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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

THE PEOPLE OF THE STATE OF
CALIFORNIA.,

Plaintiff,

v.

COAST RUNNER INDUSTRIES, INC.,
GHOST GUNNER, INC., and DEFENSE
DISTRIBUTED,

Defendants.

No. 24-cv-00971-AJB-SBC

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO REMAND
ACTION TO STATE COURT**

Date: October 17, 2024

Time: 2:00 PM

Courtroom: 4A

Judge: Hon. Anthony J. Battaglia

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN THAT ON October 17, 2024 at 2:00 P.M. or as soon
thereafter as counsel may be heard by the Honorable Anthony J. Battaglia in Courtroom
4A of the United States District Court for the Southern District of California, Plaintiff the
People of the State of California will and hereby does move the Court for an Order
remanding the above-captioned action to the Superior Court for the State of California,
County of San Diego, where the underlying action was initiated.

///

1 This Motion is being made pursuant to 28 U.S.C. §1447(c), on the ground that
2 Defendants have failed to demonstrate that diversity of citizenship exists in this case.

3 This Motion is based on this Notice of Motion and Motion, the attached
4 Memorandum of Points and Authorities, and upon such further papers and argument as
5 may be presented to the Court prior to and at the hearing.

6
7 Dated: June 18, 2024

CLAUDIA G. SILVA, County Counsel

8
9 s/John P. Cooley

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COAST RUNNER INDUSTRIES, INC.,
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DISTRIBUTED,

Defendants.

No. 24-cv-00971-AJB-SBC

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO REMAND
ACTION TO STATE COURT**

Date: October 17, 2024

Time: 2:00 PM

Courtroom: 4A

Judge: Hon. Anthony J. Battaglia

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I. INTRODUCTION

Plaintiff the People of the State of California (“The People”), by and through County Counsel for the County of San Diego, properly brought this action in California state court to enjoin Defendants from marketing and selling their illegal “Coast Runner” CNC milling machine in California and to protect the public health and safety interests of the people of California. The “Coast Runner” is a renamed version of Defendants’ other CNC milling machine, called the “Ghost Gunner.” Both the “Coast Runner” and “Ghost Gunner” are designed, marketed, and sold specifically to produce untraceable “ghost guns” that are often used by criminals. Defendants only pivoted to selling the “Coast Runner” in a blatant attempt to evade California law and thereby introduce their illegal ghost gun machine into the California market.

Defendants removed the action to federal court on the purported basis of diversity jurisdiction. Defendants assert that the real party in interest is not the actual named party, the People of the State of California, but is instead one of the outside law firms representing the People as co-counsel in this action, Giffords Law Center to Prevent Gun Violence. Defendants’ argument is meritless, and, indeed, borderline frivolous. The removal is a clear dilatory tactic by a group of Defendants who have flouted California law at every turn and should not be countenanced by this Court.

It is black-letter law that a state is the real party in interest where, as here, it has a substantial interest in the case and acts pursuant to its statutory authority. *Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 672 (9th Cir. 2012). And there can be no diversity jurisdiction where the state is the party.¹ For this reason, federal district courts in California have held that similar actions brought in the name of the People of the State of California are not

¹ See *Postal Tel. Cable Co. v. Alabama*, 155 U.S. 482, 487 (1894) (“A state is not a citizen. And under the judiciary acts of the United States it is well settled that a suit between a state and a citizen or a corporation of another state is not between citizens of different states.”); *California ex rel. McColgan v. Bruce*, 129 F.2d 421, 423 (9th Cir. 1942) (“A state . . . is not a citizen of itself or of any other state, and so is not entitled to invoke the jurisdiction of the federal courts on that ground.”).

1 subject to removal. *See California by & through Los Angeles City Att’y v. Monsanto Co.*,
2 2022 WL 2355195, at *3-5 (C.D. Cal. June 30, 2022). Because the People of the State of
3 California are the real party in interest, and because a lawsuit between a state and a citizen
4 of another state is not a suit “between citizens of different states,” there is no diversity
5 jurisdiction and no basis for this case to be in federal court. The Court should therefore
6 grant the People’s motion to remand this case to state court where it belongs.

7 **II. PROCEDURAL HISTORY**

8 The People properly filed this action in Superior Court for the County of San Diego
9 on May 2, 2024. The complaint alleges that Defendants are selling and marketing a CNC
10 milling machine called the “Coast Runner” in violation of California Civil Code § 3273.62,
11 which prohibits the sale or marketing of CNC milling machines in a manner that knowingly
12 or recklessly causes another person to violate California Penal Code § 29185, which in turn
13 makes it unlawful for anyone other than a state-licensed manufacturer to use a CNC milling
14 machine to manufacture a firearm. ECF No. 1-8 at ¶¶ 64-74. As alleged in the complaint,
15 Defendants have sold for years a CNC milling machine called the “Ghost Gunner,” and
16 have now rebranded the same machine as the “Coast Runner” in order to attempt to evade
17 California law. *Id.* at ¶¶ 1-6. The complaint also alleges that Defendants’ conduct
18 constitutes unfair and unlawful business practices under California’s Unfair Competition
19 Law. *Id.* at ¶¶ 75-86.

20 Defendants’ deadline to respond to the complaint was June 7, 2024. Instead of
21 responding, on June 2, 2024, Defendants filed a Notice of Removal (the “Notice”) arguing
22 that this Court has subject-matter jurisdiction over this case under 28 U.S.C.
23 § 1332. Defendants asserted that co-counsel for the People, Giffords Law Center to
24 Prevent Gun Violence, is a citizen of the state of California and is the “real plaintiff in
25 interest,” and that because Defendants are citizens of the state of Texas, diversity
26 jurisdiction supported removal. As explained below, that theory for removal has no support
27 whatsoever.

28 ///

**III. DEFENDANTS BEAR THE BURDEN OF ESTABLISHING THAT
REMOVAL IS PROPER.**

The removing party “bears the burden of overcoming the strong presumption against removal jurisdiction.” *Hansen v. Grp. Health Coop.*, 902 F.3d 1051, 1057 (9th Cir. 2018) (internal quotation marks omitted) (quoting *Geographic Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d 1102, 1107 (9th Cir. 2010)). Courts strictly construe the removal statute against removal jurisdiction, and any doubts about the right of removal require resolution in favor of remand. *Luther v. Countrywide Home Loans Servicing LP*, 533 F.3d 1031, 1034 (9th Cir. 2008); *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (citation omitted).

**IV. THERE IS NO DIVERSITY OF CITIZENSHIP HERE BECAUSE
CALIFORNIA IS THE REAL PARTY IN INTEREST.**

Defendants’ one-page Notice of Removal claims that this Court has subject-matter jurisdiction over this case under 28 U.S.C. § 1332, which provides that federal courts shall have jurisdiction over “all civil actions where the matter in controversy exceeds the sum or value of \$75,000 . . . and is between citizens of different States.” 28 U.S.C. § 1332. Defendants’ apparent argument for diversity jurisdiction comes in a single sentence, which is accompanied, without analysis, by two case citations. According to Defendants, diversity jurisdiction exists in this case because “this action’s real plaintiff in interest is Giffords Law Center to Prevent Gun Violence, which is a citizen of the State of California,” while Defendants are “citizens of the State of Texas.” Defendants provide no explanation as to *why* or *how* Giffords Law Center is the real party in interest.²

² The conclusory nature of Defendants’ Notice is sufficient grounds by itself to remand this case to state court. *See Leite v. Crane Co.*, 749 F.3d 1117, 1122 (9th Cir. 2014) (“[A] defendant seeking to remove an action may not offer mere legal conclusions; it must allege the underlying facts supporting each of the requirements for removal jurisdiction.”); *Blackburn v. FCA US, LLC*, 2016 WL 4191049, at *2-3 (S.D. Cal. Aug. 8, 2016) (Battaglia, J.) (granting motion to remand when defendants’ notice of removal consisted of “[c]onclusory allegations”). Defendants are limited to the arguments they made in their Notice, and may not present new grounds for removal for the first time in their opposition to the People’s Motion to Remand. *Rader v. Sun Life Assurance Co.*, 941 F. Supp. 2d 1191, 1196 (N.D. Cal. 2013) (citing *ARCO Envtl. Remediation, L.L.C. v. Dep’t of Health & Envtl. Quality of Montana*, 213 F.3d 1108, 1117 (9th Cir. 2000)).

1 Regardless, Defendants’ argument is wrong. The People of the State of California
2 bring this lawsuit, by and through the statutory powers the California Legislature has
3 granted to the Office of County Counsel for the County of San Diego. *See* Cal. Civ. Code
4 § 3273.62(d). A lawsuit between a state and a citizen of another state is not a suit “between
5 citizens of different states” for purposes of diversity jurisdiction. *Fifty Assocs. v.*
6 *Prudential Ins. Co. of Am.*, 446 F.2d 1187, 1191 (9th Cir. 1970) (finding that a state party
7 is not a “citizen” for purposes of diversity jurisdiction). Because the People of the State of
8 California are the real party in interest, there is no diversity of citizenship here, and the
9 case cannot proceed in federal court.

10 In the Ninth Circuit, courts determine whether a state is the real party in interest by
11 examining “the essential nature and effect of the proceeding as it appears from the entire
12 record.” *Dep’t of Fair Emp. & Hous. v. Lucent*, 642 F.3d 728, 740 (9th Cir. 2011) (quoting
13 *Geeslin v. Merriman*, 527 F.2d 452, 455 (6th Cir. 1975)). A state is the real party in interest
14 where it has a “substantial” interest in the case. *Nevada v. Bank of Am. Corp.*, 672 F.3d
15 661, 671 (9th Cir. 2012). This is particularly true where the state seeks “relief that is
16 available to it alone” or where the state is acting under “its statutory authority” to bring the
17 asserted claims. *Id.* at 670, 672.

18 For example, in *Nevada v. Bank of America* (one of only two cases cited by
19 Defendants in their Notice), the Nevada Attorney General filed an action in Nevada state
20 court against Bank of America alleging that Bank of America misled consumers about its
21 foreclosure practices in violation of the Nevada Deceptive Trade Practices Act. *Id.* at 664.
22 Bank of America removed the action to federal court, and the district court denied Nevada’s
23 motion to remand. *Id.* at 664-65. The Ninth Circuit reversed, finding that Nevada was the
24 real party in interest because the Nevada Attorney General was suing “to protect the
25 hundreds of thousands of homeowners in the state allegedly deceived by Bank of America”
26 and was acting “pursuant to its statutory authority.” *Id.* at 670.

27 Defendants also invoke, without explanation, *Department of Fair Employment and*
28 *Housing v. Lucent* to support their one-sentence argument that Giffords Law Center to

1 Prevent Gun Violence is the real party in interest. In *Lucent*, the Ninth Circuit found that
2 a dismissed employee was the real party in interest (rather than the plaintiff state agency)
3 because any relief ordered would “effectively operate in favor of” the employee. *Lucent*,
4 642 F.3d at 739. The Ninth Circuit later clarified its holding, explaining that the finding in
5 *Lucent* was based on the fact that the suit was brought “on behalf of a *single* aggrieved
6 employee” and any relief to the state would therefore be “tangential.” *Nevada*, 672 F.3d
7 at 670 (emphasis in original).

8 Here, the People of the State of California are clearly the real party in interest. Like
9 in *Nevada*, County Counsel for the County of San Diego is acting “pursuant to its statutory
10 authority.” California Civil Code § 3273.62 specifically authorizes “county counsel” to
11 “bring an action” seeking civil penalties and injunctive relief “[i]n the name of the people
12 of the State of California.” Cal. Civ. Code § 3273.62(d). Also like in *Nevada*, the relief
13 requested by the People in this case, which includes civil penalties and an order stopping
14 Defendants from violating California Civil Code § 3273.62(d), will substantially benefit
15 the State of California as a whole if granted.

16 Relying on *Nevada*, federal district courts in California have found that similar
17 actions brought in the name of the People of the State of California cannot be removed to
18 federal court on diversity jurisdiction. For example, in *California v. Monsanto Co.*, the
19 Los Angeles City Attorney brought a public nuisance action on behalf of the People of the
20 State of California arising from “Monsanto’s decades-long pollution of California’s
21 waterways” with toxic chemicals known as PCBs. *Monsanto*, 2022 WL 2355195, at *1-2.
22 The district court granted the Los Angeles City Attorney’s motion to remand, finding that
23 California was the real party in interest because (i) the “plain language of the statute”
24 allowed the city attorney to bring the claim in the name of the People of the State of
25 California, and (ii) the state had “specific interests” in the litigation and would
26 “substantially benefit[] from the requested relief.” *Id.* at *3-4. As the Court explained,
27 “the State of California here has concrete interests in this litigation and will substantially
28 benefit from the remedy of abatement. California desires to clean its waters of PCBs, keep

1 its fish and wildlife healthy, keep its beaches usable, and prevent deadly diseases that arise
2 from the ingestion of PCBs.” *Id.* at *3.

3 Similarly, in *California v. Purdue Pharma L.P.*, Santa Clara County Counsel and
4 the Orange County District Attorney brought an action against Purdue Pharma in the name
5 of the People of the State of California arising from the company’s role in the opioid crisis.
6 2014 WL 6065907, at *1 (C.D. Cal. Nov. 12, 2014). The Court granted the plaintiff’s
7 motion to remand, finding that California was the real party in interest and that the lawsuit
8 served to vindicate California’s interests in protecting “the health and safety of all
9 Californians.” *Id.* at *3.³

10 Like in *Nevada*, *Monsanto*, and *Purdue Pharma*, the People in this case seek to
11 remedy and prevent a statewide harm. The relief the People seek will protect the citizens
12 of California from the danger posed by ghost guns. As alleged in the People’s complaint,
13 ghost guns pose a serious threat to public health and safety across California. ECF No. 1-
14 8 at ¶¶ 56-60. Because ghost guns manufactured by machines like the “Coast Runner” are
15 untraceable, they are often used in crimes and are currently fueling an epidemic of gun
16 violence in California. In 2015, only 26 ghost guns were recovered from crimes in
17 California—by 2022, that number had increased to a staggering 12,894. *Id.* at ¶ 56. The
18 State of California has a clear interest in protecting “the health and safety of all
19 Californians” from the threat posed by ghost guns. *Purdue Pharma L.P.*, 2014 WL
20 6065907, at *3.

21 Because the People of the State of California are the real party in interest and a state
22 party is not a “citizen” for purposes of diversity jurisdiction, there is no diversity of
23 citizenship between the People and Defendants here. That is the only basis for federal
24 court jurisdiction that Defendants cite. Without diversity of citizenship, the Court does not
25 have subject-matter jurisdiction, and the action must be remanded to state court.

26 ³ See also *Cnty. of Santa Clara v. Wang*, 2020 WL 8614186, at *2 (N.D. Cal. Sept. 1,
27 2020); *California v. Boehringer Ingelheim Pharm., Inc.*, 2017 WL 3269074, at *3 (C.D.
28 Cal. July 31, 2017); *People v. Exide Techs. Inc.*, 2014 WL 12607708, at *2 (C.D. Cal.
Apr. 9, 2014).

V. CONCLUSION

For the foregoing reasons, the People respectfully request that the Court grant the motion and remand this action to the San Diego Superior Court.

Dated: June 18, 2024

CLAUDIA G. SILVA, County Counsel

s/John P. Cooley

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