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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DOMINIC LITTLE, et al,)	Case No. CV 14-01540 DDP (SHx)
)	
Plaintiffs,)	ORDER GRANTING PLAINTIFFS' MOTION
)	TO REMAND
v.)	
)	[DKT. NO. 12]
USPLABS LLC, et al.,)	
)	
Defendants.)	
)	

Presently before the Court is Plaintiffs' motion to remand this action (the "Motion"). (Docket No. 12.) For the reasons stated in this Order, the Motion is GRANTED. The action is remanded, and Defendants' pending motion to dismiss (Docket No. 10) is DENIED AS MOOT.

I. Background

Plaintiffs are twelve individuals. Plaintiffs allege that each of them used one of two dietary supplements, Jack3d and OxyElite, for some period of time. (Complaint, Docket 1-1, ¶¶ 28-83.) Jack3d and OxyElite both contain a chemical know as DMAA. (Id. ¶ 90.) DMAA is a sympathomimetic drug, a class of drug used by physicians to increase blood pressure and constrict blood vessels, but also

1 widely used because of their perceived ability to enhance athletic
2 performance. (Id. ¶¶ 91-92.) Plaintiffs allege that DMAA can cause
3 dangerous cardiovascular events, such as heart attack, stroke,
4 arrhythmia, heart palpitations, dizziness, cardiac arrest, and
5 death, as well as other serious adverse effects, including liver
6 failure, kidney failure, and seizures. (Id. ¶ 4.) Each Plaintiff
7 alleges that one or more of these serious harms happened to him or
8 her as a result of the use of Jack3d or OxyElite. (Id. ¶¶ 28-83.)

9 Plaintiffs allege that Defendants in this action each
10 designed, formulated, marketed, distributed, and/or sold Jack3d and
11 OxyElite products containing DMAA, despite its inherent dangers.
12 (Id. ¶ 87.) Plaintiffs allege that various misrepresentations were
13 made in the marketing of Jack3d and OxyElite regarding the
14 products' safety and safety testing. (Id. ¶¶ 97-113.) Further,
15 Plaintiffs allege that Jack3d and OxyElite are ineffective for
16 their advertised uses. (Id. ¶ 88.) Plaintiffs bring the following
17 state law claims arising out of these facts: (1) negligence; (2)
18 strict products liability for design defects; (3) strict products
19 liability for failure to warn; (4) breach of express warranty; (5)
20 breach of implied warranty; and (6) unlawful business practices in
21 violation of Cal. Bus. & Prof. Code § 17200 et seq. As factual
22 support for their allegations, Plaintiffs describe various warnings
23 and communications issued by the Food and Drug Administration
24 ("FDA") regarding DMAA and Defendants' use of DMAA in their
25 products. (See id. ¶¶ 144-46.)

26 This action was originally filed in the Los Angeles Superior
27 Court on January 23, 2014. (See Notice of Removal, Docket No. 1, p.
28 5-6.) Defendants removed the action on February 28, 2014 on grounds

1 of CAFA jurisdiction and federal question jurisdiction. (Id.)
2 Plaintiffs have now filed this Motion, seeking remand of the action
3 to state court. (Docket No. 12.)

4 **II. Legal Standard**

5 A defendant may remove a case from state court to federal
6 court if the case could have originally been filed in federal
7 court. 28 U.S.C. § 1441(a); see also Snow v. Ford Motor Co., 561
8 F.2d 787, 789 (9th Cir. 1977). As the removing party, a defendant
9 bears the burden of proving federal jurisdiction. Duncan v.
10 Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996); see also Matheson v.
11 Progressive Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir.
12 2003). The removal statute is strictly construed against removal
13 jurisdiction, and federal jurisdiction must be rejected if any
14 doubt exists as to the propriety of removal. Gaus v. Miles, Inc.,
15 980 F.2d 564, 566 (9th Cir. 1992) (explaining that courts resolve
16 doubts as to removability in favor of remand).

17 **III. Discussion**

18 A. CAFA Jurisdiction

19 Federal courts may exercise subject matter jurisdiction over a
20 "mass action" if it satisfies the jurisdictional requirements of
21 the Class Action Fairness Act ("CAFA"). 28 U.S.C. § 1332(d)(11).
22 One of the requirements for CAFA jurisdiction is that the action
23 must involve "monetary relief claims of 100 or more persons" that
24 are "proposed to be tried jointly on the ground that the
25 plaintiffs' claims involve common questions of law or fact." Id.

26 Defendants contend that they can meet the 100 plaintiff
27 requirement under CAFA by aggregating the claims of plaintiffs in
28 related cases filed by Plaintiffs' counsel and the claims of

1 potential plaintiffs listed on a "Notice of Claims" filed in this
2 action. Further, Defendants argue that because Plaintiffs filed a
3 notice of related cases in this action and because Plaintiffs filed
4 a multidistrict litigation ("MDL") motion in one of the related
5 cases (which did not purport to include the instant case), the
6 Court should find that Plaintiffs have implicitly tried to join
7 their claims.

8 The Ninth Circuit has held that "CAFA's 'mass action'
9 provisions do not permit a defendant to remove to federal court
10 separate state court actions, each involving the monetary claims of
11 fewer than one hundred plaintiffs." Tanoh v. Dow Chem. Co., 561
12 F.3d 945, 953 (9th Cir. 2009). As a result, Defendants' argument
13 that the plaintiffs in the related cases should be aggregated with
14 Plaintiffs here is unavailing. In addition, Plaintiffs in this case
15 have not sought to have this action consolidated with other
16 actions, as this was not one of the cases before the MDL panel.¹
17 Therefore, the claims in this case may not be aggregated with the
18 claims filed in the related actions in order to meet the CAFA
19 numerosity requirement.

20 Further, Defendants cite no authority for the proposition that
21 the CAFA numerosity requirement can be met by aggregating *potential*
22 plaintiffs who have not even filed a claim. See Carolyne v.
23 USPLabs, LLC, 2014 WL 1118017, at *3 (C.D. Cal. 2014) (finding no
24 CAFA jurisdiction in one of the cases related to this action).
25 There is no indication that any of these potential plaintiffs plans
26 to file a claim, and the Court will not speculate as to whether and
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28 ¹The MDL panel has denied the multidistrict litigation motion.

1 when these individuals may choose to file suit or whether, should
2 they choose to do so, their claims will be sufficiently similar to
3 the claims at issue in this action to warrant joining the cases for
4 trial.² Therefore, the Court finds that Defendants have not met
5 their burden of showing that subject matter jurisdiction exists
6 under CAFA and that removal on this basis is thus improper.

7 B. Federal Question Jurisdiction

8 Federal question jurisdiction exists where a civil action
9 arises "under the Constitution, laws, or treaties of the United
10 States." 28 U.S.C. § 1331. "For a case to 'arise under' federal
11 law, a plaintiff's well-pleaded complaint must establish either (1)
12 that federal law creates the cause of action or (2) that the
13 plaintiff's asserted right to relief depends on the resolution of a
14 substantial question of federal law. Federal jurisdiction cannot
15 hinge upon defenses or counterclaims, whether actual or
16 anticipated." K2 Am. Corp. v. Roland Oil & Gas, LLC, 653 F.3d 1024,
17 1029 (9th Cir. 2011). Where federal law does not create the cause
18 of action, "the question is, does a state-law claim necessarily
19 raise a stated federal issue, actually disputed and substantial,
20 which a federal forum may entertain without disturbing any
21 congressionally approved balance of federal and state judicial
22 responsibilities." Grable & Sons Metal Products, Inc. v. Darue
23 Engineering & Mfg., 545 U.S. 308, 314 (2005).

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26 ²Plaintiffs argue that even if the Court might consider such
27 potential claims in evaluating whether CAFA jurisdiction is
28 appropriate, many of the potential plaintiffs listed in their
Notice of Claims have injuries resulting from ingestion of a
different chemical (aegeline), which would raise different issues
than are present in the current action regarding DMAA.

1 Plaintiffs bring purely state law claims in this action:
2 negligence, strict products liability for design defects and
3 failure to warn, breach of warranty, and UCL claims. Defendants
4 argue that this Court has federal question jurisdiction over this
5 action because "Plaintiffs' Complaint attempts to assert claims
6 based on Defendants' alleged failure to comply with federal laws,
7 regulations and directives regarding sales and distribution of
8 their Jack3d and OxyElite dietary supplement products." (Opp. to
9 Mtn., Docket No. 17, p. 2.) This statement mischaracterizes
10 Plaintiffs' claims.

11 Although Plaintiffs mention the Food and Drug Administration's
12 warning letters to Defendants regarding the products at issue, no
13 interpretation of federal law will be necessary to adjudicate the
14 state law claims. The interactions with the FDA, at most, are
15 evidence that Defendants knew or should have known of the
16 detrimental effects of DMAA and evidence that DMAA is actually
17 unsafe. Plaintiffs could succeed on all of the claims at issue in
18 this case without any reference to the FDA or to any federal law,
19 as a determination of whether the FDA has or has not approved,
20 disapproved, or outlawed DMAA is not necessarily dispositive of
21 whether Defendants in this case should have known about the dangers
22 their products pose and whether they should have warned consumers
23 of that danger.

24 Further, to the extent that a federal issue is actually raised
25 at all, "the mere presence of a federal issue in a state cause of
26 action does not automatically confer federal-question
27 jurisdiction." Merrell Dow Pharms., Inc., v. Thompson, 478 U.S.
28 804, 813 (1986). Even if the presence of Plaintiffs' allegations

1 regarding the FDA will require some interpretation of how the
2 federal regulatory scheme works in order to understand the import
3 of the FDA warnings, and even if this interpretation could be
4 construed as a "federal issue," that issue is minor, not
5 "substantial." See Nevada v. Bank of America Corp., 672 F.3d 661,
6 675 (9th Cir. 2012) (finding no federal jurisdiction where "the
7 federal issues ... [were] not 'pivotal' to [Plaintiff's] case"). As
8 a result, the Court finds that Defendants have not met their burden
9 of demonstrating that the Court has federal subject matter
10 jurisdiction over this action.

11 **IV. Conclusion**

12 For the foregoing reasons, the Motion is GRANTED. The action
13 is remanded to the Los Angeles Superior Court. Defendants' motion
14 to dismiss (Docket No. 10) is DENIED AS MOOT.

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16 IT IS SO ORDERED.

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19 Dated: April 25, 2014

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cc: order, docket, remand letter to Los Angeles Superior Court, No. BC 534065


DEAN D. PREGERSON
United States District Judge