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**United States District Court  
Central District of California**

CRYSTAL WATERS and TONY VALENTI, on behalf of themselves and all others similarly situated,  
  
Plaintiffs,  
  
v.  
  
KOHL’S DEPARTMENT STORES, INC.; and DOES 1–100, inclusive,  
  
Defendants.

Case № 2:17-cv-02325-ODW (AFMx)  
  
**ORDER GRANTING PLAINTIFFS’ MOTION TO REMAND [16] AND DENYING AS MOOT DEFENDANT’S MOTION TO DISMISS [15]**

**I. INTRODUCTION**

This is a putative class action lawsuit brought by Plaintiffs Crystal Waters and Tony Valenti against Defendant Kohl’s Department Stores, Inc. Before the Court are Plaintiffs’ Motion to Remand and Kohl’s Motion to Dismiss. (ECF Nos. 15, 16.) For the reasons discussed below, the Court **GRANTS** Plaintiffs’ Motion and **DENIES AS MOOT** Defendant’s Motion.<sup>1</sup>

**II. BACKGROUND**

Kohl’s is a national department store chain with 116 locations in California. (Compl. ¶ 12, ECF No. 1-1.) Kohl’s offers its customers the option to participate in a

<sup>1</sup> After considering the papers submitted by the parties, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 reward program called “Kohl’s Cash.” (*Id.* ¶ 15.) Under this program, customers  
2 earn Kohl’s Cash when they spend a certain amount of money at a Kohl’s store. (*Id.*)  
3 Kohl’s Cash can be used to purchase products at Kohl’s, and, according to Plaintiffs,  
4 is advertised by Kohl’s as equivalent to real currency when so used (i.e., \$1 in Kohl’s  
5 Cash = \$1 in U.S. currency). (*See id.* ¶¶ 17–18.) Plaintiffs allege that, despite this  
6 advertising, Kohl’s customers do not receive the full value of their Kohl’s Cash when  
7 used in conjunction with percent-off discounts, because Kohl’s deducts a customer’s  
8 Kohl’s Cash from the purchase price *prior* to applying the percent-off discount. (*Id.*  
9 ¶ 18.)

10 For example, suppose a customer purchases a \$100 toaster marked at a 20%  
11 discount. (*Id.* ¶ 20.) Suppose further that this customer has \$60 in Kohl’s Cash. (*Id.*)  
12 If the customer uses his Kohl’s Cash for this purchase, Kohl’s will first subtract the  
13 Kohl’s Cash from the full, non-discounted price ( $\$100 - \$60 = \$40$ ), and will apply  
14 the 20% discount thereafter. (*Id.*) This results in the customer paying \$32 out-of-  
15 pocket for the toaster ( $80\% \times \$40 = \$32$ ). (*Id.*) Plaintiffs contend that Kohl’s should  
16 apply the Kohl’s Cash *after* the discount, which in this example would result in the  
17 customer paying only \$20 out-of-pocket for the toaster ( $[\$100 \times 80\% = \$80] - \$60 =$   
18  $\$20$ ). Plaintiffs characterize this \$12 difference as “unredeemed Kohl’s Cash,”<sup>2</sup> and  
19 have filed this lawsuit to recover any unredeemed Kohl’s Cash owed to California  
20 residents who have made such purchases in the past four years.

21 In February 2017, Plaintiffs filed this action in the Los Angeles Superior Court.  
22 (ECF No. 1-1.) In March 2017, Kohl’s removed the action to this Court and  
23 subsequently moved to dismiss the complaint. (ECF Nos. 1, 15.) Five days later,  
24 Plaintiffs moved to remand the case to state court. (ECF No. 16.) Each party opposed  
25 the other’s Motion. (ECF Nos. 17, 19.) Those Motions are now before the Court for  
26 decision.

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28 <sup>2</sup> Plaintiffs also refer to it as “Overpayment Charges” in their Complaint. (Compl. ¶ 21.) The  
Court will use the term “unredeemed Kohl’s Cash” for ease of reference.



1 No. 1.) Kohl’s also submitted an employee declaration to this effect. (Stemper Decl.  
2 ¶ 5, ECF No. 3.) The declaration further stated that Kohl’s customers “have redeemed  
3 more than \$6.7 million of Kohl’s Cash” at its store in Valencia, California, and that  
4 there are over 100 stores in California where customers have redeemed Kohl’s Cash.  
5 (*Id.* ¶ 4.) In their Motion to Remand, Plaintiffs point out that they seek to recover  
6 only *unredeemed* Kohl’s Cash, and thus Kohl’s allegations and evidence concerning  
7 the amount of *redeemed* Kohl’s Cash do not establish that the amount in controversy  
8 exceeds \$5 million.

9 In its Opposition, Kohl’s submits a supplemental declaration from the same  
10 employee. In that declaration, the employee attests that Kohl’s “prefers not to  
11 disclose the exact amount of Kohl’s Cash redeemed in California in conjunction with  
12 a second coupon entitling the customer to a percentage-off discount,” but that Kohl’s  
13 “ha[s] calculated that amount . . . [and] can assure the Court that consumers in  
14 California, over the past four years, have redeemed more than \$25 million in Kohl’s  
15 Cash while also using a percentage-off coupon.” (Stemper Suppl. Decl. ¶ 7, ECF No.  
16 19-1.) Kohl’s then argues that because Plaintiffs “are seeking only 20% of the value  
17 of Kohl’s Cash redeemed in California in conjunction with another coupon providing  
18 for a percentage off the item(s) purchased, that would mean they are seeking more  
19 than \$5 million in damages.” (*Id.* ¶ 9.)

20 The Court agrees with Plaintiffs that neither the original affidavit nor the  
21 supplemental affidavit that Kohl’s submits establishes the amount in controversy.  
22 One cannot calculate the total amount of *unredeemed* Kohl’s Cash simply by  
23 referencing the total amount of redeemed Kohl’s Cash. For instance, in the toaster  
24 example above, the amount of redeemed Kohl’s Cash was \$60,<sup>3</sup> but the amount of  
25 unredeemed Kohl’s Cash—which is what Plaintiffs seek to recover—is \$12. One  
26 cannot determine solely from the \$60 in redeemed Kohl’s Cash that the unredeemed

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27 <sup>3</sup> Plaintiffs would likely characterize the “redeemed” amount as only \$48, because one should  
28 subtract the \$12 in unredeemed Kohl’s Cash. Either way, this does not change the principal that one  
cannot calculate the unredeemed cash from the redeemed cash alone.

1 amount is \$12; rather, one requires the total price of the purchased product and the  
2 percentage-discount offered for that specific product. Kohl's has provided neither.  
3 Instead, Kohl's appears to assume that the unredeemed Kohl's Cash is always  
4 equivalent to 20% of the redeemed Kohl's Cash. While that happened to be the case  
5 in the toaster example that Plaintiffs provided, it is obviously extremely unlikely to be  
6 the case for every single purchase. Kohl's thus has not demonstrated that the amount  
7 in controversy exceeds \$5 million.<sup>4</sup>

8 **V. CONCLUSION**

9 For the reasons discussed above, the Court **GRANTS** Plaintiffs' Motion to  
10 Remand and **DENIES AS MOOT** Defendant's Motion to Dismiss. (ECF Nos. 15,  
11 16.) The Court **REMANDS** this case to the Los Angeles Superior Court, Case No.  
12 BC 650906. The Clerk of the Court shall close the case.

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14 **IT IS SO ORDERED.**

15  
16 June 27, 2017

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19 **OTIS D. WRIGHT, II**  
20 **UNITED STATES DISTRICT JUDGE**

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26 <sup>4</sup> Kohl's argues that the Court should deny this Motion based on Plaintiffs' counsel's failure to  
27 timely meet and confer prior to moving to remand. *See* C.D. Cal. L.R. 7-3. While the Court may  
28 have done so if the Motion did not concern a jurisdictional issue, *see, e.g., Singer v. Live Nation*  
*Worldwide, Inc.*, No. SACV 11-0427 DOC, 2012 WL 123146, at \*2 (C.D. Cal. Jan. 13, 2012),  
Plaintiffs' failure to meet and confer cannot justify the Court adjudicating a case over which it lacks  
subject matter jurisdiction.