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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

CLAUDIA APOLINAR and EMMANUEL PEREZ-PEREZ, **Plaintiffs,** **v.** **POLYMER80, INC., a Nevada corporation; and DOES 1-50,** **Defendants.**	**CASE NO.: 2:21-cv-08401-PA-PVC** **MEMORANDUM OF POINTS AND AUTHORITIES OF POLYMER80, INC. IN OPPOSITION TO MOTION OF PLAINTIFFS TO REMAND** **Date: December 20, 2021** **Time: 1:30 p.m.** **Courtroom: 9A** **Honorable Percy Anderson, U.S.D.J.**

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Defendant Polymer80, Inc. ("Polymer80" or "Company") respectfully submits this Memorandum of Points and Authorities in opposition to the motion ("Motion") of plaintiffs Claudia Apolinar and Emmanuel Perez-Perez, pursuant to 28 U.S.C. § 1446(b), to remand this action to the Superior Court of the State of California for Los Angeles County.[1] For all of the reasons set forth below and in the remainder of the record of this matter, the Motion is factually and legally baseless, and the Court should wholly deny it.

PRELIMINARY STATEMENT

Leaving aside plaintiffs' untoward and unfounded editorializing on Polymer80's motives in timely removing this case from State Court, the instant Motion concedes most of the key facts and controlling law as to the propriety and lawfulness of this action remaining before this Court. Plaintiffs' only "Hail Mary" chance of success -- a claim of untimeliness as to the Company's removal of their State Court filings nowhere alleging a specific amount of damages -- unquestionably evaporates in the wake of abundant precedent from Ninth Circuit Courts, and indeed this Court in particular.

In short, the record reflects that until September 27, 2021, plaintiffs, who easily could have, did not provide Polymer80 with "enough information to remove." *Cobb v. Subaru of Am., Inc.*, 2020 WL 4014744, at *2 (C.D. Cal. July 16, 2020) (Anderson, J.) ("*Cobb*"). Nor before that date did the Company have any "duty to investigate whether the matter [was] removable," given plaintiff's boilerplate averments of the amount in controversy and concomitant failure to set forth anywhere a specific dollar amount in damages. *Id*. As such, the Court is limited to a review of the Complaint[s] in the record "to determine when [Polymer80] had notice of the grounds for removal." *Id*. Thus, the Company's October 22, 2021 removal -- some twenty-five (25) days after first receiving the requisite notice -- was wholly timely and appropriate. To be sure then, the Court

[1] Citations to the "Motion" followed by a pincite are to Plaintiffs' Memorandum Of Points And Authorities In Support Of Their Motion To Remand, ECF No. 16-1.

should deny the Motion, as it essentially contends that Polymer80 had an independent obligation to ascertain the quantum of damages plaintiffs were and are seeking, and that the Company's "conduct" and "subjective knowledge" of the circumstances possibly undergirding this action are relevant and material, when such matters (according to this Court) plainly are *not*. *Gonzalez v. Ford Motor Co*., 2019 WL 1364976, at *4 (C.D. Cal. Mar. 22, 2019) (Anderson, J.) ("*Gonzalez*").

As we demonstrate below, this Court's prior rulings on these issues do not stand alone and are buttressed by a legion of other decisions from various Courts in the Ninth Circuit. Predictably and in the same vein, the authorities to the contrary relied upon by plaintiffs are of no consequence and/or extremely inapposite in the premises. Nor does plaintiffs' all-too-convenient invocation of California Code of Civil Procedure Section 425.10(b) salvage their Motion. Otherwise put, the governing thirty (30)-day removal clock does not start ticking, where the face of the pending Complaint -- as here -- does not specifically and clearly establish the amount of damages pursued. At bottom, plaintiffs simply did not do what they needed to do to establish the specific amount in controversy, and that dispositive failing lands with a thud at their collective doorstep. Therefore, remand is unwarranted, and the Court should swiftly deny the Motion.

PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiffs Concede All Of The Facts Germane To This Motion.

The facts most salient to the Motion are undisputed. As plaintiffs admit, neither of their Complaints have "ascribe[d] a specific dollar amount to their injuries." Motion at 9. Indeed, both their initial Complaint For Damages And Injunctive Relief ("Complaint") and First Amended Complaint For Damages ("FAC") do *not* expressly refer to *any* amounts of damages other than to allege that "the amount in controversy exceeds $25,000." Compl. ¶ 30; FAC ¶ 31. In that general regard, the instant Motion stresses that both the Complaint and FAC allege "lost future income, lost earning capacity, and past and future medical expenses and related expenses" and pursue

"economic and noneconomic damages, punitive and exemplary damages, and attorney's fees." But, plaintiffs do not and cannot argue that either of those pleadings ever attached a specific dollar figure to any of their injuries or damages. *See* Motion at 3, 6-9.

Plaintiffs additionally contend in a footnote that their Complaint and FAC do "not demand a specific dollar amount of damages… [i]n compliance with California law." *Id.* at 3 n.1, citing Cal. Civ. Proc. Code § 425.10(b) ("Section 425.10(b)"). Yet, nowhere do they assert that California law has prohibited them from providing such numbers in those two pleadings. Of course, plaintiffs were free to craft and flesh out both the Complaint and FAC in whatever fashion they wished, so long as they did not "state[]" the total "amount demanded," including by explaining "specific dollar amount[s]" for certain of their injuries and/or the amount at issue. Section 425.10(b); Motion at 9. Nonetheless, plaintiffs chose to remain silent regarding dollar figures save the Superior Court-mandated more than $25,000 amount in controversy. The Court of Appeal for the Fifth District of the State of California has explained that the "purpose of [Section 425.10] is to protect defendants from adverse publicity resulting from inflated *demands*." *Weakly-Hoyt v. Foster*, 230 Cal. App. 4th 928, 932-33 (2014) (first alteration in original) (emphasis supplied). Moreover, Section 425.10(b) plainly does not proscribe all averments concerning money damages, as plaintiffs well know considering their own references to the amount in controversy exceeding $25,000. Compl. ¶ 30; FAC ¶ 31.

Plaintiffs further concede that on September 27, 2021 counsel to Polymer80 wrote to their counsel by e-mail, asking in part: "do you believe that the amount in controversy exceeds $75,000?", and that "[p]laintiffs' counsel responded affirmatively that same day" in another email (the two together, "September 27 Emails"). Motion at 4; ECF No. 1-3. And, plaintiffs acknowledge that well within thirty (30) days of receipt of that response, the Company, on October 22, 2021, removed this action to this Court.

B. Plaintiffs' Immaterial Aspersions Regarding Polymer80's Supposed Motives Are Not Only Unseemly But Misleading.

Consistent with the spirit of much of the rest of their Motion, plaintiffs veer into sophistry, when they attempt to paint the Company as "seek[ing] to remove this case from a state-court judge it disfavors . . . only after this action was reassigned to a judge who had ruled against Polymer80 in a separate but related lawsuit."[2] Motion at 1. Little, if anything, could be further from the truth. Plaintiffs are correct that there is a separate lawsuit against the Company pending in Superior Court, Los Angeles County, brought by the People of the State of California. *See* Motion at 3-4, citing *California v. Polymer80, Inc.*, No. 21STCV06257 (Cal. Super. Ct. Feb. 17, 2021) ("LA County Action"). Nevertheless, what plaintiffs omit to tell the Court is far more important. In actuality, a handful of lawsuits, including the LA County Action, were filed in California in 2020 and 2021 against Polymer80, in all of which the firm of Michel & Associates originally appeared as defense counsel.

In August 2021, Polymer80 changed counsel in all of these suits to the undersigned. It was at or about that point that plaintiffs herein (during August 2021) filed both their initial Complaint and FAC. Thereafter, with new counsel on board, Polymer80 initially and understandably determined, based upon scrutiny of the express language of the Complaint and the FAC, that neither one alleged at least $75,000 in damages and so did not meet the standard for removal. Thus, new counsel requested a thirty (30)-day extension to respond to the FAC in the Superior Court, which request counsel to plaintiffs graciously granted.

Once undersigned became better acquainted with this matter, forwarded the first of the two September 27 Emails, and studied plaintiffs' response thereto as well as the controlling law, Polymer80 became aware that this action was properly removable. And

[2] As will be explained more fully below, none of defendant's purported motives or subjective knowledge is at all meaningful to the adjudication of this Motion. Nevertheless, Polymer80 is compelled to correct plaintiffs' tawdry mischaracterizations.

so, possessed of confirmation that the amount in controversy exceeded $75,000, the Company timely and lawfully removed the case to this Court. In this setting, Judge Murphy's decision in the LA County Action upon Polymer80's demurrer, which demurrer did not raise arguments under the Protection Of Lawful Commerce In Arms Act ("PLCAA"), is entirely irrelevant. *See* Motion at 4. On the other hand, the PLCAA constitutes the substantive legal foundation of the Company's extant motion to dismiss this proceeding. Upon this background, Polymer80 is fully confident in its stance on the PLCAA, whether adjudicated before this Court, that of Judge Murphy, or any other. In any event, the Company is entitled to litigate the PLCAA issues in a United States District Court and fully intends to do so.

ARGUMENT

I

THE COURT SHOULD DENY PLAINTIFFS' MOTION TO REMAND.

A. Plaintiffs Do Not Dispute That This Court Properly Has Jurisdiction Over This Action, If Removal -- As It Was Here -- Was Timely.

Plaintiffs' only argument in support of remand rests on the purported untimeliness of removal. Plaintiffs do not contest that the "Court has jurisdiction over this removed action pursuant to 28 U.S.C. § 1332, because there is complete diversity among the properly served and joined parties, and the amount in controversy exceeds the sum of $75,000." *Compare* Notice Of Polymer80, Inc. Of Removal Of State Court Action Pursuant To 28 U.S.C. §§ 1332, 1441, And 1446 ("Notice Of Removal"), ECF No. 1 at 1-2, *with* Motion at 7 ("[P]laintiffs' initial complaint states a removable case under § 1332(a). It is undisputed that the complaint reveals that plaintiffs and Polymer80 are citizens of different states."). Moreover, plaintiffs do not dispute, disregarding their meritless untimeliness theme, that Polymer80's removal was

effectuated in a procedurally sound and appropriate manner. Accordingly, plaintiffs have waived all of their contentions concerning those aspects of Polymer80's removal, and the Court need only focus on their untimeliness canard. *Cf. Kuxhausen v. BMW Fin. Servs. NA LLC*, 707 F.3d 1136, 1142 (9th Cir. 2013) ("*Kuxhausen*") (failure to attach "a copy of all process, pleadings, and orders served" to the notice of removal is a curable procedural defect); *Kelton Arms Condo. Owners Ass'n, Inc. v. Homestead Ins. Co.*, 346 F.3d 1190, 1192-93 (9th Cir. 2003) (District Court does not have authority to remand a case *sua sponte* based on procedural defects).

B. Entrenched Ninth Circuit Precedent Compels The Conclusion That Polymer80's Removal Was Timely.

Plaintiffs do not take the position that removal was untimely, if measured from the September 27 Emails addressing the amount in controversy exceeding $75,000. *See* Motion at 4; ECF No. 1-3. Instead, they assert that Polymer80's removed too late, "because . . . it failed to remove this case within thirty days of receiving plaintiffs' initial complaint and summons," and that "the face of the initial complaint affirmatively reveals a basis for federal jurisdiction." Motion at 6. Well-hewn Ninth Circuit authorities squarely foreclose and repudiate these assertions.

As explained in Polymer80's Notice Of Removal, 28 U.S.C. § 1446(b) provides two separate thirty (30)-day periods within which to remove an action from a State to a United States District Court. *See* ECF No. 1 at 2. "[T]he first thirty-day period for removal in 28 U.S.C. § 1446(b) only applies if the case stated by the initial pleading is removable on its face." *Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005) ("*Harris*"). Pursuant to the second such period, "a notice of removal may be filed within thirty days after the defendant receives 'an amended pleading, motion, order, or other paper' from which is can be ascertained from the face of the document that removal is proper." *Id.*, quoting 28 U.S.C. § 1446(b). Plaintiffs appear to acknowledge this plainly correct formulation of the law. *See* Motion at 6 (noting that

"[t]he controlling question therefore is whether Polymer80 was entitled to remove the case later, under § 1446(b)(3)"). In fact, they also do not quarrel about the fact that the September 27 Emails amounted to an "other paper" under 28 U.S.C. § 1446(b). *Compare* Notice Of Removal, ECF No. 1 at 2-3, *with* Motion at 4-10.

Tellingly and as this Court has explicitly recognized, "[t]he Ninth Circuit does not 'charge defendants with notice of removability until they've received a paper that gives them enough information to remove.'" *Cobb*, 2020 WL 4014744, at *2, quoting *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1251 (9th Cir. 2006) ("*Durham*"). "Therefore, in the Ninth Circuit, a defendant does not have a duty to investigate whether the matter is removable even where there may be a 'clue' indicating that federal jurisdiction may exist." *Cobb*, 2020 WL 401474, at *2, citing *Harris*, 425 F.3d at 694. On this subject, the Ninth Circuit has explained that the "notice of removability under 1446(b) is determined through examination of the four corners of the applicable pleadings, not through subjective knowledge or a duty to make further inquiry." *Harris*, 425 F.3d at 694. And, this Court just last year expounded upon the wisdom of this principle, as follows:

> Because inquiries into the subjective knowledge of a defendant might result in a "mini-trial regarding who knew what and when," courts may only rely on the face of the initial pleading and the documents exchanged by the parties to determine when the defendant had notice of the grounds for removal. This "bright-line approach" serves two purposes: (1) it "brings certainty and predictability to the process and avoids gamesmanship in pleading"; and (2) it "avoids the spectre of inevitable collateral litigation over whether the pleadings contained a sufficient 'clue,' whether defendant had subjective knowledge, or whether defendant conducted sufficient inquiry."

Cobb, 2020 WL 4014744, at *2 (citations omitted), quoting *Harris*, 425 F.3d at 694.

The Ninth Circuit further elucidated and concretized *Harris'* sensible approach in *Kuxhausen by* reaffirming that "[t]o avoid saddling defendants with the burden of investigating jurisdictional facts, we have held that 'the ground for removal must be revealed affirmatively in the initial pleading in order for the first thirty-day clock under § 1446(b) to begin.'" *Kuxhausen*, 707 F.3d at 1139, quoting *Harris*, 425 F.3d at 695. It is noteworthy that the *Kuxhausen* class representative plaintiff faced a $5 million amount in controversy hurdle under the Class Action Fairness Act of 2005 ("CAFA"). *See Kuxhausen*, 707 F.3d at 1139-40. And, she averred in her initial Complaint that the personal claim regarding her subject lease of a BMW vehicle exceeded $50,000, and that there existed at least 200 putative class members with like claims concerning such leases. *Id.* at 1138-41. However, her Complaint did *not* allege the amount of damages of each such putative class member, and, as a result, the Ninth Circuit held that that Complaint "fell short of triggering the removal clock under Section 1446(b)." *Id*. at 1141. That Court went on to explain that the District Court had *erred* in finding that said initial pleading *did* sufficiently trigger the removal timing, as follows:

> The district court . . . was influenced by the fact that for a 200 member class, the average contract price per vehicle needed only to exceed $25,000 in order to put greater than five million dollars in controversy. Presumably, it thought that sum was a plausible-enough guess for a case involving German luxury automobiles, perhaps doubly so since Kuxhausen's individual vehicle contract was more than twice that amount. The fact remains, however, that we "don't charge defendants with notice of removability until they've received a paper that gives them enough information to remove." This principle helps avoid a "Catch–22" for defendants desirous of a federal forum. By leaving the window for removal open, it forces plaintiffs to assume the costs associated with their own indeterminate pleadings. That is only fair after all, because—even under CAFA—"the burden is on the party removing the case from state court to show the exercise of federal jurisdiction is appropriate."

Id. (citations omitted), quoting *Durham*, 445 F.3d at 1251. *See also Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 399 (9th Cir. 2010).[3]

This Court recently has followed the crystalline teachings of *Harris* and *Kuxhausen* and found removal to be timely in circumstances remarkably akin to those at hand in this proceeding. *See Gonzalez*, 2019 WL 1364976, at *1-*4. There, in a case predicated upon the Song-Beverly Act, plaintiff "contend[ed] that removal was untimely because [d]efendant could have determined that the amount-in-controversy requirement was satisfied from the face of his original complaint or his FAC" and "focuse[d] on the amount put in controversy by his request for attorneys' fees." *Id.* at *3. More specifically, plaintiff highlighted that defendant "has a customary pattern and practice of removing cases similar to this one on the sworn statements from [defendant's] counsel that routine attorney's fees in these cases exceed $65,000 or $100,000." *Id.* Even so, this Court forcefully and justifiably rejected this line of argument, stating as follows:

> Neither the original complaint nor the FAC provided a basis for determining specific amounts placed in controversy by the other requested relief, such as attorneys' fees or injunctive relief. While Defendant might

[3] Plaintiffs' attempts to twist *Kuxhausen's* holding to support their argument are nothing short of extraordinary. First, they claim that "[i]f *Harris* required plaintiffs to state explicitly the total amount of damages sought, the court's analysis in *Kuxhausen* would have been unnecessary." Motion at 10. Plaintiffs are apparently oblivious to Courts' understandable tendencies to explicate the bases for their decisions. And in the context of *Kuxhausen*, it made sense for the Ninth Circuit to point out that "lurking in the district court's analysis was an implicit premise not furnished by the complaint. Nowhere in that pleading does Kuxhausen allege the value, even as an approximation, of other class members' vehicle financing contracts." *Kuxhausen*, 707 F.3d at 1140-41. Next, plaintiffs acknowledge that "[i]nstead, the Ninth Circuit emphasized that a defendant must 'apply a reasonable amount of intelligence in ascertaining removability.'" Motion at 10, quoting *Kuxhausen*, 707 F.3d at 1140. But, plaintiffs again decline to tell the entire story, when it (as here), eviscerates their position. The very next sentence of the Ninth Circuit's opinion states that "[m]ultiplying figures clearly stated in a complaint is an aspect of that duty." *Id.* at 1140. Here, there were and are no figures in plaintiffs' two pleadings to multiply that would have "trigger[ed] the removal clock." *Id.* at 1141.

> have been able to submit evidence of those amounts and remove this action earlier, *it was not required to do so*. *See Kuxhausen*, 707 F.3d at 1139, 1141 n.3; *Roth v. CHA Hollywood Med. Ctr., L.P.*, 720 F.3d 1121, 1125 (9th Cir. 2013). Defendant's conduct in other cases is not relevant to the timeliness of removal here, as *removability does not depend on its subjective knowledge*. *See Harris*, 425 F.3d at 694. The Court thus cannot conclude that Defendant was charged with notice of removability upon receipt of the original complaint or the FAC.

Id. at *4 (emphasis supplied).

Similarly, the "removability" of this action "does not depend on [Polymer80's] subjective knowledge." *Id.* And, while Polymer80 "might have been able to submit evidence" of the types of damages plaintiffs allege in their Complaints and "remove[d] this action earlier, it was not required to do so." *Id*. Furthermore, plaintiffs at bar must "assume the costs associated with their own indeterminate pleadings." *Kuxhausen*, 707 F.3d at 1141. They could have pleaded more facts as to damages in both the Complaint and FAC but elected not to do so. *See*, *supra*, Statement Of Facts, Section A. As a consequence, there is *zero* in the record before this Court indicating that the Company had the requisite notice that the amount in controversy exceeded $75,000 prior to the September 27 Emails.

Other District Court opinions in the Ninth Circuit further buttress *Cobb* and *Gonzalez*. Indeed, in *Chavarria v. Management & Training Corp.*, 2016 WL 11621563, at *3, (S.D. Cal. May 13, 2016), plaintiff professed that his initial Complaint "was removable on its face because it was clear from the pleading that the damages sought by [p]laintiff were for well in excess of $75,000, satisfying the amount-in-controversy requirement for diversity jurisdiction." Plaintiff also argued, *inter alia*, that he "was diagnosed by an orthopedic specialist as having a partial tear in his pectoralis muscle, and the doctor put Plaintiff off work," and that he never returned to work. *Id.* at *1. Regardless, the United States District Court for the Southern District of California roundly -- and rightly -- rejected the argument, even though plaintiff had made a pre-

suit demand for $225,000. In so doing, the Court ruled that "a review of the four corner[s] of the complaint shows that Plaintiff never indicates what amount of damages he is specifically seeking in the action," and therefore "'it fell short of triggering the removal clock under Section 1446(b).'" *Id.* at *3 & n.3, quoting *Kuxhausen*, 707 F.3d at 1141.

Other trial Court decisions in this Circuit confirm that allegations regarding serious injuries and surgeries lacking specificity about a damages amount do *not* trigger the statutory removal clock. For one, in *Thomason v. Walmart, Inc.*, 2021 WL 406598 (E.D. Wash. Feb. 5, 2021), ("*Thomason*"), a "reference to lumbar surgery did not trigger a second removal period," where "no monetary figure was assigned to the lumbar surgery." *Id.* at *3. To the same effect, in *Gonzalez v. Costco Wholesale Corp.*, 2021 WL 4916608, at *3 (C.D. Cal. Oct. 21, 2021) ("*Costco*"), the amount of potential damages arising from plaintiff's negligence claim was not apparent from the face of the Complaint, which sought recovery for general damages, medical and incidental expenses, loss of earnings and earning capacity, pre-Judgment interest, and costs of the suit. Nevertheless and for that reason, the Court could not "discern from these allegations alone whether the amount in controversy exceeds $75,000." *Id.* at *3.

Moreover, it is of no moment that Section 425.10(b) mandates that "the amount demanded shall not be stated" in a personal injury action. Notably, in *Ruiz v. Walmart Inc.*, 2020 WL 2029976 (C.D. Cal. Apr. 28, 2020), at *3-*4 ("*Ruiz*"), the Court held that despite the language of that Section, the "thirty-day clock was [not] triggered" by plaintiff's initial pleadings, because "[o]n the face of Ruiz's state court complaint, neither her citizenship nor the amount in controversy are established." And, the Court went on to determine that the removal clock did not begin running until "responses to form interrogatories . . . describing the charges to date from health care providers for injuries attributed to the incident totaling at minimum $298,2293.94, and . . . describing [plaintiff's] lost wages totaling $54,000 as of the date of her response, [was] the first

document received by [defendant] that revealed the amount-in-controversy [plaintiff] seeks to recover." *Id*. at *4.

In addition, other District Court decisions in this Circuit illuminate that only *objective* (as opposed to subjective) knowledge of the amount in controversy, moves the statutory removal clock. *Trahan v. United States Bank National Association* solidifies this principle. 2014 WL 116606 (N.D. Cal. Jan. 13, 2014) ("*Trahan*"). In that case, which involved CAFA's $5 million aforementioned such requirement, plaintiff "did not expressly state that the amount in controversy would exceed $5,000,000 in the motion for class certification or the declarations, and he did not make any specific assertions about the amount of damages that might be available to the class or the value of injunctive relief." *Id.* at *4. Significantly, plaintiff's "documents also d[id] not contain information that would permit [defendant] U.S. Bank to make a simple mathematical calculation." *Id.*

Upon this record, the United States District Court for the Northern District of California rightly "conclude[d] that those documents were 'indeterminate,' as to the amount in controversy." *Id*. As such, "pursuant to *Harris* and *Roth*, [defendant] was not required to engage in the extrapolations that would have been required to determine whether the amount in controversy exceeded $5,000,000. Further, [plaintiff] d[id] not refer the Court to any statements or documents in the state court proceeding from which it could evaluate whether [defendant] had objective—versus subjective—knowledge that the amount in controversy had been satisfied." *Id.* (citation omitted). *Accord, Murphy v. Finish Line, Inc.*, 2020 WL 5884683, at *2-*3 (N.D. Cal. 2020) ("*Murphy*") (holding that "both the initial Complaint and the FAC are devoid of facts to support any of the necessary elements of removal under CAFA, including putative class size or the amount in controversy" where "under the four corners of both pleadings, [plaintiff] failed to allege damages with enough specificity to establish the amount in controversy"

because "[defendant] could not have reasonably determined the amount in controversy from the given numbers via a mathematical calculation, and under the law, it had no further duty to estimate or investigate whether the case was removable upon service of either the Complaint or FAC"); *Shepard v. Staffmark Inv., LLC*, 2020 WL 5593232, at *3 (N.D. Cal. Sept. 18, 2020) ("Under the four corners of the FAC, Plaintiff did not facially allege a specific amount in controversy, which would have begun the thirty-day clock. Instead, Plaintiff only stated that the damages sought exceeded the minimal $25,000 jurisdictional limits of the Superior Court and briefly approximated there may be more than 100 putative class members, with no specification of how many times the listed Labor Code violations may have occurred. Defendant . . . could not have reasonably determined the amount in controversy from the given numbers via a mathematical calculation, and under the law, [d]efendant . . .had no further duty to estimate or investigate whether the case was removable upon service of the FAC." (citations omitted)); *Figueroa v. Delta Galil USA, Inc.*, 2019 WL 1433727, at *2 (N.D. Cal. Apr. 1, 2019) (same). Perhaps more to the point here, the Court in *Murphy* made clear that "plaintiffs may protect themselves [from strategic gamesmanship] by providing defendants with a document 'from which removability can be ascertained.'" *Murphy*, 2020 WL 5884683, at *2, quoting *Trahan*, 2014 WL 116606, at *3.

In this case, too, neither the Complaint nor the FAC has housed information that would permit Polymer80 to make a "mathematical calculation" regarding the amount in controversy. Consequently, plaintiffs cannot point to any documents reflecting *objective* knowledge that the $75,000 requirement had been satisfied. *See Ibarra v. SMG Holdings Inc.*, 2021 WL 4948853, at *3 (C.D. Cal. Oct. 22, 2021) (holding "the removal clock did not begin to run upon Plaintiffs' filing of the OC [Original Complaint] because the OC did not affirmatively reveal the grounds for removal. While Plaintiffs sought compensatory damages, statutory penalties, attorneys' fees, and punitive damages in the OC, the OC fails to provide information that is necessary for calculating actual damages.").

It is no accident that the case law upon which plaintiffs rely elucidates the flimsiness of their rhetoric on remand and removal. Patently inapposite, those decisions largely predate *Kuxhausen*[4] and/or omit crucial facts distinguishing them from this action. Courts in this Circuit have already explained why decisions such as *Rodriguez v. Boeing Co.*, 2014 WL 3818108 (C.D. Cal. Aug. 1 2014) ("*Rodriguez*") and *Mendoza* are of no import here. In the same spirit, the District Court in *Gilbert v. Infinity Insurance Co.*, 2015 WL 5444667 (C.D. Cal. Sept. 16, 2015) ("*Gilbert*"), rejected plaintiff's untimeliness arguments premised upon *Rodriguez* and *Mendoza*, since "[i]n both cases defendants had outside knowledge that would allow them to understand, based on the allegations in the complaint, the amount in controversy requirement was met." *Id*. at *2.[5] Polymer80, as with the *Gilbert* defendants, "had no such outside

[4] It is no accident that the following authorities cited by plaintiffs all pre-date *Kuxhausen*: *Mendoza v. Am. Airlines, Inc.*, 2010 WL 5376375 (C.D. Cal. Dec. 16, 2010) ("*Mendoza")*; *Jellinek v. Advance Prods. & Sys., Inc.*, 2010 WL 3385998 (S.D. Cal. Aug. 24, 2010) ("*Jellinek")*; *Campbell v. Bridgestone/Firestone, Inc.*, 2006 WL 707291 (E.D. Cal. Mar. 17, 2006) ("*Campbell*").

[5] In *Rodriguez*, "the court noted that the defendant was the plaintiff's employer, so the defendant knew the plaintiff's salary, and that the back-pay damages were close to the jurisdictional minimum." *TAAD Grp., Inc. v. Hanover Ins. Co.*, 2020 WL 8574973, at *3 (C.D. Cal. Dec. 16, 2020) ("*TAAD Group*"). The *Rodriguez* Court took into account "litigation realities" when determining whether the amount in controversy was adequately stated in the operative complaint. But, as the *TAAD Group* Court recognized, "[p]laintiff points to no case in which this reasoning has been extended beyond the employment context, and the Court declines to do so here." *Id. See also Costco*, 2021 WL 4916608, at *3 (rejecting untimeliness argument, because "[i]n such cases" like *Rodriguez*, "the plaintiff typically provides sufficient objective facts on which to estimate the plaintiff's damages, like plaintiff's wages, statutory penalties, or specific contract damages. That is not the case here."). Similarly, in *Carter v. Fannie Mae*, defendant was plaintiff's employer and "'should have known the approximate amount plaintiff made each year.'" 2014 WL 7339208, at *2 (C.D. Cal. Dec. 23, 2014), quoting *Rodriguez*, 2014 WL 3818108, at *5. Likewise, *Jellinek* involved a case filed by plaintiff "against his former employer." 2010 WL 3385998, at *1. And, in *Hernandez v. Target Corp.*, 2016 U.S. Dist. LEXIS 137922, at *2 (C.D. Cal. Oct. 4, 2016), defendant actually admitted that "[f]rom the face of the Complaint, the amount in controversy in this action exceeds $75,000, exclusive of interest and costs."

knowledge." *Id.* Accordingly, since plaintiffs "did not allege sufficient information in [their] Complaint to establish the amount in controversy requirement was met," the "thirty-day window . . . did not begin to run." *Id.* In brief, the Company, "unlike the defendants in both *Mendoza* and *Rodriguez*, had no outside knowledge establishing the amount in controversy requirement was satisfied." *Id.*

Plaintiffs also surprisingly cite to *Hammarlund v. C.R. Bard, Inc.*, 2015 WL 5826780 (C.D. Cal. Oct. 2, 2015) ("*Hammarlund*") for the misguided and erroneous proposition that certain "claims and factual allegations are more than sufficient to make it apparent that the amount in controversy easily exceeds the $75,000 jurisdictional threshold, notwithstanding that the complaint does not expressly state as much." Motion at 8. In *Hammarlund*, it was *defendants* who cited "severe injuries" to justify that "the amount in controversy was satisfied." *Id.* at *2. Yet, the Court *denied* plaintiff's remand motion, and, as this Court has explained, did so in a setting resembling this matter. "While [d]efendant might have been able to submit evidence . . . and remove this action earlier, it was not required to do so." *Gonzalez*, 2019 WL 1364976, at *4. Likewise, *Campbell* is a case in which *defendants* pointed to severe injuries and surgeries in an attempt to satisfy the amount in controversy requirement, and plaintiff's motion to remand once again was denied. *Campbell*, 2006 WL 707291, at *2-*3.

Even if plaintiffs had unearthed -- and they have not -- some District Court authority squarely supporting their position, that authority would be against the overwhelming weight of precedent in the Ninth Circuit. Based upon the extant pleadings, Polymer80 "could not have reasonably determined the amount in controversy from the given numbers via a mathematical calculation" and so "had no further duty to estimate or investigate whether the case was removable upon service of either the Complaint or FAC." *Shepard*, 2020 WL 5593232, at *3. *See also Murphy*, 2020 WL 5884683, at *2-*3. To be sure, as this Court has recognized, "removability does not depend on [Polymer80's] subjective knowledge." *Gonzalez*, 2019 WL

1364976, at *4. Moreover, plaintiffs' invocation of Section 425.10(b) is vacuous here, because even in personal injury actions, the "thirty-day clock [is not] triggered" where "[o]n the face of [the] state court complaint . . . the amount in controversy [is not] established." *Ruiz*, 2020 WL 2029976, at *3-*4. *Accord*, *Thomason*, 2021 WL 406598, at *3 (rejecting an untimeliness argument in a personal injury action); *Costco*, 2021 WL 4916608, at *3 (same).

Finally, it bears emphasis that plaintiffs themselves are the cause of the myth as to the tardiness of removal of this case. Ninth Circuit Courts have held that plaintiffs "assume the costs associated with their own indeterminate pleadings" and "may protect themselves [from strategic gamesmanship] by providing defendants with a document from which removability can be ascertained." *Kuxhausen*, 707 F.3d at 1141. *See also Murphy*, 2020 WL 5884683, at *2 (internal quotation marks omitted). Simply put, plaintiffs (who could have) did not avail themselves of these protections and resultingly cannot lodge a good-faith objection of any sort to the timing of the Company's impregnable removal of this action to this Court.

CONCLUSION

For all of the foregoing reasons and those arising from the remainder of the record of this matter, the Court should: (i) wholly deny the instant Motion, given that the Company's removal was timely, and the Court unquestionably has jurisdiction over this action, and (ii) issue to Polymer80 such further relief as may be deemed just and proper.

Dated: November 29, 2021

Respectfully submitted,

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