And that lawsuit, including its  
7 public-nuisance claim, has already survived a demurrer from Polymer80. *See* Order  
8 re Dem., *California v. Polymer80*, No. 21STCV06257, slip op. at 4–5 (June 7,  
9 2021).

10 On September 27, 2021, forty-six days after Polymer80 was served with  
11 plaintiffs’ initial complaint, and thirty-four days after it was served with plaintiffs’  
12 amended complaint, Polymer80’s counsel emailed plaintiffs’ counsel asking  
13 whether the amount in controversy in this case exceeds \$75,000. Notice of Removal,  
14 Ex. C, ECF No. 1-3. Plaintiffs’ counsel responded affirmatively that same day. *Id.*  
15 Nearly another month would pass before Polymer80 filed, on October 22, a notice  
16 of removal, on the basis of diversity jurisdiction. *See* Notice of Removal. Because  
17 this notice of removal is untimely, plaintiffs now move to remand the case to Los  
18 Angeles Superior Court.<sup>2</sup>

19  
20 **ARGUMENT**

21 Polymer80 does not dispute that it missed the normal deadline for removal,  
22 which was thirty days after service of plaintiffs’ initial complaint, or September 13,  
23

24

25 <sup>2</sup> On October 29, 2021, Polymer80 filed, in this court, a motion to dismiss this case or, in  
26 the alternative, to strike portions of plaintiffs’ complaint. *See* Notice of Mot. to Dismiss,  
27 ECF No. 9. That motion is currently pending. If the Court grants plaintiffs’ motion to  
remand, it will not need to address Polymer80’s motion to dismiss.



1 2021. *See* Notice of Removal at 3.<sup>3</sup> Rather, its sole argument is that its deadline  
2 should be extended, relying on a statute that applies only when “the case stated by  
3 the initial pleading is not removable,” 28 U.S.C. § 1446(b)(3). *See* Notice of  
4 Removal at 3. But that statute does not apply here, because the plaintiffs’ extensive  
5 injuries and the several categories of damages sought, all detailed in the initial  
6 complaint, made it facially apparent that federal diversity jurisdiction exists. This  
7 case should thus be remanded.

8 **I. Remand is appropriate, jurisdiction notwithstanding, when removal is**  
9 **untimely.**

10 A case filed in state court is removable to federal court if the federal court  
11 would have original jurisdiction over the case. 28 U.S.C. § 1441(a). As relevant  
12 here, federal district courts have original jurisdiction over all civil actions between  
13 citizens of different states as long as the amount in controversy exceeds \$75,000. *Id.*  
14 § 1332(a). The “amount in controversy” in a case is defined to include not just  
15 compensatory damages but also punitive damages and attorney’s fees. *Chabner v.*  
16 *United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3 (9th Cir. 2000).

17 To remove a case to federal court, a defendant normally must file a notice of  
18 removal within thirty days of receiving the initial complaint or summons.  
19 § 1446(b)(1). A notice of removal may be filed later only if the initial complaint did  
20 not state a removable case. *See* § 1446(b)(3). Otherwise, by missing the original  
21 thirty-day deadline, a defendant forfeits its ability to remove. *See, e.g., Cantrell v.*  
22 *Great Republic Ins. Co.*, 873 F.2d 1249, 1256 (9th Cir. 1989).

23  
24

25 <sup>3</sup> Indeed, even if the deadline were measured from the date of service of plaintiffs’  
26 amended complaint—which is not the law, *see, e.g., Sandpiper Mgmt., LLC v. JP Morgan*  
27 *Chase & Co.*, No. 10cv1802 DMS (AJB), 2010 U.S. Dist. LEXIS 109819, at \*6 (S.D. Cal.  
28 Oct. 15, 2010)—Polymer80’s notice of removal still would have been untimely: thirty days  
after service of the amended complaint was September 23, 2021.

1 The proper response to an improper removal is a motion to remand the case to  
2 state court. *See Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th  
3 Cir. 2009) (citing 28 U.S.C. § 1447(c)). “The removal statute is strictly construed,  
4 and any doubt about the right of removal requires resolution in favor of remand.” *Id.*

5 **II. Polymer80’s removal was untimely because federal jurisdiction was**  
6 **apparent from the initial complaint.**

7 Polymer80 does not contest that it failed to remove this case within thirty  
8 days of receiving plaintiffs’ initial complaint and summons. *See Notice of Removal*  
9 *at 3*. The controlling question therefore is whether Polymer80 was entitled to  
10 remove the case later, under § 1446(b)(3). *See id.* Because the face of the initial  
11 complaint affirmatively reveals a basis for federal jurisdiction, it was not.

12 Whether a case is removable “is determined through examination of the four  
13 corners of the applicable pleadings, not through subjective knowledge or a duty to  
14 make further inquiry.” *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th  
15 Cir. 2005). Yet although “defendants need not make extrapolations or engage in  
16 guesswork,” they *are* required “to apply a reasonable amount of intelligence in  
17 ascertaining removability.” *Kuxhausen v. BMW Fin. Servs. NA LLC*, 707 F.3d 1136,  
18 1140 (9th Cir. 2013) (quoting *Whitaker v. Am. Telecasting, Inc.*, 261 F.3d 196, 206  
19 (2d Cir. 2001)). “[A] ‘defendant should not be able to ignore pleadings or other  
20 documents from which removability may be ascertained and seek removal only  
21 when it becomes strategically advantageous for it to do so.’” *Muniz v. UtiliQuest,*  
22 *LLC*, No. CV 19-08759 PA (SKx), 2019 U.S. Dist. LEXIS 212883, at \*18 (C.D.  
23 Cal. Dec. 5, 2019) (quoting *Roth v. CHA Hollywood Med. Ctr., LP*, 720 F.3d 1121,  
24 1125 (9th Cir. 2013)), *perm. app. denied*, No. 19-80179, 2020 U.S. App. LEXIS  
25 5951 (9th Cir. Feb. 26, 2020).

26 Consequently, even where, as here, federal jurisdiction depends on the  
27 amount in controversy, “[a] pleading need not identify a specific amount in

1 controversy in order to trigger the thirty-day removal period under 28 U.S.C.  
 2 § 1446(b)(1).” *Rodriguez v. Boeing Co.*, No. CV 14-04265-RSWL (AGRx), 2014  
 3 U.S. Dist. LEXIS 106798, at \*9 (C.D. Cal. Aug. 1, 2014) (citing *Kroske v. US Bank*  
 4 *Corp.*, 432 F.3d 976, 980 (9th Cir. 2005)); accord *Carter v. Fannie Mae*, No. SACV  
 5 14-01754-CJC(JCGx), 2014 U.S. Dist. LEXIS 177040, at \*4 (C.D. Cal. Dec. 23,  
 6 2014). Rather, “so long as the initial pleading enables the defendant to intelligently  
 7 ascertain removability, the case is removable, and the thirty-day period begins at the  
 8 time the defendant receives the complaint.” *Rodriguez*, 2014 U.S. Dist. LEXIS  
 9 106798, at \*9–10.

10 Here, plaintiffs’ initial complaint states a removable case under § 1332(a). It  
 11 is undisputed that the complaint reveals that plaintiffs and Polymer80 are citizens of  
 12 different states. *Cf.* § 1332(a)(1). In its notice of removal, Polymer80 points to the  
 13 complaint itself to establish that both plaintiffs are citizens of California. *See* Notice  
 14 of Removal at 2 (citing First Am. Compl. ¶ 31); *cf.* Compl. ¶ 30 (same). And to  
 15 establish that it is a citizen of Nevada, Polymer80 relies on its incorporation in  
 16 Nevada and its principal place of business being in Nevada, *see* Notice of Removal  
 17 at 2, both of which facts are pleaded in plaintiffs’ complaint, *see* Compl. ¶ 26; *see*  
 18 *also* First Am. Compl. ¶ 27 (same).

19 Plaintiffs’ initial complaint also clearly reveals that the amount in controversy  
 20 is greater than \$75,000. *Cf.* § 1332(a). The complaint alleges in specific detail the  
 21 type and nature of the severe injuries suffered by each plaintiff. *See* Compl. ¶¶ 1–6,  
 22 34–40; *see also* First Am. Compl. ¶¶ 1–6, 35–41 (same). It describes in painstaking  
 23 detail the circumstances under which the plaintiffs were ambushed and shot with  
 24 live bullets intended to kill them; bullets that penetrated a face, shattered a jaw,  
 25 sliced a tongue in half, and fractured and shattered multiple bones in arms and  
 26 hands. Compl. ¶¶ 1–5, 34–35, 38; *see also* First Am. Compl. ¶¶ 1–3, 35–36, 39  
 27 (same). It details in vivid terms the plaintiffs’ fear as they scrambled out of and

1 around their patrol vehicle and searched for and did their best to hide from the  
2 person who had shot them. Compl. ¶¶ 4–6; *see also* First Am. Compl. ¶¶ 4–6  
3 (same). It enumerates plaintiffs’ many surgical procedures, the resulting permanent  
4 implanted hardware, and the extended hospital stays. Compl. ¶¶ 36, 39; *see also*  
5 First Am. Compl. ¶¶ 37, 40 (same). Collectively, the complaint describes how one  
6 or the other or both of the plaintiffs suffered brain bleeds, a concussion, facial  
7 disfigurement, physical limitations, work restrictions, severe emotional distress  
8 caused by, for instance, a child’s fear at seeing his mother’s injuries, mental  
9 anguish, sleeplessness, irritability, and the need for help from mental-health  
10 professionals. Compl. ¶¶ 34–35, 37, 39–41; *see also* First Am. Compl. ¶¶ 35–36, 38,  
11 40–42 (same).

12       The reader of the complaint learned all of the foregoing and that the plaintiffs  
13 had been unable to work from the time they were shot until, at least, the complaints  
14 had been filed—a period of close to one year. *See* Compl. ¶¶ 1–6, 34–41; *see also*  
15 First Am. Compl. ¶¶ 1–6, 35–42 (same). What is more, the complaint seeks punitive  
16 damages and attorney’s fees in addition to compensatory damages for these  
17 enumerated harms. *See* Compl. at 29–30; *see also* First Am. Compl. at 35 (same); *cf.*  
18 *Rodriguez*, 2014 U.S. Dist. LEXIS 106798, at \*10 (“The calculation of the amount  
19 in controversy takes into account claims for general damages, special damages,  
20 punitive damages, and attorney’s fees ....”).

21       Of course, these claims and factual allegations are more than sufficient to  
22 make it apparent that the amount in controversy easily exceeds the \$75,000  
23 jurisdictional threshold, notwithstanding that the complaint does not expressly state  
24 as much. *See, e.g., Hammarlund v. C.R. Bard, Inc.*, No. 2:15-cv-05506-SVW-JEM,  
25 2015 U.S. Dist. LEXIS 134962, at \*4 (C.D. Cal. Oct. 2, 2015) (“In cases involving  
26 severe injuries, especially those requiring surgery, courts have found it facially  
27 apparent from the complaint that the [\$75,000] amount in controversy was

1 satisfied.”); *Campbell v. Bridgestone/Firestone, Inc.*, No. CIV F 05-1499 FVS DLB,  
2 2006 U.S. Dist. LEXIS 16113, at \*6 (E.D. Cal. Mar. 17, 2006) (finding that  
3 description of injuries in complaint made it “facially apparent that the amount in  
4 controversy exceeds \$75,000.00”). Thus, particularly in light of “the types of  
5 damages Plaintiff[s] [are] seeking here,” the “initial pleading ‘affirmatively  
6 reveal[s]’ a basis for removal.” *Mendoza v. Am. Airlines, Inc.*, No. CV 10-7617  
7 RSWL (JCx), 2010 U.S. Dist. LEXIS 146176, at \*7–8 (C.D. Cal. Dec. 22, 2010)  
8 (quoting *Harris*, 425 F.3d at 695); *accord Rodriguez*, 2014 U.S. Dist. LEXIS  
9 106798, at \*7–8.

10 To be clear, that plaintiffs’ complaint does not ascribe a specific dollar  
11 amount to their injuries, in conformance with section 425.10(b) of the California  
12 Code of Civil Procedure, “does not preclude a finding that the Complaint facially  
13 alleges an amount in controversy in excess of the minimum jurisdictional amount.”  
14 *Mendoza*, 2010 U.S. Dist. LEXIS 146176, at \*7. On the contrary, district courts in  
15 California have regularly remanded untimely removed cases because diversity  
16 jurisdiction was apparent from the initial complaint, notwithstanding the absence of  
17 a stated amount in controversy. *See, e.g., Hernandez v. Target Corp.*, No. CV 16-  
18 5808 DMG (AGRx), 2016 U.S. Dist. LEXIS 137922, at \*3–4 (C.D. Cal. Oct. 4,  
19 2016) (remanding because removability was facially apparent where complaint  
20 sought lost income, punitive damages, emotional-distress damages, and attorney’s  
21 fees); *Carter*, 2014 U.S. Dist. LEXIS 177040, at \*4–5; *Rodriguez*, 2014 U.S. Dist.  
22 LEXIS 106798, at \*11–12 (“While Plaintiff did not provide a specific jurisdictional  
23 amount, the facts alleged in the Complaint should have indicated to Defendant that  
24 the amount in controversy exceeded \$75,000.”); *Mendoza*, 2010 U.S. Dist. LEXIS  
25 146176, at \*7–8; *Jellinek v. Advance Prods. & Sys., Inc.*, No. 10cv1226 JM(WMC),  
26 2010 U.S. Dist. LEXIS 88331, at \*4 (S.D. Cal. Aug. 24, 2010).

1 The Ninth Circuit’s decision in *Harris*, which Polymer80 relies on, *see* Notice  
2 of Removal at 3, does not dictate otherwise. *Harris* holds, quite explicitly, that  
3 “notice of removability under § 1446(b) is determined through examination of the  
4 four corners of the applicable pleadings” and thus that the thirty-day deadline to  
5 remove “is triggered by defendant’s receipt of an ‘initial pleading’ that reveals a  
6 basis for removal.” *Harris*, 425 F.3d at 694.

7 Defendants seem to suggest that *Harris* requires a complaint to state explicitly  
8 the basis for diversity jurisdiction in order to start the thirty-day clock. *See* Notice of  
9 Removal at 3. That is incorrect. The *Harris* decision simply adopts the rule that “the  
10 ground for removal must be revealed affirmatively in the initial pleading in order for  
11 the first thirty-day clock under § 1446(b) to begin.” *Harris*, 425 F.3d at 695. That  
12 requirement is satisfied here. *See, e.g., Mendoza*, 2010 U.S. Dist. LEXIS 146176, at  
13 \*7–8.

14 The narrowness of *Harris*’s holding is revealed by the Ninth Circuit’s  
15 subsequent decision in *Kuxhausen*, 707 F.3d 1136. In that case, where the plaintiffs’  
16 complaint also did not specify the total amount of damages sought, the court of  
17 appeals evaluated and ultimately rejected a number of arguments that “the amount in  
18 controversy was” nevertheless “stated by the initial pleading.” *Id.* at 1140–41. If  
19 *Harris* required plaintiffs to state explicitly the total amount of damages sought, the  
20 court’s analysis in *Kuxhausen* would have been unnecessary. Instead, the Ninth  
21 Circuit emphasized that a defendant must “apply a reasonable amount of  
22 intelligence in ascertaining removability.” *Id.* at 1140 (quoting *Whitaker*, 261 F.3d  
23 at 206); *cf. Vigil v. Waste Connections, Inc.*, No. 2:14-cv-02383-KJM-CKD, 2015  
24 U.S. Dist. LEXIS 16844, at \*8 (E.D. Cal. Feb. 11, 2015) (ruling removability not  
25  
26  
27



1 apparent from face of complaint because complaint “provide[d] no detail of the  
2 injuries alleged”).<sup>4</sup>

3 In this case, applying any amount of intelligence to the detailed injuries  
4 alleged and the damages sought in plaintiffs’ initial complaint would have revealed  
5 the availability of federal jurisdiction. Polymer80 was thus subject to the thirty-day  
6 removal deadline established by § 1446(b)(1), and its failure to file a notice of  
7 removal before that deadline is dispositive here.

8  
9 **CONCLUSION**

10 For the foregoing reasons, plaintiffs request that this Court remand this case  
11 to Los Angeles Superior Court for further proceedings.

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21 <sup>4</sup> To be sure, some district judges have interpreted the Ninth Circuit’s rulings to require an  
22 explicit statement of the amount in controversy. *See, e.g., Chavarria v. Mgmt. & Training*  
23 *Corp.*, No. 16-cv-617-H (RBB), 2016 U.S. Dist. LEXIS 197047, at \*8 & n.2 (S.D. Cal.  
24 May 13, 2016) (denying motion to remand because “Plaintiff never indicate[d] what  
25 amount of damages he [was] specifically seeking”). But such decisions overread *Harris*  
26 and *Kuxhausen*, neither of which requires anything more than that removability be  
27 apparent from the complaint itself—that is, not based on the defendant’s outside  
28 knowledge or investigation. *See Kuxhausen*, 707 F.3d at 1140. The harsh rule implied by  
*Chavarria*—which flies in the face of earlier decisions interpreting *Harris* and *Kuxhausen*,  
*see, e.g., Rodriguez*, 2014 U.S. Dist. LEXIS 106798, at \*9—has never been imposed by  
the Ninth Circuit, and indeed is implicitly rejected by the court of appeals’ extended  
analysis in *Kuxhausen*, as discussed above, *see* 707 F.3d at 1140–41.



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Dated: November 16, 2021

WALKUP, MELODIA, KELLY & SCHOENBERGER

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