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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LINA NOORY,

 Plaintiff,

 v.

CAMDEN DEVELOPMENT, INC.;
AND DOES 1 – 5,

 Defendants.

Case No. CV 20-01767-AB (GJSx)

**ORDER DENYING PLAINTIFF’S
MOTION FOR REMAND AND
REQUEST FOR JUST COSTS
AND ACTUAL EXPENSES**

Before the Court is Plaintiff Lina Noory’s (“Plaintiff”) Motion for Remand. (“Motion,” Dkt. No. 12.) For the following reasons, the Court **DENIES** the Motion.

I. BACKGROUND

On November 18, 2019, Plaintiff filed her Complaint (“Compl.”) in state court alleging ten causes of action stemming from toxic mold in her apartment at the property Defendant owned.¹ See Compl. (Dkt. No. 1-2). On December 20, 2019,

¹ The causes of action are: (1) Breach of implied warranty of habitability, (2) premises liability, (3) negligence, (4) nuisance, (5) breach of contract, (6) breach of covenant of good faith and fair dealing, (7) breach of covenant of quiet enjoyment, (8) negligent misrepresentation, (9) intentional misrepresentation, (10) violation of business and professions code section 17200, *et seq.* (unfair competition).

1 Defendant made an appearance through counsel stating in a declaration that it needed
2 more time to file a demurrer. Defendant filed a demurrer and motion to strike in state
3 court on January 22, 2020. Two days later, Defendant served Plaintiff with a request
4 for Statement of Damages. On February 03, 2020, Plaintiff informed Defendant that
5 her damages totaled \$4,750,000. On February 24, 2020, Defendant removed based on
6 diversity jurisdiction.

7 Plaintiff argues that Defendant's removal was untimely because the amount in
8 controversy was obvious from the face of the Complaint and Defendant removed more
9 than 30 days after the Complaint was filed. Defendant responds that the amount in
10 controversy was not apparent from the face of the Complaint and was not apparent
11 until Defendant received Plaintiff's Statement of Damages, after which it timely
12 removed.

13 After reviewing the law and the parties' submissions, the Court overrules
14 Plaintiff's timeliness objection and denies the Motion for Remand.

15 **II. LEGAL STANDARD**

16 A case filed in state court may be removed to federal court if the federal court
17 would have had original jurisdiction over the matter. 28 U.S.C. § 1441(a). A
18 defendant must remove a case within thirty days of receiving a copy of the complaint,
19 or if the matter is not removable based on the complaint, within thirty days of
20 receiving "an amended pleading, motion, order or other paper from which it may be
21 ascertained that the case is one which is or has become removable." 28 U.S.C.
22 1446(b)(3).

23 The first thirty-day period begins when the defendant receives an "initial
24 pleading" that reveals a basis for removal. 28 U.S.C. § 1446(b)(1). This period only
25 applies if the initial pleadings statement of the case shows that it is removable on its
26 face. *Harris v. Bankers Life & Cas Co.*, 425 F.3d 689, 694 (9th Cir. 2005). This is
27 determined by looking at the contents of "the four corners of applicable pleadings, not
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1 through subjective knowledge or a duty to make further inquiry.” *Harris*, 425 F.3d at
2 694.

3 If the initial pleading does not show a ground for removal on its face, the
4 second thirty-day period begins when the defendant receives “an amended pleading,
5 motion, order or other paper” that shows from the face of the document that removal
6 is proper. 28 U.S.C. § 1446(b)(3); *Harris*, 425 F.3d at 694. If federal jurisdiction is
7 based on diversity jurisdiction, the case must be removed within one year of the case
8 being filed. 28 U.S.C. 1446(c)(1).

9 **III. DISCUSSION**

10 **A. Pre-Suit Papers Do Not Trigger The Second Thirty-Day Window To** 11 **Remove.**

12 The Court must first address threshold questions of what puts Defendants on
13 notice that the amount in controversy is satisfied for removal. Plaintiff asserts that a
14 settlement demand sent on August 21, 2019 put Defendant on notice that the amount
15 in controversy was met for removal. *See* Reply (Dkt. No. 19), p. 4.² First, Plaintiff is
16 vague about whether she sent her settlement demand to Defendant, or to Defendant’s
17 insurer, and, if the latter, whether that constitutes notice to Defendant. But it doesn’t
18 make a difference, because a pre-complaint document does not start the time to
19 remove. The Ninth Circuit has held that “document[s] received prior to the receipt of
20 the initial pleading cannot trigger the second thirty-day removal period” while
21 rejecting the idea that “a pre-complaint document containing a jurisdictional clue can
22 operate in tandem with an indeterminate initial pleading to trigger some kind of hybrid
23 of the first and second removal periods.” *Carvalho v. Equifax Infor Servs., LLC*, 629
24 F.3d 876, 886 (9th Cir. 2010).

25 Accordingly the Court will not consider Plaintiff’s pre-suit settlement demand
26 to determine when this case was removable.

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28 ² Plaintiffs reply was untimely but the Court has considered it.

1 **B. Removability Was Not Evident From the Face of the Complaint.**

2 Plaintiff argues that the first thirty-day window to remove was triggered by the
3 filing of her Complaint. Plaintiff asserts that while the Complaint does not state any
4 specific amount of monetary damages it was clear from the face of the Complaint that
5 the amount in controversy exceeded \$75,000. She asserts that her Complaint alleges
6 in “great detail – the significant personal injuries, property damage, and lost income
7 that Plaintiff sustained because of [Defendant’s] misconduct. . . [while also] seek[ing]
8 punitive damages and contractual attorneys’ fees.” Mot. 6:12-15. The Court does not
9 agree with Plaintiff’s characterizations of her Complaint. The relevant portions are as
10 follows:

- 11 • On May 18, 2019 Plaintiff again told Defendant the problem was not fixed after
12 they had spent the better part of a week going in and out of her apartment.
13 “Defendants replied with a blatant falsehood, stating that this was the first time
14 they were hearing of any work that needed to be performed[.]” (Compl. ¶ 15.)
- 15 • Plaintiff had to hire independent mold inspectors. (*Id.* ¶ 17.)
- 16 • Plaintiff began to suffer migraines, rhinorrhea, dysphonia, and a high level of
17 immunoglobulin (indicating she is fighting an infection from mold). (*Id.* ¶ 21.)
- 18 • Plaintiff has a cyst on her throat that will have to be removed surgically, and
19 she has begun seeing a voice coach and a therapist for increased anxiety (that
20 Plaintiff admits was already present before the mold). (*Id.* ¶ 22.)³
- 21 • Plaintiff was forced to decline “invitations to host television shows and could
22 not post to her social media for 3 months until her voice recuperated to an
23 acceptable level.” Loss of income has further increased her anxiety. (*Id.* ¶ 23.)
- 24 • The mold/ mildew outbreak in Plaintiff’s closet has “destroyed and/or rendered
25 unusable much of her clothes and furniture.” (*Id.* ¶ 24.)

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³ Plaintiff does not state whether this cyst appeared before or after the mold was said to have been present.

- 1 • Because of living near the mold and being exposed to it Plaintiff has sustained
2 serious physical harm. As a consequence of the physical harm caused by the
3 conditions, Plaintiff has also sustained and continues to sustain emotional
4 distress, mental suffering, frustration, inconvenience and anxiety. (*Id.* ¶ 28.)
- 5 • Plaintiff has expended her “own funds to repair multiple items.” (*Id.* ¶ 37.)
- 6 • For nuisance, “Plaintiff is [] entitled to an award of punitive damages in an
7 amount appropriate to punish and make an example of Defendants.” (*Id.* ¶ 66.)
- 8 • Plaintiff suffered loss of use of the property for which she paid consideration.
9 (*Id.* ¶ 78.)
- 10 • Plaintiff is entitled to punitive damages for breach of covenant of quiet
11 enjoyment. (*Id.* ¶ 84.)
- 12 • Defendant’s agent made a false representation which entitled Plaintiff to
13 punitive damages for fraud. (*Id.* ¶ 85-105.)
- 14 • Plaintiff is entitled to reasonable costs and attorneys’ fees. (*Id.* ¶112.)

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16 While these allegations list wide-ranging types of injuries, they fail to establish
17 that the amount in controversy is satisfied. Plaintiff’s characterizations of her injuries
18 does not provide any basis for quantifying the damages alleged, nor is it obvious from
19 Plaintiff’s injuries that the damages exceed \$75,000. While Plaintiff contends she lost
20 3 months of wages, Defendant neither knew from the Complaint what Plaintiff’s
21 occupation is, nor what Plaintiff’s wages are. Whether the amount in controversy was
22 satisfied based on Plaintiff’s alleged injuries could only be a matter of speculation.
23 Given the fact that “notice of removability under § 1446(b) is determined through
24 examination of the four corners of the applicable pleadings, not through [the
25 defendant’s] subjective knowledge or a duty to make further inquiry,” *Harris*, 425
26 F.3d at 694, the Court concludes that the Complaint was not sufficient to give notice
27 of removability. Thus, the case did not become removable until Plaintiff served her
28 notice of damages on February 3, 2020 informing Defendant her damages totaled

1 \$4,750,000.00. Defendant removed by 30 days thereafter, so the removal was timely.⁴

2 **C. Defendant Did Not Waive Removal by Filing Documents in State Court**

3 “A party, generally the defendant, may waive the right to remove to federal
4 court where, after it is apparent that the case is removable, the defendant takes actions
5 in state court that manifest his or her intent to have the matter adjudicated there, and to
6 abandon his or her right to a federal forum.” *Resolution Trust Corp. v. Bayside*
7 *Developers*, 43 F.3d 1230, 1240 (9th Cir. 1994), as amended (Jan. 20, 1995). Plaintiff
8 argues that when Defendant filed a demurrer and motion to strike in state court
9 Defendant waived removal because now they are trying for a “second bite at the apple
10 in federal court” after realizing their motions would be denied. Mot. 8:2-5. The Court
11 is not convinced. Defendant filed its motions before it was “apparent that the case
12 [was] removable” and once Defendant was made aware that the case was removable,
13 they timely removed it. *Resolution Trust Corp.*, 43 F.3d at 1240.

14 **IV. CONCLUSION**

15 Plaintiff’s Motion for Remand is **DENIED**.

16 **IT IS SO ORDERED.**

17
18 Dated: April 30, 2020



19 _____
20 ANDRÉ BIROTTE JR.
21 UNITED STATES DISTRICT JUDGE

22 _____
23 ⁴ Plaintiff requests the Court take Judicial Notice of the fact that the Defendants are a
24 “sophisticated company” with thousands of buildings across the United States.
25 Plaintiff argues that Defendant should not be able to “feign ignorance” and should
26 have been aware that the amount in controversy was satisfied from the face of the
27 Complaint. (Motion at 5.) The Court **DENIES** the request. Defendant’s size is not
28 probative of the amount put in controversy by Plaintiff’s injuries. Furthermore,
Plaintiff relies on 3 cases, all of which are just persuasive, that held Defendants should
have been aware the amount in controversy was met when the Complaints asserted
injuries such as six days in the hospital, ambulance rides, and serious injury and
wrongdoing among other things. Here, Plaintiff’s Complaint does not assert injuries
that are as obviously serious as the injuries in the cases Plaintiff cites.