UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TOWNSEND FARMS, INC.,

Plaintiff,

vs.

GÖKNUR GIDAMADDELERI ENERJI IMALAT ITHALAT IHRACAT TICARET ve SANAYI A.Ş., et al.,

Defendants.

PURELY POMEGRANATE, INC. and VALLEY FORGE INSURANCE CO.,

Plaintiffs,

vs.

GÖKNUR GIDAMADDELERI ENERJI IMALAT ITHALAT IHRACAT TICARET ve SANAYI A.Ş., et al.,

Defendants.

Case No.: SA CV 15-0837-DOC (JCGx)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND

A jury trial in this matter took place from April 4 to 14, 2017, on claims asserted by Plaintiffs Townsend Farms, Inc. ("Townsend Farms"), Purely Pomegranate, Inc. ("PPI"), and Valley Forge Insurance Company ("Valley Forge") (collectively "Plaintiffs").

Before the jury were claims for equitable indemnity and negligence by Townsend Farms, PPI, and Valley Forge; claims for negligent and intentional misrepresentation by Townsend Farms and PPI; and Townsend Farms' assigned claim for breach of contract. The jury found Defendants Göknur Gida Maddeleri Enerji Imalat Ithalat Ihracat Ticaret ve Sanayi A.Ş. ("Göknur") and United Juice Corp. ("United Juice") liable on all of these claims. Redacted Verdict Form ("Verdict Form") (Dkt. 235).

The parties have reserved Plaintiffs' claim for declaratory relief. Plaintiffs contend that their Unfair Competition Law ("UCL") claim, under California Business and Professions Code § 17200, *et seq.*, was also reserved, while Defendants contend that Plaintiffs dropped their UCL claim during the jury trial.

The parties have also submitted to the Court the issues of United Juice's alter ego liability and the insurers' ability to bring their claims in subrogation of Townsend Farms and PPI.

Plaintiffs have also requested that the Court enforce the parties' damages stipulation (the "Damages Stipulation") (Dkt. 214) and that the Judgment be altered to reflect the Damages Stipulation. This would result in a significant increase over the damages awarded by the jury. *See* Verdict Form.

The Court issues the following findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52. To the extent that any findings of fact are included in the Conclusions of Law section, they shall be deemed findings of fact, and to the extent that any conclusions of law are included in the Findings of Fact section, they shall be deemed conclusions of law.

II. FINDINGS OF FACT

A. The Hepatitis A Outbreak

1. In 2013, there was a hepatitis A outbreak (the "Outbreak") in the western United States linked to consumption of a the Townsend Farms Organic Antioxidant Blend ("Antioxidant Blend"),

a blend of frozen berries sold at Costco. Joint Statement of the Case ("Joint Statement") (Dkt. 201) at 2.

2. The Antioxidant Blend was a frozen berry blend that contained five fruits—strawberries, cherries, raspberries, blueberries and pomegranate arils. *Id.*

3. Townsend Farms packaged and sold the Antioxidant Blend. *Id.*

4. Göknur produced some of the pomegranate arils used in the Antioxidant Blend. *Id.*

5. PPI sold pomegranate arils supplied by Göknur and used by Townsend Farms in the Antioxidant Blend. *Id.*

6. Valley Forge is PPI's insurer. *Id.*

7. United Juice imported the Göknur arils that were used in the Antioxidant Blend. *Id.*

B. This Lawsuit and Damages Stipulation

8. Plaintiffs brought this action contending that some of the Göknur pomegranate arils that were used in the Antioxidant Blend were contaminated with hepatitis A, and that Göknur and United Juice are therefore responsible for the Outbreak. Joint Statement at 2.

9. Plaintiffs asserted various claims for relief, and sought payment from Göknur and United Juice for amounts they and certain other insurance companies have paid to settle underlying consumer claims and for associated litigation costs and other out-of-pocket expenses and lost profits. *Id.* at 2–3.

10. All parties stipulated that Plaintiffs and their insurers had paid certain amounts to defend consumer actions arising out of the Outbreak, and to settle those clams: (1) Plaintiff Valley Forge paid $11,625,000 in settlements and $3,996,144.56 in attorney's fees and costs related to defending PPI and Townsend Farms in the underlying consumer claims; (2) Townsend Farm's insurer Massachusetts Bay Insurance Company paid $2,769,986.61 in settlement costs and $1,241,764.49 in attorney fees and costs for the defense of the underlying consumer claims; (3) as of March 28, 2017, Townsend Farms' insurer, Great American Insurance Company, paid $874,382 in settlement payments and $3,447,624.26 in attorney fees and costs for the defense of the underlying consumer claims; (4) Fallon Trading's insurer, Maryland Casualty Company, paid $349,267.07 in attorney fees and defense costs on the underlying consumer claims, as well as

$2,250,000.00 to settle a lawsuit between Fallon Trading and Townsend Farms. Damages Stipulation ¶¶ 2–9.

11. Per the stipulation, the Plaintiffs were relieved of proving that the amounts provided in the Damages Stipulation were "reasonable, and that each settlement was based on a reasonable estimate of liability at the time of the settlement." *Id.*¶ 10.

12. Finally, the parties agreed as part of the damages stipulation the Townsend Farms paid $2,772,808 for various out-of-pocket expenses in responding to the outbreak. *Id.*¶ 11.

13. The jury found that Massachusetts Bay Insurance Company, Great American Insurance Company, Maryland Casualty Company, and Fallon Trading validly assigned their claims to Townsend Farms. Verdict Form at 2.

14. While the majority of underlying consumer claims have now been settled or resolved, approximately twenty-two lawsuits (including a class action) remain ongoing. *See* Transcript, April 5, 2017, Vol. V (Dkt. 271) at 39:19–23, 40:13–19. It is also possible that additional claims could be brought. *Id.* 42:19–21.

15. Great American Insurance Company has continued to defend and resolve the underlying consumer claims on behalf of Townsend Farms, Purely Pomegranate, and Fallon Trading. *Id.* at 40:20-41:2.

16. Göknur and United Juice contended that Göknur pomegranate arils were not the source of contamination in the Antioxidant Blend, and that they are therefore not responsible for the 2013 hepatitis A outbreak and are not liable to Plaintiffs. Joint Statement at 3.

C. Jury Instructions and Verdict

17. The jury was instructed according to a jointly-proposed jury instruction that, if the jury found for any Plaintiff on any claim, including indemnity, the jury was to determine that Plaintiff's damages. Jury Instructions (Dkt. 236) at 37.

18. The jury was further instructed that the Plaintiffs had the burden of proving damages; that "[d]amages means the amount of money that will reasonably and fairly compensate the plaintiff for any injury you find was caused by the defendant;" and that "[i]t is for you to determine what damages, if any, have been proved." *Id.*

19. The equitable indemnity jury instruction stated that "The parties have stipulated that the plaintiffs are relieved of their burden of proving . . . that the [Plaintiffs] paid settlements to the legal claimants and that such settlements, and that the legal expenses incurred in connection with those settlements, were reasonable." *Id.* at 23.

20. Defendants proposed a one-page verdict form. Defendants' Proposed Jury Verdict Form (Dkt. 208). The Plaintiffs proposed a nine page, multipart general verdict form. Plaintiffs' Proposed Jury Verdict Form (Dkt. 204). The Court rejected Defendants' proposed verdict, and ultimately gave a somewhat modified version of the Plaintiff's verdict form to the jury.

21. All parties approved the modified version of Plaintiffs' proposed verdict form. The final verdict form, to which no party objected, asked the jury whether Defendants had provided pomegranate arils that were contaminated with hepatitis A; whether Plaintiffs had proved the elements of each of their claims against each defendant; and what damages, "if any," to award. Jury Verdict.

22. The jury's damages award was itemized by category of damages claimed:

- Question 12 provided blanks for damages, "if any," to be awarded to each Plaintiff for underlying settlements and associated litigation expenses, *id.* at 6; and
- Questions 13, 14, and 15 provided blanks for damages, "if any," to be awarded to Townsend Farms, PPI, and Townsend Farms as assignee of Fallon Trading for costs incurred and lost profits (excluding settlements and litigation expenses), *id.* at 6–7.

23. The jury found that Defendants provided pomegranate arils contaminated with hepatitis A and that Plaintiffs proved all the elements on all claims. *Id.* at 1–5.

24. The jury awarded Townsend Farms $2.7 million for underlying settlements and associated litigation expenses and $4.8 million in punitive damages. *Id.* at 6, 8.

25. The jury awarded PPI $78,671.16 for costs incurred and lost profits and $500,000 in punitive damages. *Id.* at 7–8.

26. The jury awarded $0 to Valley Forge and PPI related to underlying settlements and associated litigation expenses. *Id.* at 6.

27. The jury awarded $0 to Townsend Farms for costs incurred and lost profits. *Id.*

28. Ultimately, the jury awarded Plaintiffs only a small fraction of the amounts they and their insurance companies paid to settle underlying consumer claims and for associated litigation expenses.

29. No party objected to the recording of the verdicts by the clerk or to discharge of the jury. Transcript, April 14, 2017, Verdict (Dkt. 266) at 32:1–11.

D. Evidence of Other Sources or Causes of the Outbreak Offered at Trial

30. Defendants provided evidence upon which the jury may have concluded that although Defendants were liable for providing some contaminated pomegranate arils, Defendants were not the cause of the entire outbreak or of all of the losses Plaintiffs suffered.

31. Although it is unclear exactly how the jury arrived at its damages determination, in deciding to award Plaintiffs far less than the total losses they incurred, the jury may have determined that one or a combination of several other potential sources was responsible for the initial contamination or spread of the Outbreak:

- The jury was presented with evidence that Townsend Farms used another Turkish pomegranate supplier, Sanex, in the implicated lots of Antioxidant Blend and that some of the implicated lots of Antioxidant Blend contained only Sanex arils (and no Göknur arils). Transcript, April 5, 2017, Vol. II (Dkt. 257) at 20:18–23. Further, evidence was offered that there was no way to be certain whether any Outbreak case patient actually ate bags containing Sanex arils or bags containing Göknur arils. Transcript, April 11, 2017, Vol. II (Dkt. 274) at 45:16–56:19; Transcript, April 11, 2017, Vol. IV (Dkt. 275) at 47:20–60:4. Additionally, there was evidence that Sanex processed all of their pomegranate arils by hand. Transcript, April 5, 2017, Vol. III at 57:21–58:13; Transcript, April 11, 2017, Vol. II (Dkt. 274) at 43:8–10. There was also testimony that processing pomegranate arils by hand causes an increased risk of hepatitis A contamination such that, "based on the absence of a Juran machine, it's probably riskier for Sanex to have product that has hepatitis A in it." Transcript, April 11, 2017, Vol. II (Dkt. 274) at 14:16–15:2; 42:14–43:17. Defendants therefore offered evidence that Sanex might have been a source of hepatitis A contamination,

and it was possible for the jury to conclude there was contamination in both Sanex and Göknur arils.

- The jury was presented with evidence that just 99 of the 165 outbreak cases had identical strains of hepatitis A, genotype 1B. Transcript, April 7, 2017, Vol. II (Dkt. 273) at 91:24–92:5. Eighteen other outbreak cases had different hepatitis A, genotype 1B strains. *Id.* at 92:6-14. Two outbreak cases who had reported eating the Organic Antioxidant Blend had hepatitis A, genotype 1A. *Id.* at 91:20-23. No one knew the genotype or strain (and therefore the most likely geographic provenance) of the remaining forty-five outbreak cases. *Id.* at 91:14–19. This genotype evidence could indicate multiple sources of the outbreak, which also might have led the jury to believe that both Sanex and Göknur arils were sources of contamination.
- The jury was presented with evidence that a piece of equipment that Townsend Farms used to process the implicated lots of Antioxidant Blend (a "shaker table") had a rough weld that the FDA considered dangerously unsafe because organic materials could get stuck in the weld, it could not be cleaned properly, and microorganisms that came in contact with the weld could grow and spread. Transcript, April 5, 2017, Vol. II at 40:9–44:7; Transcript, April 12, Vol. I (Dkt. 264) at 72:7–11. This might potentially have led the jury to conclude that Townsend Farms' processing practices may have spread the contamination.
- The jury was presented with evidence that PPI participated in the sale of some Göknur pomegranate arils that were contaminated with Hepatitis A, and knew that the same Göknur arils that were eventually used in the implicated lots of the Antioxidant Blend may have been contaminated with foreign material—including worms, a snail, a feather, and plastic. *See* Transcript, April 5, 2017, Vol. II at 111:6–116:13; Transcript, April 7, 2017, Vol. I (Dkt. 260) at 15:20–34:21. However, there was no evidence presented that PPI recalled the Göknur arils before the Outbreak or even warned Townsend Farms about the foreign material. This might have led the jury to conclude the PPI was aware that the lots were comprised and, in failing to act, was in part responsible for the ensuing damages.

III. CONCLUSIONS OF LAW

A. Enforcing the Damages Stipulation

32. Plaintiffs asks the Court to "enforce" the Damages Stipulation by increasing the amount awarded to Plaintiffs in relation to the underlying consumer settlements and associated litigation expenses to the sums specified in the Damages Stipulation.

33. "Federal practice does not permit the use of additur in cases where the amount of damages is disputed." *DePinto v. Provident Sec. Life Ins. Co.*, 323 F.2d 826, 837 (9th Cir. 1963) (citing *Dimick v. Schiedt*, 293 U.S. 474 (1935)).

34. While the Ninth Circuit has not explicitly adopted such a rule, district courts in the Ninth Circuit and other circuit courts have found that a court may increase a jury damages award if the amount is not disputed and causation is not in question. *See, e.g.*, *Roman v. W. Mfg., Inc.*, 691 F.3d 686, 691 (5th Cir. 2012); *Liriano v. Hobart Corp.*, 170 F.3d 264, 266 (2d Cir. 1999); *Jones v. Wal-Mart*, 870 F.2d 982 (5th Cir. 1989); *Odmark v. Westside Bancorporation, Inc.*, No. C85-1099R, 1988 WL 108288, at *3 (W.D. Wash. Mar. 9, 1988).

35. In a situation where the parties stipulated that the plaintiff incurred a certain amount of medical costs, a court declined to increase the damages award in part because it was possible the jury had determined that there were other causes for the medical costs. *Al-Kindi v. Edwards Bros.*, No. CV03-459-E-LMB, 2005 WL 2265914, at *13 (D. Idaho Sept. 16, 2005). As noted by that court, the exception permitting additur is "very narrow and is applicable only when damage claims are definite and incontrovertible." *Id.* at *11 (citing *Jones*, 870 F.2d at 985).

36. Here, while the Defendants agreed that the amounts referenced in the damages stipulation were reasonable and were actually paid by the Plaintiffs, they did not agree that they were the cause of those damages. Although the jury found the Defendants provided pomegranate arils contaminated with hepatitis A, the jury made no finding that the Defendants were the exclusive source of the hepatitis A contamination or that Plaintiffs bore no fault for the Outbreak. Defendants provided evidence at trial that would have allowed the jury to determine there were multiple causes of the Outbreak, or that Plaintiffs were in part responsible for the Outbreak. This determinations, if the jury made them, could justify the reduced awards Plaintiffs ultimately

received. Therefore, causation as to the amounts in the Damages Stipulation was not indisputably resolved either by the Damages Stipulation or by the jury verdict.

37. Accordingly, an increase of the jury award here in accord would be impermissible additur. The Court therefore will not adjust the amounts awarded to the Plaintiffs for underlying consumer settlements and associated litigation expenses.

B. Declaratory Relief

38. Plaintiffs seek a declaration that Defendants are "obligated to reimburse" Plaintiffs for the amounts Plaintiffs paid to settle underlying consumer claims and associated litigation expenses. Plaintiffs further seek a declaration that Defendants are obligated to indemnify PPI and Townsend Farms for all pending and future claims that are alleged to arise out of the 2013 hepatitis A outbreak.

39. Declaratory relief is an equitable claim for the Court, rather than the jury, to decide, but in doing so the Court must follow the jury's explicit or implicit factual determinations. *See Los Angeles Police Protective League v. Gates*, 995 F.2d 1469, 1473 (9th Cir. 1993); *Century Sur. Co. v. Saidian*, No. CV 12-7428 SS, 2016 WL 6440140, at *16 (C.D. Cal. Mar. 16, 2016).

40. Here, the jury already determined the extent to which Defendants are obligated to reimburse Plaintiffs for the amounts Plaintiffs paid to settle underlying consumer claims and associated litigation expenses, and made an award of specific amounts. Accordingly, this portion of the Plaintiffs' declaratory relief claim is moot.

41. As for Plaintiffs' requested declaration that Defendants are obligated to indemnify PPI and Townsend Farms for all pending and future claims that arise out of the Outbreak, the Court declines to grant such relief because doing so would run afoul of the jury's implicit finding that Defendants were responsible for only some fraction of all the losses caused by the Outbreak. The jury's verdict appears to implicitly rest on a finding that Defendants did not cause the entire outbreak, and a declaration holding otherwise would therefore run afoul of the Seventh Amendment.

42. Nor have Plaintiffs established an adequate record from which the Court could reliably determine whether Defendants are responsible for any pending claims, let alone future claims.

43. Plaintiffs have the burden of proving their entitlement to the declaratory relief they seek. *Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 134 S. Ct. 843, 849 (2014) (holding that the burden of proof in declaratory relief action lies where it would in substantive action). Plaintiffs have not met that burden here.

C. Violation of the UCL

44. The UCL prohibits "any unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200.

45. Because a UCL claim is equitable in nature, the Court, rather than the jury, must decide whether defendants engaged in such an act or practice. *Bradstreet v. Wong*, 161 Cal. App. 4th 1440, 1458 (2008). However, in making this determination, the Court is bound by the explicit and implicit findings of the jury. *Los Angeles Police Protective League*, 995 F.2d at 1473.

46. Plaintiffs claim that Defendants violated the UCL by providing the contaminated pomegranate arils that caused the hepatitis A outbreak.

47. While the jury found that Defendants provided pomegranate arils contaminated with hepatitis A, it did not find that Defendants caused the Outbreak. Indeed, the jury implicitly found that Defendants were responsible for only some fraction of all the losses caused by the Outbreak.

48. The sole remedy Plaintiffs seek under the UCL is damages for the amounts they paid to settle underlying consumer claims and for associated litigation expenses, as well as out-of-pocket amounts Townsend Farms paid in responding to the Outbreak.

49. The parties dispute whether such damages are even recoverable under the UCL. However, even if the amounts Plaintiffs seek were recoverable under the UCL, the claim would be moot because the jury already determined the amount of damages that Defendants caused by engaging in the same conduct that forms the basis of Plaintiffs' UCL claim, and Plaintiffs' claim for an award of additional amounts would contradict the jury's implicit finding of the harm Defendants' caused.

D. Alter Ego Liability

50. The parties agree that the determination of Plaintiffs' alter ego claim is moot because the jury's verdict was against both Göknur and United Juice.

E. Subrogation

51. Defendants do not dispute that Plaintiffs were properly subrogated for their insureds, to the extent of the jury's verdict.

IV. DISPOSITION

52. Based on the above Findings of Fact and Conclusions of Law, judgment shall be entered as set forth in the accompanying Judgment pursuant to Federal Rule of Civil Procedure Rule 54(b).

Dated: July 26, 2017

David O. Carter

DAVID O. CARTER
UNITED STATES DISTRICT JUDGE