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

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11 RUTHIE MARTIN,
12 Plaintiff,
13 v.
14 CHATTEM, INC. et al.,
15
16 Defendants.

Case No. 2:19-cv-06464-ODW(PJWx)

**ORDER GRANTING MOTION TO
REMAND [11] AND DENYING
MOTION TO DISMISS AS MOOT
[21]**

17 **I. INTRODUCTION**

18 On May 16, 2019, Plaintiff Ruthie Martin (“Martin”) filed this putative class
19 action in Los Angeles Superior Court against Chattem, Inc. (“Chattem”) and Sanofi,
20 Inc. (“Sanofi”) (collectively, “Defendants”). (Not. of Removal, Ex. A (“Compl.”),
21 ECF No. 1-1.) On July 25, 2019, Chattem removed the action pursuant to the Class
22 Action Fairness Act, 28 U.S.C. § 1332(d) (“CAFA”). (Notice of Removal
23 (“Removal”) 1, ECF No. 1.) Martin moved to remand this action for lack of subject
24 matter jurisdiction (“Motion”). (Mot. to Remand (“Mot.”), ECF No. 11.) Chattem
25 subsequently filed a motion to dismiss. (Mot. to Dismiss, ECF No. 21.) For the
26 reasons discussed below, the Court finds that Chattem has not met its evidentiary
27 burden to establish that the amount in controversy exceeds \$5 million. Accordingly,
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1 the Court **GRANTS** Martin’s Motion to Remand and **DENIES** Chattem’s Motion to
2 Dismiss as moot.¹

3 **II. FACTUAL BACKGROUND**

4 Martin brings this class action against Defendants individually and on behalf of
5 all others similarly situated (collectively “putative class”) for pain, burns, and
6 inflammation from use of the product, “Icy Hot Applicator.” The putative class
7 consists of “all citizens of California who purchased the [d]effective [p]roduct [but
8 not] the Court and its personnel, Defendants and their employees, and persons who
9 purchased the [d]effective [p]roduct for resale.” (Compl. ¶ 27.) Martin is a citizen of
10 California. (Compl. ¶ 11.) Chattem is incorporated and has its principal place of
11 business in Tennessee. (Compl. ¶ 12.) Martin alleges eight causes of action:
12 (1) Consumer Legal Remedies Act (“CLRA”); (2) False Advertising Law (“FAL”);
13 (3) Unfair Competition Law (“UCL”); (4) Breach of Express Warranty; (5) Breach of
14 Implied Warranty of Merchantability; (6) Unjust Enrichment; (7) Strict Products
15 Liability; and (8) Negligence. (Compl. ¶¶ 33–130.) Martin does not allege a specific
16 damages amount. (*See* Compl. at 23.)

17 Chattem removed the action to this Court on July 25, 2019, pursuant to the
18 CAFA. (Removal 2.) On August 26, 2019, Martin moved to remand arguing that
19 Chattem’s removal relies on speculative violation rates to calculate the amount in
20 controversy. (Mot. 1.) Martin contends that, as a result, Chattem has not established
21 that the amount in controversy is met and, thus, the Court lacks subject matter
22 jurisdiction. (Mot. 1.) Chattem opposes the Motion and argues that the amount in
23 controversy is satisfied because Chattem calculated the alleged violation rates based
24 on reasonable assumptions derived from the Complaint. (Opp’n to Mot. (“Opp’n”) 1,
25 ECF No. 14.)

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28 ¹ After carefully considering the papers filed in support of and in opposition to these motions, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 **III. LEGAL STANDARD**

2 CAFA allows for federal jurisdiction over a purported class action when (1) the
3 amount in controversy exceeds \$5 million (2) at least one putative class member is a
4 citizen of a state different from any defendant, and (3) the putative class exceeds 100
5 members. 28 U.S.C. §§ 1332(d)(2), (5). “[T]he burden of establishing removal
6 jurisdiction remains . . . on the proponent of federal jurisdiction.” *Abrego Abrego v.*
7 *Dow Chem. Co.*, 443 F.3d 676, 685 (9th Cir. 2006). Generally, removal statutes are
8 strictly construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
9 (9th Cir. 1992). However, “no antiremoval presumption attends cases invoking
10 CAFA.” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014).

11 “[A] defendant’s notice of removal need include only a plausible allegation that
12 the amount in controversy exceeds the jurisdictional threshold. *Id.* If the plaintiff
13 disputes the alleged amount in controversy, “both sides submit proof and the court
14 decides, by a preponderance of the evidence, whether the amount-in-controversy
15 requirement has been satisfied.” *Id.* at 88. The parties may submit evidence,
16 “including affidavits or declarations, or other summary-judgment-type evidence
17 relevant to the amount in controversy at the time of removal.” *Ibarra v. Manheim*
18 *Investments, Inc.*, 775 F.3d 1197 (9th Cir. 2015) (quoting *Singer v. State Farm Mut.*
19 *Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997)). “[A] defendant cannot establish
20 removal jurisdiction by mere speculation and conjecture, with unreasonable
21 assumptions.” *Ibarra*, 775 F.3d at 1197.

22 **IV. DISCUSSION**

23 Chattem asserts that removal is proper because there are more than 100 putative
24 class members, minimal diversity is satisfied, and the amount in controversy exceeds
25 \$5 million. (Removal 3.) Martin does not dispute that the class is over 100 members
26 or that the parties are minimally diverse; instead, he argues that Chattem has not
27 established the amount in controversy. (Mot. 3–4.)

1 Chattem contends that the restitution damages alone exceeds \$5 million.
2 (Removal 4.) Alternatively, Chattem indicates that the potential personal injury
3 claims for class members would exceed \$5 million. (Opp’n to Mot. 10–11.) Martin
4 counters that Chattem has not provided sufficient evidence and relies on speculation in
5 its amount in controversy calculation. (*See* Mot.)

6 **A. Restitution Damages**

7 Determining whether the amount in controversy exceeds \$5 million is
8 contingent upon whether Chattem’s calculations are reasonable. *See*
9 *Ibarra*, 775 F.3d at 1197 (finding assumptions of damages “cannot be pulled from thin
10 air but need some reasonable ground underlying them.”) Chattem, as the removing
11 party, bears the burden to establish that its asserted amount in controversy relies on
12 reasonable assumptions. *Id.* at 1199. “Where the complaint contains generalized
13 allegations of illegal behavior, a removing defendant must supply ‘real evidence’
14 grounding its calculations of the amount in controversy.” *Dobbs v. Wood Group PSN,*
15 *Inc.*, 201 F. Supp. 3d 1184, 1188 (E.D. Cal. 2016) (*citing Ibarra*, 775 F.3d at 1199).

16 Chattem contends that the restitution damages alone exceeds \$5 million.
17 (Removal 4.) Chattem proffers as evidence the declaration of Brian Nutter, the Senior
18 Manager of Revenue and Working Capital at Chattem, who stated that its sales to
19 California retailers “from May 2015 to July 2019 exceeds \$5 million.” (Decl. of Brian
20 Nutter (“Nutter Decl.”) ¶¶ 1, 5, ECF No. 14-1.) Martin disputes that she does not seek
21 restitution, nevertheless, any restitution the class seeks would be the amount class
22 members paid to Chattem to purchase its product. (Mot. 5.) As Martin notes,
23 purchasers with the intent to resale Chattem’s product do not fall within the class as
24 defined by the Complaint. (Compl. ¶ 27.) Therefore, without more, the value of sales
25 Chattem earned from its California retailers is irrelevant to the damages Martin and
26 the putative class seek in this suit.

27 Chattem argues that the year to year sales to the retailers indicate that
28 individuals in California are purchasing its product, and if the retailers collectively

1 paid over \$5 million surely the individual customers collectively paid over \$5 million.
2 (Opp'n 12.) The Court finds Chattem has ventured far from its evidence and the
3 allegations in the Complaint. Unwilling to join the journey, the Court finds that
4 Chattem has not satisfied its burden. *See Ibarra*, 775 F.3d at 1197 (finding
5 assumptions of damages "cannot be pulled from thin air but need some reasonable
6 ground underlying them.")

7 **B. Compensatory Personal Injury Damages**

8 Chattem alternatively asserts that the amount in controversy is met by the
9 personal injury damages of class members. (Opp'n 10–11.) In its calculation,
10 Chattem extrapolates from Martin's allegations of "hundreds of thousands" of class
11 members that there are at least 200,000 class members. (Compl. ¶ 28; Opp'n 10.)
12 Chattem further speculates that if each class member was injured in the amount of
13 \$25, this cause of action would satisfy the amount in controversy requirement.
14 (Opp'n 10–11.) As Chattem provides no evidence to assume that every class member
15 will be physically injured from the use of its product and the Complaint makes no
16 such allegations, the Court declines to accept Chattem's speculations and does not
17 find the amount in controversy satisfied. *See Ibarra*, 775 F.3d at 1197 (finding
18 assumptions of damages "cannot be pulled from thin air but need some reasonable
19 ground underlying them.")

20 **C. Other Damages and Attorney's Fees**

21 Finally, Chattem asserts that the injunctive relief would be a "substantial" cost,
22 attorney's fees would be 25% of the compensatory damages (\$1.2 million), and
23 punitive damages would equal the compensatory damages (\$5 million). (Opp'n 13–
24 15.) However, these estimates are based on the unsubstantiated \$5 million
25 compensatory damages. Accordingly, the Court does not consider these estimates in
26 the amount in controversy calculation. *See Ibarra*, 775 F.3d at 1197 (finding
27 assumptions of damages "cannot be pulled from thin air but need some reasonable
28 ground underlying them.")

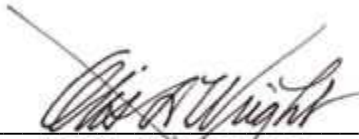
1 Finding that Chattem has not provided a sound basis to determine that the
2 amount in controversy exceeds \$5 million, the Court lacks jurisdiction over this case.
3 Accordingly, the Court **GRANTS** the motion to remand and **DENIES** as moot the
4 motion to dismiss.

5 **V. CONCLUSION**

6 For the reasons discussed above, the Court **GRANTS** Martin's Motion, and
7 **REMANDS** this case to the Superior Court of California for the County of Los
8 Angeles, Case No. 19STCV03843 located at 111 North Hill Street, Los Angeles,
9 California 90012. (ECF No. 11.)

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11 **IT IS SO ORDERED.**

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13 December 9, 2019

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17 **OTIS D. WRIGHT, II**
18 **UNITED STATES DISTRICT JUDGE**
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