

1
2
3
4
5
6
7
8 **United States District Court**
9 **Central District of California**
10 **Western Division**
11

12 SUMMER SANDOVAL,

13 Plaintiff,

14 v.

15 YUMMYEARTH INC.,

16 Defendant.

CV 17-01832 TJH (KKx)

Order

JS-6

17
18 The Court has reviewed Defendant YummyEarth Inc.'s ["YummyEarth"] notice
19 of removal.

20 YummyEarth is a New Jersey corporation that sells food products, including bags
21 of lollipops. Sandoval, a California citizen, alleged that she bought YummyEarth's
22 lollipops, thinking that the lollipops were healthy because the ingredient list listed
23 "evaporated cane juice" rather than "sugar." In 2017, Sandoval filed this putative class
24 action, in California Superior Court, on behalf of herself and all unnamed individuals
25 who purchased YummyEarth's lollipops with the "evaporated cane juice" labeling.
26 Sandoval's First Amended Complaint ["FAC"] alleged that YummyEarth's labeling
27 was a: (1) Negligent misrepresentation; (2) Violation of the Consumers Legal Remedies
28 Act, Cal. Civ. Code § 1750, *et seq.*; (3) Violation of California's False Advertising

1 law, Cal. Bus. & Prof. Code § 17500, *et seq.*; and (4) Violation of California's
2 Unlawful Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* Sandoval sought
3 damages, restitution, and injunctive relief, but did not specify any amounts.

4 YummyEarth removed this case, pursuant to 28 U.S.C. § 1441, based on
5 diversity jurisdiction. *See Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 n. 4 (9th
6 Cir. 2007). The Court has subject matter jurisdiction on the basis of diversity when the
7 amount in controversy exceeds \$75,000.00 and the parties are citizens of different
8 states. 28 U.S.C. § 1332(a). The issue, here, is whether the amount in controversy
9 threshold has been met. Because it is not facially evident from the FAC that the
10 amount in controversy exceeds \$75,000.00, YummyEarth must allege facts in the
11 notice of removal to establish by a preponderance of the evidence that the amount in
12 controversy exceeds \$75,000.00. *See Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117
13 (9th Cir. 2004).

14 Sandoval alleged the lollipops cost \$8.99 per bag. YummyEarth has not
15 substantiated that Sandoval, or any other individual putative class members, purchased
16 over 8,000 bags of lollipops. YummyEarth cannot aggregate the putative class
17 monetary relief claims to meet the threshold because it did not remove this action
18 pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(D)(2), and none of the
19 exceptions to aggregating putative class claims are applicable, here. *See Gibson v.*
20 *Chrysler Corp.*, 261 F.3d 927, 943-944 (9th Cir. 2001). Accordingly, YummyEarth
21 has not shown that Sandoval, or any putative class member, can meet the minimum
22 amount in controversy with regard to their monetary relief claims. *See Exxon Mobil*
23 *Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 555 (2005).

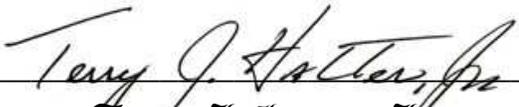
24 Where plaintiff seeks injunctive relief, as Sandoval does here, the amount in
25 controversy threshold may, also, be met by measuring the value of the injunctive relief.
26 *See Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002). YummyEarth
27 submitted a declaration from its Chief Executive Officer, who declared that complying
28 with an injunction would cost over \$75,000.00 without providing any factual basis for

1 such conclusion. However, “a defendant seeking to remove an action may not offer
2 mere legal conclusions; it must allege the underlying facts supporting each of the
3 requirements for removal.” *Leite v. Crane Co.*, 749 F.3d 1117, 1122 (9th Cir. 2014).
4 Accordingly, YummyEarth failed to establish, by a preponderance of the evidence, that
5 this Court has diversity jurisdiction.

6
7 Accordingly,

8
9 **It is Ordered**, *sua sponte*, that the action be, and hereby is, **Remanded**.

10
11 Date: April 9, 2018

12
13 
14 **Terry J. Hatter, Jr.**
Senior United States District Judge