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JS-6

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

THERESA REISFELT on behalf of
herself and all others similarly
situated,

Plaintiffs,

v.

TOPCO ASSOCIATES, LLC, a
Delaware Limited Liability
Company, and
DOES 1 through 25, inclusive,

Defendants.

Case No. 8:20-cv-01283-JWH-ADSx

**ORDER GRANTING PLAINTIFF'S
MOTION TO REMAND [Dkt.
No. 14]**

1 **I. INTRODUCTION**

2 On June 8, 2020, Plaintiff Theresa Reisfelt filed this putative class action
3 in Orange County Superior Court.¹ On July 17, 2020, Defendant Topco
4 Associates, LLC removed the case to federal court, citing federal question and
5 diversity jurisdiction.² On August 28, 2020, Reisfelt filed a motion to remand
6 this case to state court.³ For the reasons stated below, the Court **GRANTS** the
7 Motion.

8 **II. LEGAL STANDARD**

9 “Except as otherwise expressly provided by Act of Congress, any civil
10 action brought in a State court of which the district courts of the United States
11 have original jurisdiction, may be removed by the defendant or the defendants,
12 to the district court of the United States for the district and division embracing
13 the place where such action is pending.” 28 U.S.C. § 1441(a). A district court
14 has original jurisdiction of all civil actions where the parties are completely
15 diverse and the “matter in controversy exceeds the sum or value of \$75,000,
16 exclusive of interest and costs.” 28 U.S.C. § 1332(a). “[A] defendant’s notice
17 of removal need include only a plausible allegation that the amount in
18 controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin*
19 *Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014). Evidence establishing the
20 amount in controversy is necessary only “when the plaintiff contests, or the
21 court questions, the defendant’s allegation.” *See id.*

22 District courts also have “original jurisdiction of all civil actions arising
23 under the Constitution, laws, or treaties of the United States.” 28 U.S.C.
24 § 1331. “The presence or absence of federal-question jurisdiction is governed by
25 the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists

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27 ¹ Notice of Removal, Ex. A (the “Complaint”) [Dkt. No. 1-1].

28 ² Notice of Removal [Dkt. No. 1].

³ Pl.’s Mot. to Remand (the “Motion”) [Dkt. No. 14].

1 only when a federal question is presented on the face of the plaintiff’s properly
2 pleaded complaint.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)
3 (citing *Gully v. First National Bank*, 299 U.S. 109, 112–113 (1936)). “The rule
4 makes the plaintiff the master of the claim; he or she may avoid federal
5 jurisdiction by exclusive reliance on state law.” *Id.* In certain cases, however,
6 “federal-question jurisdiction will lie over state-law claims that implicate
7 significant federal issues.” *Grable & Sons Metal Products, Inc. v. Darue*
8 *Engineering & Mfg.*, 545 U.S. 308, 312 (2005). Such state-law claims implicate
9 federal question jurisdiction when they “necessarily raise a stated federal issue,
10 actually disputed and substantial, which a federal forum may entertain without
11 disturbing any congressionally approved balance of federal and state judicial
12 responsibilities.” *Id.* at 314.

13 “In actions seeking declaratory or injunctive relief, it is well established
14 that the amount in controversy is measured by the value of the object of the
15 litigation.” *Hunt v. Washington State Apple Advert. Comm’n*, 432 U.S. 333, 347
16 (1977). The value may be established by the “losses that will follow” the
17 granting of the requested injunctive relief. *See id.* However, in class actions
18 brought in federal court based on diversity jurisdiction and “asserting the
19 ‘separate and distinct’ claims of class members, as opposed to claims that are
20 the ‘common and undivided’ right of the class, the defendant’s-viewpoint
21 approach” to establishing the amount in controversy is inappropriate. *Kanter v.*
22 *Warner-Lambert Co.*, 265 F.3d 853, 859 (9th Cir. 2001). Rather, “each member
23 of the class must have a claim” exceeding the amount in controversy. *Snow v.*
24 *Ford Motor Co.*, 561 F.2d 787, 789 (9th Cir. 1977).

25 **III. ANALYSIS**

26 **A. Federal Question Jurisdiction**

27 In *Grable*, the Supreme Court explained that “[a]s early as 1912, this
28 Court had confined federal-question jurisdiction over state-law claims to those

1 that ‘really and substantially involv[e] a dispute or controversy respecting the
2 validity, construction or effect of [federal] law.’” *Grable*, 545 U.S. at 313
3 (quoting *Shulthis v. McDougal*, 225 U.S. 561, 569 (1912)). Accordingly, “federal
4 jurisdiction demands not only a contested federal issue, but a substantial one,
5 indicating a serious federal interest in claiming the advantages thought to be
6 inherent in a federal forum.” *Id.*

7 The Court finds no such substantial federal question here. Reisfelt asserts
8 only state law claims. Although these state law claims “borrow” from other
9 statutes, including federal statutes, this point alone is not sufficient to confer
10 federal question jurisdiction. Critically, the Supreme Court has held that “a
11 complaint alleging a violation of a federal statute as an element of a state cause of
12 action, when Congress has determined that there should be no private, federal
13 cause of action for the violation, does not state a claim ‘arising under the
14 Constitution, laws, or treaties of the United States.’” *Merrell Dow Pharm. Inc. v.*
15 *Thompson*, 478 U.S. 804, 817 (1986). In the instant case, the parties do not
16 dispute that the predicate federal act—the Federal Food, Drug, and Cosmetic
17 Act (the “FDCA”)—does not provide a private case of action. The FDCA is
18 the same act that was at issue in *Merrell*. *Id.* Accordingly, the Court does not
19 have federal question subject matter jurisdiction.

20 **B. Diversity Jurisdiction**

21 Alternatively, Topco argues that the Court has diversity jurisdiction. To
22 establish diversity jurisdiction, the removing party must show (1) that the parties
23 are completely diverse; and (2) that the amount in controversy requirement of
24 \$75,000 is adequately alleged. *See* 28 U.S.C. § 1332(a). Reisfelt bases her
25 Motion on Topco’s failure to meet the amount in controversy requirement in its
26 Notice of Removal. In its papers in opposition to the Motion, Topco included a
27 Declaration from one of its employees, Greg Lenski. The testimony that
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1 Mr. Lenski provides, however, still fails to establish that this case meets the
2 amount in controversy requirement.⁴

3 In her Complaint, Reifelt alleges that Topco violates “slack-fill” rules in
4 the FDCA; Reifelt claims that Topco underfills its boxes of popcorn.

5 According to Reifelt, Topco fills the boxes that it sells with only three bags of
6 popcorn, but those boxes could easily fit four bags of popcorn.⁵ In addition to an
7 injunction, Reifelt seeks restitution and an award of attorneys’ fees and costs.⁶

8 Lenski testifies that Topco sold \$211,000 of the subject popcorn in California
9 from July 2019 to June 2020.⁷ Further, Topco states that it has made profits of
10 \$7,400 annually from the sale of the popcorn, although Lenski does not
11 expressly state that this is profit solely from California sales.⁸ Lenski further
12 declares that changing the dimensions of the popcorn boxes would lead to
13 changeover and increased carton costs of roughly \$77,000.⁹ Further, if Topco
14 added another bag of popcorn to the boxes, then it would incur costs just barely
15 more than \$75,000.¹⁰ Lenski also states that Topco would lose revenues from
16 the injunction because the changes requested would not “make commercial
17 sense.”¹¹

18 Regardless of whether the Court accepts the facts in Lenski’s declaration
19 as true, Topco still fails to meet the amount in controversy requirement. In a
20 diversity case such as this, the Court may not “allocate the cost to [defendant]
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22 ⁴ Suppl. Decl. of Greg Lenski in Supp. of Opp’n to Motion (“Lenski
23 Decl.”) [Dkt. No. 18-1].

24 ⁵ See Complaint at ¶¶ 1 & 2.

25 ⁶ See *id.* at ¶¶ 1 & 2 and 12:16-28.

26 ⁷ Lenski Decl. ¶ 5.

27 ⁸ *Id.* at ¶ 6.

28 ⁹ *Id.* at ¶ 7.

¹⁰ *Id.* at ¶¶ 8-9.

¹¹ *Id.* at ¶ 10.

1 of providing the requested injunctive relief to” the class to a single plaintiff.
2 *Kanter*, 265 F.3d at 858. This conclusion is compelled by *Snow v. Ford Motor*
3 *Co.*, 561 F.2d 787 (9th Cir. 1977). There, the plaintiff, on behalf of himself and
4 others similarly situated, alleged that Ford sold trailering packages that were
5 incomplete because “they did not contain a wiring kit for the connection of the
6 trailer’s electrical system to that of the towing vehicle.” *Id.* at 788. The named
7 plaintiff “sought, on behalf of a class, actual damages of \$11.00 per class
8 member, punitive damages, and an order ‘enjoin[ing] Ford from continuing to
9 sell’” the trailering packages without a wiring kit. *Kanter*, 265 F.3d at 858–59
10 (discussing *Snow*).

11 Ford removed the case to federal court based upon diversity jurisdiction,
12 arguing that it “satisfied the amount-in-controversy requirement because the
13 cost to Ford of complying with the injunction would exceed” the jurisdictional
14 amount. *Id.* The Ninth Circuit held that “[t]he right asserted by plaintiffs is the
15 right of individual future consumers to be protected from Ford’s allegedly
16 deceptive advertising which is said to injure them in the amount of \$11.00
17 each,” an amount far below the amount in controversy requirement. *Snow*, 561
18 F.2d at 790–91.

19 The same reasoning applies here. The right that Reifelt asserts is the
20 “right of individual future consumers” to be protected from the allegedly
21 misleading packaging of Topco’s popcorn. Reifelt alleges that she purchased
22 Organic Light Butter, Organic Butter, and Organic Salted Full Circle Market™
23 popcorn.¹² Each box of popcorn contained one less bag than she apparently
24 expected.¹³ Whatever the value of three bags of popcorn, there can be no doubt
25 that it is less than \$75,000. The attempt to meet the amount in controversy
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27 ¹² Complaint at ¶ 3.

28 ¹³ *See id.*

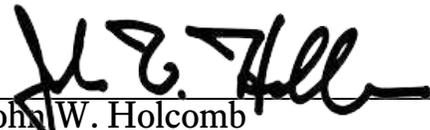
1 requirement by valuing the cost to Topco of complying with the requested
2 injunction is foreclosed by *Kanter* and *Snow*. Accordingly, Topco has not
3 established that this Court has diversity jurisdiction.

4 **IV. CONCLUSION**

5 For the foregoing reasons, the court hereby **GRANTS** Reisfelt's Motion.
6 This case is remanded to the Orange County Superior Court.

7 **IT IS SO ORDERED.**

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9 Dated: November 16, 2020



John W. Holcomb
UNITED STATES DISTRICT JUDGE

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