APPENDIX

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APPENDIX A:
NINTH CIRCUIT OPINION ASSUMING JURISDICTION AND RENDERING DECISION UPON THE MERITS

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE ESTATE OF ISABELLA "BELLA" HERNDON; et al.,

Plaintiffs-Appellants,

v.

NETFLIX, INC.,

Defendant-Appellee.

No. 22-15260

D.C. No. 4:21-cv-06561-YVR

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Yvonne Gonzalez Rogers, District Judge, Presiding

Argued and Submitted February 15, 2024
San Francisco, California

Before: MILLER, BADE, and VANDYKE, Circuit Judges.

Plaintiffs-Appellants (Plaintiffs) appeal from the district court's order granting Defendant-Appellee Netflix, Inc.'s motion to dismiss the First Amended Complaint (FAC) and granting Netflix's motion to strike under California's anti-SLAPP statute. In March 2017, Netflix released the show *13 Reasons Why*, which portrayed the suicide of the main character. After watching the show in April 2017, minor Isabella Herndon (Bella) committed suicide.

Four years after her death, Bella's father, John Herndon, and brothers, J.H. and T.H., sued Netflix in

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

a putative class action. In the FAC, John Herndon, as the successor in interest to Bella, brought a survival action against Netflix for (1) strict liability based on its failure to warn about the show's alleged risks to mental health and (2) negligence. J.H. and T.H. brought a claim against Netflix for wrongful death. The district court dismissed these claims with prejudice under Federal Rule of Civil Procedure 12(b)(6). The district court also struck the FAC under California's anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16(b).

We review de novo the district court's order granting the motion to dismiss and granting the motion to strike under California's anti-SLAPP statute. *Holt v. County of Orange*, 91 F.4th 1013, 1017 (9th Cir. 2024); *Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 261 (9th Cir. 2013). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The district court did not err by dismissing John Herndon's survival claims as time-barred. California Code of Civil Procedure section 366.1 provides that a survival action may be commenced before the expiration of the later of two terms: (a) "[s]ix months after the person's death" or (b) "[t]he limitations period that would have been applicable if the person had not died." Cal. Code Civ. Proc. § 366.1. Plaintiffs contend that, had Bella not died, the limitations period for her claims would not have begun until her

eighteenth birthday, pursuant to the minor tolling provision in California Code of Civil Procedure section 352. *Id.* § 352(a).

In answering questions of statutory interpretation, California courts first consider the ordinary meaning of the language in question, the text of related provisions, and the overall statutory structure, and, if the language is unambiguous after considering these sources, need not look further. *See Larkin v. Workers' Comp. Appeals Bd.*, 358 P.3d 552, 555 (Cal. 2015). Plaintiffs' argument fails because the ordinary meaning of the phrase "limitations period" is distinct from the ordinary meaning of the phrase "tolling period." "Limitations period" ordinarily means the statutorily-defined time limit for bringing a claim based on the nature of the claim and the date of accrual. *See Norgart v. Upjohn Co.*, 981 P.2d 79, 92 (Cal. 1999) ("Under the statute of limitations, a plaintiff must bring a cause of action for wrongful death within one year of accrual . . . . The limitations period is thus defined by the Legislature."); *see also Limitation*, Black's Law Dictionary (11th ed. 2019). In contrast, a "tolling statute" suspends or interrupts the limitations period in various situations. *Mitchell v. State Dep't of Pub. Health*, 205 Cal. Rptr. 3d 261, 269 (Ct. App. 2016) ("The term 'tolled' in the context of the statute of limitations is commonly understood to mean 'suspended' or 'stopped.'"); *see also Tolling Statute*,

Black's Law Dictionary (11th ed. 2019). Moreover, interpreting the phrase "limitations period" as being distinct from a "tolling period" is consistent with the overall statutory scheme, which places the sections providing for limitations periods in a separate chapter from the sections providing for tolling periods. *Compare* Cal. Code Civ. Proc. Part 2, Title 2, Ch. 3 § 335 (listing the "periods of limitation," which are the "periods prescribed for the commencement of actions"), *with* Cal. Code Civ. Proc. Part 2, Title 2, Ch. 4 (separately listing tolling statutes). Furthermore, California courts have explained that "minority does not toll a limitations period or excuse noncompliance unless a statute specifically says so." *Blankenship v. Allstate Ins. Co.*, 111 Cal. Rptr. 3d 528, 535 (Ct. App. 2010).

We therefore predict that the California Supreme Court would interpret the phrase "limitations period" to mean the statutorily-defined time limit for bringing a claim based on the nature of the claim and the date of accrual, without inclusion of a tolling period. *See Larkin*, 358 P.3d at 555. And because actions for the death of an individual caused by a wrongful act or neglect of another must be brought "[w]ithin two years," *Shalabi v. City of Fontana*, 489 P.3d 714, 717 (Cal. 2021), John Herndon's claims, which were brought over four years after Bella died, were appropriately dismissed as time-barred.

2. The district court also did not err by dismissing the claims brought by Bella's siblings for lack of standing under the wrongful death statute. When a decedent has no spouse, domestic partner, issue, or grandchild, only immediate successors under California's probate code may bring a wrongful death action. *See Scott v. Thompson*, 109 Cal. Rptr. 3d 846, 848–49 (Ct. App. 2010). Under California's probate code, the immediate successor if a decedent lacks a spouse, domestic partner, or issue, is "the decedent's parent or parents equally," if alive, not the decedent's siblings. *Id.* (quoting Cal. Prob. Code § 6402). Therefore, because Bella's father is still alive, the district court correctly held that J.H. and T.H. lacked standing to bring a wrongful death action.

3. Netflix has not sought, and agrees it will not seek, attorney's fees against Plaintiffs if we affirm the district court's order dismissing Plaintiffs' claims. Plaintiffs concede that if we affirm the district court on statute of limitations and standing grounds, Netflix's agreement not to seek attorney's fees moots their argument that the district court erred in its application of the anti-SLAPP statute. Given this concession, and the overlap between the standards governing the Rule 12(b)(6) motion and the anti-SLAPP motion, we do not separately address the district court's motion to strike. *See Planned*

Parenthood Fed'n of Am., Inc v. Ctr. for Med. Progress, 890 F.3d 828, 833–35 (9th Cir. 2018).

4. Plaintiffs requested leave to amend if we reverse on either the statute of limitations issue or the wrongful death standing issue. Because we affirm on both procedural issues, any amendment would be futile. *See Newland v. Dalton*, 81 F.3d 904, 907 (9th Cir. 1996) (courts "need not accommodate futile amendments").

AFFIRMED.

APPENDIX B:
DISTRICT COURT ORDER DENYING PETITIONER'S MOTION TO REMAND FOR LACK OF JURISDICTION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE ESTATE OF B.H., *et al.*,

Plaintiffs,

v.

NETFLIX, INC.,

Defendant.

Case No. 4:21-cv-06561-YGR

ORDER DENYING MOTION TO REMAND AND MOTION FOR JURISDICTIONAL DISCOVERY

Dkt. Nos. 25, 26.

Plaintiffs the Estate of B.H., John Herndon, B.H.'s father and successor in interest, J.H., a minor, and T.H. a minor, on behalf of themselves and others similarly situated (collectively "plaintiffs"), have filed a motion to remand this class action against defendant Netflix, Inc. ("Netflix"). Plaintiffs have also filed a motion for jurisdictional discovery.

Having carefully considered the papers submitted on both motions along with the pleadings in this action, and for the reasons set forth below, the Court **DENIES** both motions.[1]

I. BACKGROUND

On April 30, 2021, plaintiffs filed their class action complaint in the Superior Court of the State of California for the County of Santa Clara. (Dkt. No. 3-1, the "Complaint.") The class action alleged claims for failure to adequately warn, wrongful death, and negligence stemming from an alleged increase in youth suicide after Netflix released its show *Thirteen Reasons Why*. Netflix removed the class action complaint to this Court on August 25, 2021, asserting that jurisdiction is proper under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d)(2)(A). (Dkt. No. 3.) After the case was removed to this Court, plaintiffs filed a First Amended Complaint, which included new class definitions. (Dkt. No. 22.) Plaintiffs then filed a motion to remand and a motion

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[1] Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds this motion appropriate for decision without oral argument and **VACATES** the hearing set for November 16, 2021.

for discovery necessary to establish exceptions to CAFA jurisdiction. (Dkt. Nos. 25-26.)

II. LEGAL STANDARD

A defendant's removal is proper where the federal courts have original jurisdiction over an action brought in state court. 28 U.S.C. § 1441(a). Pursuant to CAFA, this Court has original jurisdiction over class actions in which there are at least 100 class members, at least one of which is diverse in citizenship from any defendant, and for which the aggregate amount in controversy exceeds the sum of $5 million, exclusive of interest and costs. 28 U.S.C. § 1332(d); *Ibarra v. Manheim Invs., Inc.*, 775 F. 3d 1193, 1196-97 (9th Cir. 2015). Generally, courts strictly construe the removal statute against removal jurisdiction. *See, e.g.*, *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009). However, "no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014).

Under CAFA, the removing party bears the burden of establishing federal jurisdiction. *Ibarra*, 775 F.3d at 1197. The removing party must prove by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional threshold, *Dart Cherokee*, 574 U.S. at 88 (citing 28 U.S.C. § 1446(c)(2)(B)),

that the number of class members exceeds 100, and that minimal diversity exists between the parties. *See Abrego v. Dow Chem. Co.*, 443 F.3d 676, 685 (9th Cir. 2006).

When a party moves to remand under CAFA, they present either a "facial" attack or a "factual" attack on the removing party's showing of the jurisdictional elements. A facial attack does not present any new evidence, but instead argues that the allegations offered "are insufficient on their face to invoke federal jurisdiction." *Salter v. Quality Carriers, Inc.*, 974 F.3d 959, 964 (9th Cir. 2020) (quoting *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (cleaned up and citation omitted)). By contrast, a "factual" attack "contests the truth of the [] factual allegations, usually by introducing evidence outside the pleadings." *Salter*, 974 F.3d at 964 (quoting *Leite*, 749 F.3d at 1121 (citation omitted)). When a removing party is presented with a facial attack, the Court applies a lower evidentiary standard; in those cases, a removal "need not contain evidentiary submissions but only plausible allegations of jurisdictional elements." *See Salter*, 974 F.3d at 964 (quoting *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 922 (9th Cir. 2019)) (cleaned up). When the attack is factual, courts apply a higher evidentiary standard. The removing party "must support [the] jurisdictional allegations with 'competent proof' . . . under the same evidentiary standard that governs

in the summary judgment context." *Salter*, 974 F.3d at 964 (quoting *Leite*, 749 F.3d at 1121 (citations omitted)).

III. DISCUSSION

A. Identifying The Operative Complaint For Removal

Plaintiffs filed the First Amended Complaint after Netflix's removal to this Court. Before the Court can begin a jurisdictional analysis, it must determine which complaint is operative for removal purposes. "[T]he circuits have unanimously and repeatedly held that whether remand is proper must be ascertained on the basis of the pleadings at the time of removal. . . . This unanimity seems firmly to establish that plaintiffs' attempts to amend a complaint after removal to eliminate federal jurisdiction are doomed to failure." *Broadway Grill, Inc. v. Visa Inc.*, 856 F.3d 1274, 1277 (9th Cir. 2017). The Ninth Circuit has recognized a narrow exception for amendments that provide some amplification for federal jurisdiction. *Id.* (explaining the "very narrow" exception set forth in *Benko v. Quality Loan Service Corp.*, 789 F.3d 1111 (9th Cir. 2015)). The Ninth Circuit has clarified that the very narrow exception does not "strike a new path to permit plaintiffs to amend their class definition, add or remove defendants, or add or remove claims in such

a way that would *alter the essential jurisdictional analysis*." *Id*. at 1279 (emphasis supplied).

Here, plaintiffs First Amended Complaint includes express class definitions that were not present in their original Complaint filed in the state court. The proposed classes are as follows:

California Negligence and Failure-to-Warn Class: All ascertainable California citizens (the harmed minors who survived or their successors in interest on behalf of the decedents who did not) who watched Netflix's Show, in full or in part, and assert that they suffered as a result of Netflix's failure to adequately warn and/or as a result of being negligently targeted and manipulated by Netflix (or its streaming and content-delivery products) to watch the Show.

Global Wrongful-Death Class: All ascertainable beneficiaries (or their equivalents such as those otherwise legally entitled or with standing to bring claims for wrongful death or an equivalent under their state or national laws) of decedents who watched Netflix's Show, in full or in part, and died as a result of Netflix's failure to adequately warn and/or as a result of being negligently targeted and manipulated by Netflix (or its streaming and content-delivery products) to watch the Show.

(First. Am. Compl. ¶ 76.) Both parties agree that plaintiffs' original Complaint did not include such express class definitions even though it made broad class-type allegations.

In its Notice of Removal, Netflix alleged that while the "Plaintiffs failed to include a class definition in their Complaint, Plaintiffs purport to bring the Action on behalf of class members allegedly harmed by the Netflix Show *Thirteen Reasons Why*, which was distributed throughout the United States via Netflix streaming service. Because the class is not geographically limited, it includes members nationwide, and CAFA's requirement is satisfied." (Dkt. No. 3 at ¶ 6.) Indeed, plaintiffs filed suit in their original Complaint as class-representatives "on behalf of all others similarly situated," without any geographic restrictions or limitations. (Compl. ¶¶ 73, 78, 82.) In a subsection entitled "Netflix's failure to adequately warn harmed and caused the death of many children," the original Complaint references an "alarming story" from shortly after the shows release where a school in Florida reported a significant spike in self-mutilation and threats of suicide. (Compl. ¶ 44.) The same section also alleges that "[t]he effect was not merely domestic. For example, similar devastating impacts were identified in Canada." (Compl. ¶ 48.) Plaintiffs' own description of its "ascertainable and numerous" class in its original Complaint is consistent

with this broad scope. Plaintiffs described their classes as: "Here, as a result of Netflix's inadequate warnings, Netflix caused the death of an estimated hundreds, possibly a thousand, children who committed suicide since the release of the Show, with their many survivors, heirs, etc., holding viable claims. Beyond those who died, there are many more who suffered substantial trauma at the hands of callous business decisions that prioritized reaching certain business milestones over the safety of Netflix's customers." (Compl. ¶ 69.)

Now, after removal, plaintiffs have limited the failure to warn class to "all ascertainable California citizens" and have submitted declarations that this limitation was intended when the Complaint was filed in state court. *Broadway Grill* does not give this Court discretion to consider the First Amended Complaint. Restricting the class to California citizens when a limitation did not exist in the original Complaint is the exact definitional change rejected by the Ninth Circuit. *Broadway Grill*, 856 F.3d at 1277-78 ("Instead of being composed of all the merchants in the state of California, regardless of citizenship, the class, as defined in the amended complaint, became exclusively composed of California citizens. We conclude such an amendment is outside the exception recognized in *Benko* and thus cannot affect the removability of the action."). Accordingly, the Court considers the

original Complaint as filed in the state court as the operative complaint for removal.

B. Whether An Express Class Definition Is A Prerequisite For Removal

A threshold issue presented in the motion to remand is whether the case should be remanded to the state court on the basis that the original Complaint does not expressly include a "class definition." Under CAFA, a "class action" is defined as "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). To "determine whether the matter in controversy" exceeds the sum of $5 million, "the claims of the individual class members shall be aggregated." *Id*. § 1332(d)(6). The phrase "class members" includes "persons (named or unnamed) who fall within the ***definition of the proposed*** or certified ***class***." *Id*. § 1332(d)(1)(D) (emphasis supplied).

There is no dispute that this case is a class action within the meaning of CAFA. In its Notice of Removal, Netflix highlights that "Plaintiffs fail to include a [class] definition in their complaint." (Dkt. No. 3 at ¶ 4.) Plaintiffs argue that this dispenses of Netflix's jurisdictional argument and that the case should be remanded. Specifically, plaintiffs argue that

in order for there to be "class members" in this case, "there must be a definition of the proposed or certified class in a class action." Since there is no class definition, plaintiffs argue that there are no class members, and in turn no class under section 1332(d)(1). The Court is not persuaded.

To begin, the Court notes that CAFA does not provide a meaning for "definition of the proposed . . . class" and that the Ninth Circuit has not addressed this precise issue. However, in analyzing whether a district court can consider amendments to a pleading, the Ninth Circuit has stated that "[a] class definition, however, will always be present in any class action complaint, state or federal." *Broadway Grill*, 856 F.3d at 1278. *Broadway Grill* does not explain why. The First Circuit's decision cited by the parties, which is instructive here, helps fill the gap as the only case analyzing whether removal can be denied based on an insufficient "class definition." In *College of Dental Surgeons of Puerto Rico v. Connecticut General Life Insurance Company*, the First Circuit acknowledged that "[a] complaint that contains class-type allegations historically has been assumed to assert a class action before formal class certification." 585 F.3d 33, 40 (1st Cir. 2009). Ultimately, the First Circuit held that evaluating the inadequacy of a class definition is a question for the class certification stage

and not on a motion for remand under CAFA. *Id*. at 42.

In light of the foregoing, the Court understands that its duty is to analyze the undisputed class-type allegations in order to discern what the proposed class is without weighing the adequacy of any purported class definition, whether express or implied. This approach is consistent with CAFA's legislative history which stresses that vague class definitions cannot be used to evade federal jurisdiction.[2]

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[2] *See* Senate Report, S. Rep. 109-14, S. Rep. No. 14, 109th Cong. 1st Sess. 2005, 2005 WL 627977 *43 (Feb. 28, 2005) ("[N]amed plaintiffs will not be able to evade federal jurisdiction with vague class definitions or other efforts to obscure the citizenship of class members. The law is clear that, once a federal court properly has jurisdiction over a case removed to federal court, subsequent events generally cannot 'oust' the federal court of jurisdiction. While plaintiffs undoubtedly possess some power to seek to avoid federal jurisdiction by defining a proposed class in particular ways, they lose that power once a defendant has properly removed a class action to federal court."). Plaintiffs criticize reliance on this Senate Report. However, the Ninth Circuit in *Broadway Grill*

Here, plaintiffs filed suit as class-representatives "on behalf of all others similarly situated" without any express geographical restriction. (Compl. ¶¶ 73, 78, 82.) Even without an expressly stated "class definition," "class members" are referenced several times in the original complaint. *See, e.g.*, Compl. ¶ 68 ("the members of the class"); *id*. ¶ 68(a) ("each class member"); *id*. ¶ 68(c) ("members of the class"). Furthermore, as discussed above, plaintiffs' original Complaint characterizes what they view as "ascertainable and numerous" classes. (Compl. ¶ 69.) That conceded description includes at least three classes of similarly situated individuals. The first relates to those similarly situated persons, who Netflix "as a result of Netflix's inadequate warnings, [] caused the death of an estimated hundreds, possibly a thousand, children who committed suicide since the release of the Show." (*Id*.) The second relates to "their many survivors, heirs, etc., holding viable claims." (*Id*.) The third relates to the "many more who suffered substantial trauma at the hands of callous business decisions that prioritized reaching certain business milestones over the safety of Netflix's customers." (*Id*.)

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considered it in reaching its holding concerning amended class definitions. 856 F.3d at 1278-79.

These are enough to support the jurisdictional analysis under CAFA.[3]

C. Whether CAFA's Jurisdictional Requirements Are Satisfied

i. Numerosity

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[3] Plaintiffs' strategy here illustrates why it is improper to consider amendments to a class definition on a motion to remand after a case has been removed. As discussed below, plaintiffs argue that their original class action complaint lacked a "class definition" and that this precluded removal. They do not argue that the Court can or should consider the amended class definitions in order to clarify whether the numerosity, minimal diversity, and the amount in controversy requirements were satisfied. However, plaintiffs seek to reap the benefit of the amendment in forging their purported class into a home state exception. Plaintiffs are the masters of their complaint for jurisdictional purposes. *Hawaii ex rel. Louie v. HSBC Bank Nevada, N.A.*, 761 F.3d 1027, 1040 (9th Cir. 2014). *Broadway Grill* instructs that plaintiffs could have structured their Complaint to avoid CAFA in the first instance and before removal. Because they did not, they cannot avoid CAFA through amendments that would alter the jurisdictional analysis.

A district court shall not have original jurisdiction pursuant to CAFA if the number of members of all proposed plaintiff classes in the aggregate is less than 100. 28 U.S.C. § 1332(d)(5)(B). Plaintiffs do not dispute that the number is less than 100. (Dkt. No. 26 at 11 n.4.) Instead, plaintiffs argue that Netflix has failed to plead and prove that there are at least 100 class members.

Here, the Court finds that Netflix's Notice sets forth a plausible allegation that the plaintiffs' class is composed of over 100 individuals. The Notice of Removal incorporates plaintiffs' admission that there "are hundreds, possibly a thousand" proposed class members. Plaintiffs argue that Netflix has not met its burden because it has not produced any evidence, however, this misconstrues the standard applicable here. As outlined in the legal standard section, Netflix is only required to produce evidence when a factual attack is made. Plaintiffs actually agree here with the plausible allegation that there "are hundreds, possibly a thousand" proposed class members. Thus, evidence was not required. *Salter*, 974 F.3d 959 at 964-65 (holding that the district court erred in requiring factual evidence when the truth of CAFA jurisdictional allegations were not disputed). Plaintiffs' pleading is also a judicial admission sufficient to establish the jurisdictional element. *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373,

376-77 (9th Cir. 2006). CAFA's numerosity requirement is met.

ii. Minimal Diversity

CAFA confers jurisdiction on federal district courts over class actions when, among other things, "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A). There is no dispute here that Netflix and the named plaintiffs are not diverse. Netflix nevertheless argues that minimal diversity is met because plaintiffs filed their class action on behalf of class members harmed by *Thirteen Reasons Why*, which was distributed throughout the United States and internationally via Netflix's streaming platform. Netflix also highlights that there are no geographical limits to the class and points to the allegation concerning Florida's spike in youth at-risk behavior after the show was released. (Dkt. No. 3 at ¶ 6.)

Again, plaintiffs do not dispute that they are seeking a global class and "that minimal diversity very likely exists." (Dkt. No. 26 at 11 n.4.) Instead, plaintiffs argue that Netflix has not met its factual burden of proving by preponderance of the evidence that there are class members outside of California. However, plaintiffs misconstrue the burdens of a facial attack. They have not contested the truth of Netflix's allegation. Furthermore, Netflix's allegation that

minimal diversity is satisfied is plausible given the broad class proposed in plaintiffs' Complaint. Indeed, Ninth Circuit case law suggests that the burden is low. In *Ehrman v. Cox Communs., Inc.*, a defendant's burden was satisfied even though allegations were made on information and belief based upon the plaintiffs' own pleading. 932 F.3d 1223, 1227-1228 (9th Cir. 2019). Plaintiffs have not persuaded that a different result should be reached, especially where their own allegations identify harms in Florida and Canada for a sprawling global class. (Compl. ¶¶ 44, 49.) Accordingly, the minimal diversity requirement is met.

iii. Amount in Controversy

There is no dispute here that the Complaint did not expressly allege an amount in controversy. Netflix nevertheless argues that the amount of controversy is sufficient based upon the face of the Complaint due to the wrongful death damages sought.

The removing party may not establish federal jurisdiction "by mere speculation and conjecture, [or] with unreasonable assumptions." *Ibarra*, 775 F.3d at 1197-98. Instead, it must rely on "real evidence and the reality of what is at stake in the litigation." *Id.* Nevertheless, "a defendant's notice of removal need include only a plausible allegation that the amount in

controversy exceeds the jurisdictional threshold." *Dart Cherokee*, 574 U.S. at 89.

Here, Netflix's Notice of Removal outlines the assumptions that it makes concerning the amount in controversy. First, Netflix highlights the various economic and non-economic damages for injuries allegedly suffered in connection with wrongful death claims. (Dkt. No. 3 at ¶ 9.) Second, it alleges that "Courts have recognized that individual claims for wrongful death are sufficient to establish that the complaint has put in controversy more than $75,000 for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a)" for individual claims. (*Id*.) Third, assuming there are only 100 putative class members with just $75,000 each, the amount put in controversy by the plaintiffs is more than $5 million. (*Id*.)

Plaintiffs do not dispute that the amount in controversy exceeds $5,000,000. (Dkt. No. 26 at 11 n.4.) Instead, they argue that Netflix is still required to produce evidence in order to satisfy its burden. Again, this is inconsistent with the controlling legal standard. Since the plaintiffs have not challenged the "reasonable assumptions" in Netflix's plausible allegations, and instead embrace their truth, the amount in controversy requirement is met. *Salter*, 974 F.3d at 965; *see also Ibarra*, 775 F. 3d at 1199 (permitting reasonable assumptions in calculating the

amount of controversy).[4] Furthermore, plaintiffs' judicial admission concedes that the amount in controversy is sufficient to satisfy this element. *Singer*, 116 F.3d at 376-77 (holding that a judicial admission may establish the amount in controversy). Accordingly, all three CAFA factors are satisfied and removal was proper.

D. Whether CAFA's Exceptions Are Satisfied

In order to escape federal jurisdiction under CAFA, plaintiffs invoke two exceptions. The first is the mandatory home-state exception pursuant to 28 U.S.C. § 1332(d)(4)(B). The second is the discretionary home-state exception pursuant to 28 U.S.C. § 1332(d)(3). As the party seeking to remand these proceedings, the plaintiffs bear the burden of proving that a CAFA exception applies. *See Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1024 (9th Cir. 2007).

Under the mandatory home-state controversy exception, the Court must decline to exercise jurisdiction where "two-thirds or more of the members

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[4] Plaintiffs' suggestions that *Dart Cherokee* was wrongly decided or that it is inapplicable lacks any support grounded in Ninth Circuit case law. The Court has not been persuaded that any deviation is necessary.

of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed." 28 U.S.C. § 1332(d)(4)(B). To meet this burden, plaintiffs must provide "some facts in evidence from which the district court may make findings regarding class members' citizenship." *Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 884 (9th Cir. 2013). While this "jurisdictional finding of fact should be based on more than guesswork," the Court may "make reasonable inferences from facts in evidence." *Id.* at 884, 886.

Here, plaintiffs fail to provide sufficient facts to carry their burden of showing that two thirds of proposed class members are California citizens. They concede that they do not know the scope of their national class, let alone the composition of its members across states. Therefore, this factor is not satisfied. *Broadway Grill*, 856 F.3d at 1276 ("The district court correctly denied the motion to remand because the class, on its face, included many non-citizens of California, and [the moving party] could not establish two-thirds were California citizens.").

Plaintiffs' second exception fails for similar reasons. The Court "may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction" when more than one-third of the putative class, and the primary defendants, are citizens of the state where the action

was originally filed." 28 U.S.C. § 1332(d)(3). There is no evidence in the record to support a finding that more than one-third of the putative class are citizens of California. Therefore, this exception fails. Because plaintiffs have failed to establish that an exception to CAFA applies, their motion to remand is **DENIED WITHOUT PREJUDICE**.

E. Timeliness Of Removal

Plaintiffs on reply raise a new argument in support of remand. For the first time, they assert that Netflix's removal was untimely. Raising new argument in reply is improper. *See Floyd v. Filson*, 949 F.3d 1128, 1145 n.6. (9th Cir. 2020) (holding that new argument was forfeited when it was not raised in the opening brief); *Colgate v. JUUL Labs, Inc.*, 345 F. Supp. 3d 1178, 1196 (N.D. Cal. 2018) (declining to consider theory for dismissal raised for the first time in reply). The timing requirements are also procedural, not jurisdictional, and can be forfeited. *Corono-Contreras v. Gruel*, 857 F.3d 1025, 1029 (9th Cir. 2017); *Firstoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1212 (9th Cir. 1980) ("Although the time limit is mandatory and a timely objection to a late petition will defeat removal, a party may waive the defect or be estopped from objecting to the untimeliness by sitting on his rights."). Plaintiffs waived the issue by not raising it earlier.

F. Jurisdictional Discovery

Plaintiffs also request jurisdictional discovery in order to meet their burden in order to establish that a CAFA exception applies.[5] The request is **DENIED**.

The Court has discretion to grant jurisdictional discovery to assist it in determining whether it has subject matter jurisdiction. *See Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 430 n. 24 (9th Cir. 1977). "[A]ny decision regarding jurisdictional

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[5] Specifically:

> Plaintiffs seek information that is exclusively in the province of Netflix about which accounts watched the Show, who Netflix targeted and manipulated into watching the Show, and their contract information and account addresses—all with the simple goal of ascertaining, if for the California citizens, there is any assertion of harm as a result as a result of Netflix's targeting and/or failure to adequately warn and, for both California and non-California citizens alike, whether anyone died as a result of Netflix's targeting or failure to warn.

(Dkt. No. 25 at 13.)

discovery is a discretionary one, and is governed by existing principles regarding post-removal jurisdictional discovery, including the disinclination to entertain substantial, burdensome discovery on jurisdictional issues." *Abrego*, 443 F.3d at 692 (internal quotation marks and citation omitted). Furthermore, it is appropriate to deny a request for jurisdictional discovery that is "based on a little more than a hunch that it might yield jurisdictionally relevant facts." *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008).

Limited jurisdictional discovery is permissible in those instances where it is *likely* to support a CAFA exception. *See Modragon*, 736 F.3d at 885 (permitting jurisdictional discovery where it was suspected that the two-thirds citizen requirement would be satisfied). Netflix has submitted unrefuted evidence that its content can be accessed in more than 190 countries. (Long Decl. ¶ 2.) Based on the face of plaintiffs' Complaint, which asserts global claims, it is apparent that the class as alleged includes many non-citizens of California. Plaintiffs only speculate that there are more California citizens in the class than non-citizens and they have not persuaded the Court that limited discovery is appropriate. This speculation is insufficient to support a claim for jurisdictional discovery. *Boschetto*, 539 F.3d at 1020.

Notably, Netflix opposed the discovery sought by plaintiffs on the ground that it does not exist, that it would be unduly burdensome, and that it cannot establish the "simple goal" sought by plaintiffs. Declarations were submitted in support of Netflix's assertions. Plaintiffs did not file a reply and have effectively conceded Netflix's argument.[6] The request for jurisdictional discovery is **DENIED**.

IV. CONCLUSION

For the reasons state above, plaintiffs' motion for remand is **DENIED**. Plaintiffs' motion for jurisdictional discovery is also **DENIED**. Pursuant to this Court's Order Granting Stipulated Request for Order Changing time (Dkt. No. 35), plaintiffs have **14 days to file an opposition** to Netflix's Motion to Strike/Dismiss the First Amended Complaint. Netflix has **21 days from the opposition to file a reply**.

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[6] Netflix also presented unrefuted evidence and argument that in 2017, when *Thirteen Reasons Why* was released, only 0.5% of the estimated global number of child suicides occurred in California. Plaintiffs did file the Declaration of Rory Stevens in support of their motion for jurisdictional discovery. (Dkt. No. 39.) However, it is not cited and its relevancy has not been made clear.

This Order terminates Docket Numbers 25 and 26.

IT IS SO ORDERED.

Dated: November 12, 2021

/s/ Yvonne Gonzalez Rogers
YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE

APPENDIX C:
NINTH CIRCUIT ORDER DENYING PETITIONER'S TIMELY FILED PETITION FOR REHEARING

FILED
MAY 17 2024
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE ESTATE OF ISABELLA "BELLA" HERNDON; et al.,

Plaintiffs-Appellants,

v.

NETFLIX, INC.,

Defendant-Appellee.

No. 22-15260

D.C. No. 4:21-cv-06561-YVR
Northern District of California,
Oakland

ORDER

Before: MILLER, BADE, and VANDYKE, Circuit Judges.

The panel has voted to deny the petition for rehearing and the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc (Dkt. 116) are DENIED.

APPENDIX D: EXCERPT OF PETITIONERS' NINTH CIRCUIT BRIEF PERTAINING TO LACK OF JURISDICTION

JURISDICTIONAL STATEMENT

(A) This action was asserted with class allegations by California plaintiffs against a California defendant in California state court under California law. 6-ER-1137-1160. No non-California citizen has ever been identified or joined into this action. Nonetheless, the District Court purported to exercise diversity jurisdiction after removal based upon an erroneous reading of the provisions of the Class Action Fairness Act. 1-ER-28-39; see 28 U.S.C. §1332(d); U.S. Cons. Art. III, §2.

(B) The District Court entered final judgment below. 1-ER-2. This Court has appellate jurisdiction. 28 U.S.C. §1291.

Even though the District Court lacked subject-matter jurisdiction, this Court nonetheless has the "inherent authority" to consider and correct the erroneous exercise of subject-matter jurisdiction below. E.g., Hoffmann v. Pulido, 928 F.3d 1147, 1151 (9th Cir. 2019). Indeed, "every federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review[.]'" Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 541 (1986).

Upon appellate review, "if a district court has wrongfully exercised subject matter jurisdiction over a dispute, the appellate court *must* vacate the district court's decision[.]" Latch v. United States, 842 F.2d 1031, 1033 (9th Cir. 1988).

(C) Judgment was entered on January 19, 2022. 1-ER-2. Plaintiffs timely noticed their appeal on February 16, 2022. 7-ER-1282-1284; see 28 U.S.C. §2107(a); Fed. R. App. P. 4(a)(1)(A).

(D) This appeal is from a final order and judgment. 1-ER-2.

APPENDIX E: EXCERPT OF PETITIONERS' PETITION FOR REHEARING PERTAINING TO LACK OF JURISDICTION

I. NEITHER THE DISTRICT COURT NOR THE PANEL EVER IDENTIFIED A MINIMALLY-DIVERSE PARTY THAT ESTABLISHED SUBJECT-MATTER JURISDICTION BASED UPON DIVERSITY.

Here, a grieving *California* family sued a *California* corporation in *California* state court on *California* claims.

The defendant removed (and the plaintiffs sought remand). No minimally-diverse person has ever been identified—not by the defendant, not by the District Court, not by the Panel—whose opinion is silent on jurisdiction. **No one has ever answered any of the following questions: Who is the diverse person? Where are they from? How are they in this case?**

The Herndon family asks the Panel or this Court to explain why it believes it has jurisdiction. See, e.g., Herklotz v. Parkinson, 848 F.3d 894, 897 (9th Cir. 2017) ("This Court has an **independent obligation** to assess both its own and the district court's jurisdiction."); 1-ER-35. If the Panel believes it has identified a minimally diverse party, the Herndon family, and the public, should be afforded to know the following:

(1) Who are they?

(2) **What state are they from?**

(3) How are they in the case?

Absent those answers, minimal diversity is plainly lacking.[3]

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In ruling on minimal diversity, the District Court ignored them; and the Panel passed over them in silence. 1-ER-35; see generally Opinion. There are six glaring problems regarding subject-matter jurisdiction.

Problem 1: Inapposite Authority

The District Court cited a single case regarding minimal diversity. 1-ER-35 (citing Ehrman v. Cox Communs., Inc., 932 F.3d 1223, 1227-1228 (9th Cir. 2019). Erhman is plainly inapposite.

Erhman involved ***named*** parties from ***different*** states. Id. In Ehrman, the defendant corporation was a "citizen of Delaware and Georgia" (id. at 1226)

[3] If the Panel cannot answer these questions, respectfully, it should call for response for Netflix to do so. Netflix repeatedly and willfully refused to do so below.

whereas the plaintiff was a "a citizen of California" (id. at 1228).

Here, the named parties are plainly not diverse. 1-ER-35 ("There is no dispute here that Netflix and the named plaintiffs are not diverse."). California plaintiffs sued a California defendant. And, Netflix has never identified *any* putative class member that's diverse. Netflix has never identified what state the diverse party is from.

Erhman doesn't address the minimal diversity problems here.

Problem 2: Failure to specifically identify a diverse party.

Minimal diversity requires identifying "**a specific class member** who is a citizen of a state other than [California]." See Toulon v. Cont'l Cas. Co., 877 F.3d 725, 733 (7th Cir. 2017). Here, Netflix has never specifically identified the name and state of citizenship of any putative class member who's diverse. Neither has the District Court. Neither did the Panel.

That's egregiously insufficient. See id. ("***identify* the *name* and *state* of citizenship**"); Dancel v. Groupon, Inc., 940 F.3d 381, 385-386 (7th Cir. 2019) ("**Failure to *identify* a *specific* party** from a diverse state fails to meet CAFA's minimal diversity

requirement."); Sanchez v. Ameriflight, LLC, 724 F. App'x 524, 526 (9th Cir. 2018) ("***identify*** **any** ***specific*** **putative class member** that was diverse[.]").

If you think there's jurisdiction here, then **the Herndon family asks this Court to specifically identify: (1) the name of the diverse class member and (2) what state they are from**?[4]

Problem 3: Confusing Place of Harm with Place of Citizenship

Conflating place of harm with place of citizenship is a basic error. 1-ER-35 ("harms in Florida and Canada").

Jurisdiction turns on ***citizenship***. See, e.g., Broadway Grill, Inc. v. Visa Inc. 856 F.3d 1274, 1279 (9th Cir. 2017) ("**CAFA means what it says—citizenship** of the class for purposes of minimal diversity **must be determined** as of the operative complaint at the date of removal."). Identifying the place of harm doesn't address ***that*** question. Californians can be harmed in Florida or Canada. If.

[4] Or, this Court should ask Netflix to "**identify the name and citizenship"** of at least one **"specific class member"** who was a citizen of a state other than California at the time the suit was commenced. See Toulon, 877 F.3d at 733.

a car accident took place in Florida, that wouldn't speak to the jurisdictional question of citizenship.

So too here.

Looking at the place of harm, rather than identifying a specific party's ***citizenship*** entirely misses the boat. Place of citizenship (not place of harm) is a basic feature of diversity jurisdiction.

Problem 4: The Timing Problem

Speculating about citizenship at the *time of the harm* also misses the boat. 1-ER-35 ("harms in Florida and Canada" in 2017)

That's because the "jurisdiction of the Court depends upon the state of things ***at the time of the action brought***." See Grupo Dataflux v. Atlas Global Group, L.P., 541 U.S. 567, 570 (2004); 28 U.S.C. §1332(d)(7). Indeed, this "rule is hornbook law (quite literally) taught to first-year law students in any basic course on federal civil procedure." Grupo Dataflux, 541 U.S. at 570-571.

Nevertheless, the District Court believed—and the Panel silently adopted the view that—that harms occurring in **2017** somehow determined diversity of citizenship in **2021**. See 1-ER-35 ("harms in Florida and Canada"). Harms that occurred in **2017** don't

speak to the citizenship of putative class members as of **2021**.

CAFA Jurisdiction turns on citizenship of the party ***at the time of the suit***—not at the time of the harm. See 28 U.S.C. §1332(d)(7); see also Broadway Grill, Inc. v. Visa Inc., 856 F.3d 1274, 1277 (9th Cir. 2017).

That's axiomatic.

The operative jurisdictional question never answered is: ***In 2021*****,** what specific class member who was a citizen of a state other than California? Neither the District Court nor the Panel ever addressed *that* question.

Problem 5: The Methodological Problem

Neither Netflix, nor the District Court, nor the Panel has ever identified the specific person who establishes minimal diversity. Not a name. Not a place of citizenship.

Instead, jurisdiction was based on statistical likelihood and probabilistic hunch–the hunch that there must be someone, somewhere who's diverse. See 1-ER-35 ("sprawling global class"); 5-ER-814-829 (reference to purely statistical reasoning without identification).

Jurisdiction by mere statistical inference is simply illegitimate:

> The rule, springing from the nature and limits of the judicial power of the United States, is inflexible and without exception, which requires this court, of its own motion, to deny its own jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record on which, in the exercise of that power, it is called to act. On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it.
>
> Moreover, because **it is not sufficient that jurisdiction may be inferred argumentatively from averments in the pleadings, it follows that the necessary factual predicate may not be gleaned from the briefs and arguments themselves. This first**

> **principle of federal jurisdiction applies whether the case is at the trial stage or the appellate stage**.

E.g., Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 546-547 (1985) (cleaned up).

Simply put, you can't just rely on the statistical distributions of human beings across the planet to establish diversity of *specific* persons. See 5-ER-814-829; 1-ER-35 ("sprawling global class").

Doing so would have radical implications. Suppose a Nevadan sues a defendant of unknown citizenship. Probabilistically, there's a 99% chance the defendant is not a Nevadan.[5] But that wouldn't tell us anything about the specific defendant. Who are they? Where are they from?

That's why courts require identification of the diverse party. In CAFA or otherwise, courts don't do jurisdiction by statistics and minimal diversity isn't a game of probability. Instead, minimal diversity requires identifying specific persons of specific

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[5] Nevada has a population of 3 million. The U.S. has a population of 336.3 million. The world has a population of 8.04 billion. *See* Census Population Clock, https://www.census.gov/popclock/

citizenship. E.g., Toulon, 877 F.3d at 733, ("**identify the *name* and *state* of citizenship**"); Dancel, 940 F.3d at 385-386 (7th Cir. 2019) ("**Failure to identify a *specific* party from a diverse state**"); Sanchez, 724 F. App'x at 526 (9th Cir. 2018) ("**identify any *specific* putative class member** that was diverse").

The gut instinct that that there is someone from somewhere who is diverse just doesn't engage minimal diversity's requirement to ***identify a specific party/class member***.

And, of course, even if Netflix could identify someone, somewhere, they would still need to establish how they were made a part of this case or controversy—without notice and without an opportunity to simply opt out. See, e.g., Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 811 (1985); U.S. Const. art. 3, §2.

* * * * *

No one—not Netflix, not the District Court, and not the Panel—has ever ***identified*** any specific class member who is diverse. No showing of minimal diversity has ever been made. The theory seems to be a hunch that it's someone, from somewhere, and it's not California. But we just can't tell you who. And, we can't tell you where they're from.

That doesn't satisfy minimal diversity's requirement to identify a specific person. Simply put, "it is not sufficient that jurisdiction may be inferred argumentatively from averments in the pleadings[.]" See Bender, 475 U.S. at 546-547. The Herndon family asks this Court to identify the specific person and the specific state of citizenship that creates diversity in this case—or call for a response for Netflix to do so. **Otherwise, this Court must remand to the Superior Court of California for want of jurisdiction.**

APPENDIX F: EXCERPT OF RESPONDENT'S NOTICE OF REMOVAL PERTAINING TO DIVERSITY OF CITIZENSHIP

6. Minimal Diversity. The diversity requirement of § 1332(d) is satisfied if at least one putative class member is a citizen of a different state than at least one defendant. 28 U.S.C. § 1332(d)(2)(A). Here, defendant Netflix is a citizen of California, where its principal place of business is located, and Delaware, where it is incorporated. Compl. ¶ 9; Young Decl. ¶ 2. Though Plaintiffs fail to include a class definition in their Complaint, Plaintiffs purport to bring the Action on behalf of class members allegedly harmed by the Netflix show *Thirteen Reasons Why*, which was distributed throughout the United States via Netflix's streaming service. Because the class is not geographically limited, it includes members nationwide, and CAFA's diversity requirement is satisfied. *See, e.g.*, Compl. ¶ 44 (alleging that a Florida school superintendent reported a spike in youth at-risk behavior shortly after the show's release); *id.* ¶ 48 (alleging suicide rates "in the United States" have been correlated to the release of the show).

APPENDIX G:
EXCERPT OF RESPONDENT'S SUICIDE FACT SHEET FROM THE WORLD HEALTH ORGANIZATION (WHO)

World Health Organization

Suicide

17 June 2021

Key Facts

- More than 700 000 people die due to suicide every year.
- For every suicide there are many more people who attempt suicide. A prior suicide attempt is the single most important risk factor for suicide in the general population.
- Suicide is the fourth leading cause of death in 15-19-year-olds.
- 77% of global suicides occur in low- and middle-income countries.
- Ingestion of pesticide, hanging and firearms are among the most common methods of suicide globally.

Every year 703 000 people take their own life and there are many more people who attempt suicide. Every suicide is a tragedy that affects families,

communities and entire countries and has long-lasting effects on the people left behind. Suicide occurs throughout the lifespan and was the fourth leading cause of death among 15-29 year-olds globally in 2019.

Suicide does not just occur in high-income countries, but is a global phenomenon in all regions of the world. In fact, over 77% of global suicides occurred in low- and middle-income countries in 2019.

Suicide is a serious public health problem; however, suicides are preventable with timely, evidence-based and often low-cost interventions. For national responses to be effective, a comprehensive multisectoral suicide prevention strategy is needed.

Who is at risk?

While the link between suicide and mental disorders (in particular, depression and alcohol use disorders) is well established in high-income countries, many suicides happen impulsively in moments of crisis with a breakdown in the ability to deal with life stresses, such as financial problems, relationship break-up or chronic pain and illness.

In addition, experiencing conflict, disaster, violence, abuse, or loss and a sense of isolation are strongly associated with suicidal behaviour. Suicide rates are also high amongst vulnerable groups who experience

discrimination, such as refugees and migrants; indigenous peoples; lesbian, gay, bisexual, transgender, intersex (LGBTI) persons; and prisoners. By far the strongest risk factor for suicide is a previous suicide attempt.

Methods of suicide

It is estimated that around 20% of global suicides are due to pesticide self-poisoning, most of which occur in rural agricultural areas in low- and middle-income countries. Other common methods of suicide are hanging and firearms.

Knowledge of the most commonly used suicide methods is important to devise prevention strategies which have shown to be effective, such as restriction of access to means of suicide.

Prevention and control

Suicides are preventable. There are a number of measures that can be taken at population, subpopulation and individual levels to prevent suicide and suicide attempts. LIVE LIFE, WHO's approach to suicide prevention, recommends the following key effective evidence-based interventions:

- **limit access to the means of suicide (e.g. pesticides, firearms, certain medications);**

- **interact with the media for responsible reporting of suicide;**
- **foster socio-emotional life skills in adolescents;**
- **early identify, assess, manage and follow up anyone who is affected by suicidal behaviours.,**

These need to go hand-in-hand with the following foundational pillars: situation analysis, multisectoral collaboration, awareness raising, capacity building, financing, surveillance and monitoring and evaluation.

Challenges and obstacles

Stigma and taboo

Stigma, particularly surrounding mental disorders and suicide, means many people thinking of taking their own life or who have attempted suicide are not seeking help and are therefore not getting the help they need. The prevention of suicide has not been adequately addressed due to a lack of awareness of suicide as a major public health problem and the taboo in many societies to openly discuss it. To date, only a few countries have included suicide prevention among their health priorities and only 38 countries report having a national suicide prevention strategy.

Raising community awareness and breaking down the taboo is important for countries to make progress in preventing suicide.

Data quality

Globally, the availability and quality of data on suicide and suicide attempts is poor. Only some 80 Member States have good-quality vital registration data that can be used directly to estimate suicide rates. This problem of poor-quality mortality data is not unique to suicide, but given the sensitivity of suicide – and the illegality of suicidal behaviour in some countries – it is likely that under-reporting and misclassification are greater problems for suicide than for most other causes of death.

Improved surveillance and monitoring of suicide and suicide attempts is required for effective suicide prevention strategies. Cross-national differences in the patterns of suicide, and changes in the rates, characteristics and methods of suicide, highlight the need for each country to improve the comprehensiveness, quality and timeliness of their suicide-related data. This includes vital registration of suicide, hospital-based registries of suicide attempts and nationally-representative surveys collecting information about self-reported suicide attempts.

WHO response

WHO recognizes suicide as a public health priority. The first WHO World Suicide Report "Preventing suicide: a global imperative", published in 2014, aims to increase the awareness of the public health significance of suicide and suicide attempts and to make suicide prevention a high priority on the global public health agenda. It also aims to encourage and support countries to develop or strengthen comprehensive suicide prevention strategies in a multisectoral public health approach.

Suicide is one of the priority conditions in the WHO Mental Health Gap Action Programme (mhGAP) launched in 2008, which provides evidence-based technical guidance to scale up service provision and care in countries for mental, neurological and substance use disorders. In the *WHO Mental Health Action Plan 2013–2030*, WHO Member States have committed themselves to working towards the global target of reducing the suicide rate in countries by one third by 2030.

In addition, the suicide mortality rate is an indicator of target 3.4 of the Sustainable Development Goals: by 2030, to reduce by one third premature mortality from noncommunicable diseases through prevention and treatment, and promote mental health and well-being.