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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAMARY BETH MONTERA,
Plaintiff,

v.

PREMIER NUTRITION CORPORATION,
Defendant.

Case No. 16-cv-06980-RS

**ORDER AWARDING STATUTORY
DAMAGES OF \$8.3 MILLION ON
REMAND****I. INTRODUCTION**

This long-running dispute over Defendant Premier Nutrition’s discontinued product, Joint Juice, returns on remand from the Ninth Circuit. After a nine-day trial in 2022, a jury found Premier liable to a class of New York purchasers for deceptive advertisement of Joint Juice. In particular, the jury found Premier had violated New York General Business Law (“GBL”) Sections 349 and 350, which impose statutory damages of \$50 and \$500, respectively, or actual damages, whichever is greater. N.Y. Gen. Bus. L. §§ 349(h), 350-e. Mary Beth Montera, representing the class, sought an aggregated statutory damages award based on both statutes, amounting to \$550 per violation, for a total award of approximately \$91 million. Premier raised a substantive due process challenge to that award. At that point, the Ninth Circuit had not yet addressed whether aggregated statutory damages awards were subject to constitutional limits, and if so, how to evaluate those challenges. Based on the limited appellate guidance and analogizing to cases reducing punitive damages, Montera’s statutory damages award was reduced to \$50 per violation for a total of approximately \$8.3 million.

1 Two months after final judgment was entered in this matter, the Ninth Circuit decided
2 *Wakefield v. ViSalus, Inc.*, confirming statutory damages awards can raise constitutional problems
3 and clarifying the approach to evaluating such awards. 51 F.4th 1109, 1043 (9th Cir. 2022).
4 Without addressing the merits of the \$8.3 million award, the panel in this matter remanded with
5 instructions to evaluate Premier’s due process challenge under the test articulated in *Wakefield*.
6 *Montera v. Premier Nutrition Corp.*, 111 F.4th 1018, 1043 (9th Cir. 2024).

7 Montera now contends she and the other purchasers are entitled to an award of
8 \$83,124,500, or \$500 per violation under GBL § 350. Premier re-raises its constitutional challenge
9 to the award, advancing a new argument based on the legislative history of the relevant New York
10 statutes. Because Montera would be barred from seeking class-wide statutory damages in New
11 York state court, Premier concludes the class is entitled to only actual damages. For the following
12 reasons, the class is entitled to some statutory damages, but \$83 million is so large as to violate
13 Premier’s right to substantive due process. Accordingly, Plaintiffs are awarded \$8,312,450 in
14 statutory damages.¹

15 II. BACKGROUND

16 The procedural background of this case, which spans nine years, is set out in greater detail
17 in previous orders. *See, e.g.*, Dkt. 320. To summarize briefly, a class of New York state
18 consumers, represented by Mary Beth Montera, filed suit against Premier Nutrition, claiming the
19 company had misrepresented the benefits of its product, Joint Juice. Montera’s theory of liability
20 relied on New York General Business Law Sections 349 and 350, which protect consumers from
21 deceptive business practices and false advertising, respectively.

22 The nine-day jury trial was held from May 23 through June 7, 2022. The jury determined
23 both that Premier Nutrition engaged in deceptive acts and practices in violation of GBL § 349 and
24 engaged in deceptive or misleading advertising in violation of GBL § 350. The jury further

25 ¹ Defendant’s Request for Judicial Notice, Dkt. 371, is granted. *See Anderson v. Holder*, 673 F.3d
26 1089, 1094 n.1 (9th Cir. 2012) (“Legislative history is properly a subject of judicial notice.”).
27 Plaintiff is incorrect in arguing § 901(b) is entirely irrelevant to the remand analysis mandated by
the Ninth Circuit. *See infra* Section IV.A.i. Therefore, given Defendant’s showing of authenticity
and relevance, the request for judicial notice of legislative history is granted.

1 determined that Premier Nutrition had sold 166,249 units of Joint Juice in New York during the
2 Class Period.

3 GBL §§ 349 and 350, by their plain text, require courts to award the greater of actual
4 damages or statutory damages of \$50 or \$500, respectively. GBL §§ 349(h), 350-e. The jury
5 determined the class’s actual damages were approximately \$1.4 million, or the retail cost of every
6 unit of Joint Juice sold in the state during the class period. Based on the statute, Montera sought
7 \$550 per violation, or unit sold, to recover under both §§ 349 and 350. In its challenge to
8 Montera’s requested statutory damages award, Premier did not assert that the per-violation amount
9 under either statute was unconstitutional. Instead, Premier argued that an aggregated award of
10 \$91,436,950 violated its right to substantive due process and the award should be reduced to \$50
11 per unit sold—the amount available under GBL § 349 only.

12 Premier’s proposed reduction was granted and Montera was awarded \$8.3 million in
13 statutory damages. This reduction was awarded due to concerns about the arbitrariness arising
14 from New York’s statutory limit on aggregate recovery. New York law provides that statutory
15 damages are not an available remedy in class actions unless the New York Legislature expressly
16 authorizes them. *See* N.Y. C.P.L.R. § 901(b) (“[A]n action to recover a penalty, or minimum
17 measure of recovery created or imposed by statute may not be maintained as a class action.”).
18 Without constitutional limits on aggregate statutory damages, the same case for the same class
19 could result in \$1.4 million, if filed in New York state court, or \$91 million, if filed in federal
20 court. Therefore, this court found a reduction was warranted.

21 Premier appealed the final judgment as well as numerous underlying orders. Montera
22 appealed only the grant of a reduction to the award of statutory damages. On appeal, the Ninth
23 Circuit panel affirmed decisions on all issues raised except for the award of prejudgment interest,
24 owing to the Court’s determination that statutory damages were punitive rather than compensatory
25 in nature. *Montera*, 111 F.4th at 1043. Most notably for this motion, the panel also vacated and
26 remanded the award of statutory damages under GBL § 349. *Id.* The panel directed this Court to
27 “reassess Premier’s substantive due process challenge to the award of statutory damages in light of

1 the factors identified in *Wakefield*” and award statutory damages accordingly. *Id.* The panel did
2 not address the constitutionality of the \$8.3 million award. *See id.*

3 **III. LEGAL STANDARD**

4 Aggregated statutory damages awards are, in certain extreme circumstances, subject to
5 constitutional due process limitations. *Wakefield*, 51 F.4th at 1121. *Wakefield* instructed courts to
6 consider whether “aggregation [of statutory damages] has resulted in extraordinarily large awards
7 wholly disproportionate to the goals of the statute” and whether the award “greatly outmatch[es]
8 any statutory compensation and deterrence goals.” *Id.* at 1122 (extending *St. Louis, I.M. & S. Ry.*
9 *Co. v. Williams*, 251 U.S. 63, 66-67 (1919)).

10 Beyond *Williams*’s guideposts, courts can also look to the factors articulated in *Six (6)*
11 *Mexican Workers v Ariz. Citrus Growers* for “further guidance” in determining whether statutory
12 damages are disproportionately punitive in the aggregate. *Wakefield*, 51 F.4th at 1123 (citing 904
13 F.2d 1301 (9th Cir. 1990)). *Six Mexican Workers* adopted a seven factor test: “1) the amount of
14 award to each plaintiff, 2) the total award, 3) the nature and persistence of the violations, 4) the
15 extent of the defendant's culpability, 5) damage awards in similar cases, 6) the substantive or
16 technical nature of the violations, and 7) the circumstances of each case.” 904 F.2d at 1309
17 (quoting *Beliz v. W.H. McLeod & Sons Packing Co.*, 765 F.2d 1317, 1332 (5th Cir. 1985)).

18 The Ninth Circuit declined to apply the Supreme Court’s line of cases regarding
19 constitutional limits on punitive damages to statutory damages. *Wakefield*, 51 F.4th at 1122-23.
20 However, the *Wakefield* court used the line of cases on punitive damages to underscore “where
21 statutory damages no longer serve purely compensatory or deterrence goals, consideration of an
22 award’s reasonableness and proportionality to the violation and injury takes on heightened
23 constitutional importance.” *Id.* (examining *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S.
24 408, 418 (2003)).

25 In sum, courts must consider the magnitude of the aggregated award in relation to the
26 statute's goals of compensation, deterrence, and punishment and to the proscribed conduct. *Id.* The
27 “public importance and deterrence goals” are also articulated in terms of: (i) the public interest;

1 (ii) the opportunities for committing the offense; and (iii) the need for securing uniform adherence
2 to the statute,” as laid out in *Williams*, 251 U.S. at 67. Because both the *Wakefield* court and the
3 panel in this matter remanded before reaching the merits of these awards, there is a dearth of
4 appellate authority on how to reduce aggregated statutory damages awards once a constitutional
5 issue is identified.

6 IV. DISCUSSION

7 Plaintiff argues the class is entitled to \$83 million, or \$500 per violation under GBL § 350.
8 Because Montera seeks recovery under only § 350, the question of double recovery under both
9 provisions is now moot. In its renewed constitutional challenge, Defendant mines the legislative
10 history of § 901(b) and GBL §§ 349 and 350 to argue the class is entitled only to actual damages.

11 A. Constitutional Question under *Wakefield*

12 The analysis must first begin with the application of *Wakefield* to Montera’s requested \$83
13 million award. “Only very rarely will an aggregated statutory damages award meet the exacting
14 *Williams* standard and exceed constitutional limitations where the per-violation amount does not.”
15 *Wakefield*, 51 F.4th at 1123–24 (9th Cir. 2022) (citing *Williams*, 251 U.S. at 67). An
16 overapplication of the *Williams* test to reduce statutory awards would subvert the punitive goals of
17 the legislature. *See id.* However, Defendant argues this is in fact that rare situation where “a
18 largely punitive per-violation amount results in an aggregate that is gravely disproportionate to
19 and unreasonably related to the legal violation committed.” *Id.*

20 The statutory language of § 349 clearly directs the award of actual damages or \$50,
21 whichever is greater. Section 350 imposes a larger minimum amount of \$500. However, the
22 aggregation of damages that would otherwise be impossible in New York state court under §
23 901(b) can balloon these minimum awards beyond their intended purpose. Although the statute’s
24 language is clear, this is the uncommon case where the constitution must limit damages “so severe
25 and oppressive’ as to no longer bear any reasonable or proportioned relationship to the ‘offense.’”
26 *Wakefield*, 51 F.4th at 1123–24 (9th Cir. 2022) (quoting *Williams*, 251 U.S. at 67). The goals of
27 the statutes in question serve as the starting point for determining whether the \$83 million has lost

1 touch with the legislative purpose.

2 *i. Relevant Statutes*

3 Montera contends § 901(b) is entirely irrelevant to the analysis on remand. Plaintiff relies
4 on the United States Supreme Court’s decision in *Shady Grove Orthopedic Associates, P.A. v.*
5 *Allstate Insurance Co* and portions of the Ninth Circuit’s opinion in this matter remanding the
6 issue of statutory damages. *See* 559 U.S. 393, 398 (2010). First, the Ninth Circuit notes: “In *Shady*
7 *Grove*..., the Supreme Court held that because § 901(b) is procedural, not substantive, it has no
8 application in federal diversity suits such as this.” *Montera*, F.4th at 1038, fn. 8. Then, the panel
9 noted “the relevant statutory goals for the district court to consider on remand *include* the
10 Legislature’s compensation and deterrence goals in enacting GBL §§ 349 and 350—the statutes
11 that authorized the statutory damages at issue.” *Id.* (quotations and citations omitted) (emphasis
12 added). Premier has the better reading of “include,” and therefore § 901(b) has some role in
13 determining the statutory goals. Despite Montera’s arguments, nowhere in the appellate opinion
14 does the panel reject any consideration of 901(b). Therefore, the New York legislature’s explicit
15 concern about the punitive nature of aggregated statutory damages does some work to differentiate
16 this case from *Wakefield* and other TCPA awards. However, 901(b) is not determinative, and the
17 analysis of statutory goals must focus primarily on GBL §§ 349 and 350.

18 *ii. Statutory Goals*

19 The award must be proportional with the goals of the statutes imposing damages. Premier
20 argues that any award greater than actual damages for a class would subvert the statutory goals
21 and thus raise a constitutional problem because the New York legislature did not imagine §§ 349
22 or 350 could award aggregate statutory damages. Defendant’s briefing on this matter attempts to
23 make an end run around *Shady Grove* by smuggling in § 901(b) via the legislative history of §§
24 349 and 350. *See* 559 U.S. at 398. While it is true § 901(b) existed during the enactment of §§ 349
25 and 350, Defendant’s interpretation transforms § 901(b) from procedural to substantive using the
26 supposed intent of §§ 349 and 350’s enactors. In today’s textualist world of statutory
27 interpretation, the statements of individual legislators, no matter their prominence in passing

1 legislation, cannot override the plain text of a statute. *See, e.g., Avella v. City of New York*, 80
2 N.E.3d 982, 987 (N.Y. 2017) (“When interpreting a statute, our primary consideration is to discern
3 and give effect to the Legislature’s intention. The text of a statute is the clearest indicator of such
4 legislative intent and courts should construe unambiguous language to give effect to its plain
5 meaning.” (internal quotation marks and citations omitted)).

6 Premier’s text-based argument hinges only on the *omission* of a specific provision
7 allowing for aggregate statutory damages. Montera replies the New York legislature could have
8 easily amended §§ 349 and 350 to prohibit aggregate statutory damages after the Supreme Court
9 decided *Shady Grove*, and its failure to do so implies the legislature has now *allowed* for class-
10 wide damages. The actual text of the statutes offers clarity where these academic debates around
11 statutory interpretation fall short. Given §§ 349 and 350’s plain language, which does not address
12 aggregate damages, Defendant’s argument that §§349 and 350 *prohibit* the provision of class-wide
13 statutory damages must be rejected.

14 Because the statutes do not completely foreclose aggregated statutory damages, the focus
15 then turns to Plaintiffs’ requested award of \$83 million. Premier renews its constitutional
16 challenge to an award of that size. Here, where the statutory language does not explicitly outline
17 the goals in enacting the statutes, the legislative history offers insight.

18 GBL § 349 prohibits “[d]eceptive acts or practices in the conduct of any business, trade or
19 commerce.” N.Y. Gen. Bus. Law § 349. GBL § 350 prohibits “[f]alse advertising in the conduct of
20 any business, trade or commerce or in the furnishing of any service.” N.Y. Gen. Bus. Law § 350.
21 Section 350 specifically addresses false advertising but otherwise has the same broad scope and
22 standard for recovery as § 349. *See Karlin v. IVF Am., Inc.*, 712 N.E.2d 662, 665 (N.Y. 1999);
23 *Goshen v. Mut. Life Ins. Co. of New York*, 774 N.E.2d 1190, 1195 n.1 (N.Y. 2002). GBL §§ 349
24 and 350 allow for the greater of actual damages or statutory damages. Section 349(h) provides that
25 “any person who has been injured by reason of any violation of this section may bring . . . an
26 action to recover his actual damages or fifty dollars, whichever is greater.” N.Y. Gen. Bus. Law §
27 349(h). Section 350-e similarly states that “[a]ny person who has been injured by reason of any

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violation of [this section] may bring . . . an action to recover his or her actual damages or five hundred dollars, whichever is greater.” *Id.* § 350-e.

The legislature added private rights of action, including the right to seek injunctive relief and damages, to both provisions in 1980, after recognizing the limited ability of the New York State Attorney General adequately to police false advertising and deceptive trade practices. *See Plavin v. Grp. Health Inc.*, 146 N.E.3d 1164, 1168 (N.Y. 2020); *Beslity v. Manhattan Honda, a Div. of Dah Chong Hong Trading Corp.*, 467 N.Y.S.2d 471, 474 (App. Term 1983). The legislature authorized statutory damages to “encourage private enforcement” and to “add a strong deterrent against deceptive business practices.” *Beslity*, 467 N.Y.S.2d at 474 (quoting Mem. of Gov. Carey, On Approving L.1980, chs. 345 and 346, 1980 N.Y. Sess. Laws 1867 (June 19, 1980)). In 2007, the Legislature increased the statutory damages amount in § 350-e from \$50 to \$500 because “[c]urrent limits [were] too low to be effective.” N.Y. State Senate Introducer’s Mem. in Support for Bill No. S4589.

Given this history and the plain text of the statutes, the legislature enacted §§ 349 and 350 in their current form to compensate injured consumers and deter future wrongdoing. However, as per *Wakefield*, the statute’s potential punitive goals must also be considered. 51 F.4th at 1124. On appeal in this matter, the Ninth Circuit acknowledged the resemblance of §§ 349 and 350’s statutory damages to punitive damages. *See Montera*, F.4th at 1043; *see also Wakefield*, 51 F.4th at 1123 (concluding the TCPA’s floor, as opposed to a range of damages, reflected a legislative intent to punish violations, as well as deter future infringement and compensate for harm). Therefore, Premier cannot argue that once an award becomes *at all* punitive, it exceeds the goals of the New York legislature. Even a predominantly punitive award is not necessarily constitutionally unsound. *See Wakefield*, 51 F.4th at 1124. The New York legislature, in setting a minimum amount of damages as opposed to a range, intended to punish false and misleading advertisement of products. Based on the legislative history and form of the statutory damages, §§ 349 and 350 are designed to punish misconduct, compensate consumers, and deter future violations.

iii. Magnitude of the award

1 Premier has offered no reason on remand to upset that determination.

2 c. Nature of the Violations

3 The violations at issue here were substantive, not merely technical. Premier continued to
4 market and sell Joint Juice, despite evidence the product did not function as promised. The harm
5 to consumers, however, was economic and not physical. As discussed in the previous
6 constitutional challenge, there is no allegation that Joint Juice caused physical harm to any
7 consumer. The harm here was wasted money. Additionally, lead plaintiff Beth Montera and others
8 certainly suffered from disappointment and lost hope due to this product. Class members based
9 reasonable hopes on Joint Juice’s promises. And while Premier may not have targeted people with
10 financial vulnerability, it did target people suffering from joint issues seeking relief. Taken with
11 Premier’s culpability, these economic and intangible harms again lead to a mixed result on
12 Premier’s overall reprehensibility.

13 Both parties agree there are no such similar cases awarding damages, given § 901(b)’s bar
14 on class-wide recovery in state court. The final factor allows trial courts to examine the
15 circumstances of each case. On balance, the *Six Mexican Workers* factors relevant here support the
16 conclusion there is a due process issue with Montera’s \$83 million requested award.

17 **B. Reducing the Award**

18 The test provided in *Wakefield* and the additional factors in *Six Mexican Workers*
19 illuminate the threshold question of constitutionality. However, the Ninth Circuit has not provided
20 further guidance on how to reduce an award once a due process problem is identified. A survey of
21 other circuits similarly offers little guidance. *See, e.g., Golan v. Veritas Ent., LLC*, No.
22 4:14CV00069 ERW, 2017 WL 3923162 (E.D. Mo. Sept. 7, 2017), *aff’d sub nom. Golan v.*
23 *FreeEats.com, Inc.*, 930 F.3d 950 (8th Cir. 2019) (affirming the reduction to \$32,424,930 in
24 damages, a total of \$10 per call rather than the TCPA’s standard of \$500, without further
25 reasoning).

26 The parties themselves do not offer persuasive principles in reducing the award. Defendant
27 recommends “looking out over the crowd” at this novel party and picking out its preferred

1 legislative history to reduce the award to \$1.6 million, or actual damages. Plaintiffs focus much of
2 their briefing on rebutting the threshold constitutional problem but acknowledged at oral argument
3 that there is no reason why any particular number below \$83 million would be improper.

4 *Wakefield's* warning against overstepping the role of the judiciary looms large at this stage.
5 When a legislature codifies minimum damages in statutory text, courts “are constrained by a
6 statute's language and interpret statutes with awareness that [the legislature] could have enacted
7 limits as to damages, including in large class action litigation, provided discretion to courts to
8 award damages within a given range, or limited liability in any number of ways.” *Wakefield*, 51
9 F.4th at 1123–24.

10 Balancing the clear minimums set by GBL §§ 349 and 350 against the constitutional issue
11 posed by a statutory damages award under § 350, Montera is entitled to \$8.3 million or aggregate
12 statutory damages under § 349 alone. \$50 per violation more closely hews to the compensatory,
13 deterrence, and punitive goals of the statutes. Consumers of Joint Juice will be adequately
14 compensated, far above the purchase price of each bottle of Joint Juice. As Defendant has
15 vehemently argued, even the award of actual damages per violation would deter future conduct,
16 given the loss of revenue from the sale as well as the loss from producing the product in the first
17 instance. Montera contends Premier and its parent company are so wealthy as to render such a
18 punishment ineffective. However, \$8.3 million in damages for sales of \$1.4 million of a now
19 discontinued product is a proportionate penalty, punishing past conduct and deterring future
20 violations.

21 **V. CONCLUSION**

22 Considering the proportionality of an aggregated award of statutory damages to the goals
23 of GBL §§ 349 and 350, \$83 million is grossly punitive and thus wholly disproportionate to the
24 legislative goals. Given this due process concern with such a large award, the proper amount in
25 aggregated statutory damages is \$8,312,450.

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27 **IT IS SO ORDERED.**

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Dated: March 10, 2025


RICHARD SEEBORG
Chief United States District Judge