

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THOMAS IGLESIAS,  
Plaintiff,  
v.  
WELCH FOODS INC., et al.,  
Defendants.

Case No. 17-cv-00219-TEH

**ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND**

On February 16, 2017, the Plaintiff filed a Motion to Remand. ECF No. 19 (“Mot.”). Defendants timely opposed Plaintiff’s motion, ECF No. 21 (“Opp’n”), and Plaintiff timely replied, ECF No. 22 (“Reply”). The Court heard oral arguments on the motion on April 3, 2017. After carefully considering the parties’ written and oral arguments, the Court GRANTS Plaintiff’s motion for the reasons set forth below.

**I. BACKGROUND**

This case is about a putative class action filed against Welch Foods and Promotion In Motion (“PIM”).<sup>1</sup> Plaintiff alleges that Defendants sell fruit snack products in California with false and misleading labels. ECF No. 1-4 (“Compl.”) ¶ 1. This is because the products state they contain “no preservatives” when, in fact, they contain three ingredients which have been recognized by the Food and Drug Administration (“FDA”) as chemical preservatives. Id. ¶¶ 3,13–14. And also because Defendants’ fruit snacks state “**Fruit** is our 1<sup>st</sup> Ingredient!” when, in fact, the Defendants are unlawfully grouping separate fruit puree ingredients to make fruit appear as a more predominant ingredient than it really is. Id. ¶¶ 4, 15-21.

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<sup>1</sup> Defendant Welch Foods is an operating subsidiary of the National Grape Cooperative Association, Inc. Welch Foods supplies fresh grapes and other products to be sold under the “Welch’s” name. Compl. ¶ 11. PIM is a Delaware corporation with its principal place of business in Allendale, New Jersey. PIM manufactures and markets popular brand name fruit snacks. Id. Welch Foods has entered into a partnership with PIM allowing PIM to sell fruit snack products with the “Welch’s” name. Id.

1           The Plaintiff seeks only declaratory and injunctive relief based on two claims for  
2 relief: (1) A violation of the Consumer Legal Remedies Act (“CLRA”); and (2) a violation  
3 of the Unfair Competition Law (“UCL”). *Id.* ¶¶ 32–46. In particular, Plaintiff seeks an  
4 injunction preventing Defendants from continuing to sell the allegedly mislabeled  
5 products. *Id.* at 14:22–25.

6           In November 2017, Plaintiff originally filed this suit in the Superior Court of  
7 California for the County of San Francisco. See ECF No. 1. In January 2017, the  
8 Defendants removed the case to federal court, alleging that the Class Action Fairness Act  
9 provided this Court with original jurisdiction. *Id.* On February 16, 2017, the Plaintiff filed  
10 a Motion to Remand. Plaintiff argues removal is proper because the \$ 5 million amount-  
11 in-controversy requirement has not been met, and also because the judicial estoppel  
12 doctrine requires the Court to remand the case. *Mot.* at 3:3–16. Because the Court finds  
13 the judicial estoppel doctrine applies here, the Court need not, and does not, address the  
14 amount-in-controversy dispute.

15           **II. LEGAL STANDARD**

16           A defendant may remove a civil action filed in state court to federal court so long as  
17 the district court could have exercised original jurisdiction over the matter. 28 U.S.C. §  
18 1441(a). “The ‘strong presumption against removal jurisdiction means that the defendant  
19 always has the burden of establishing that removal is proper . . . .’” *Hunter v. Philip Morris*  
20 *USA*, 583 F.3d 1039, 1042 (9th Cir. 2009) (quoting *Gaus v. Miles*, 980 F.2d 564, 566 (9th  
21 Cir. 1992)). A plaintiff, however, may seek to have a case remanded to the state court  
22 from which it was removed if the district court lacks jurisdiction or if there is a defect in  
23 the removal procedure. 28 U.S.C. § 1447(c). “Federal jurisdiction must be rejected if  
24 there is any doubt as to the right of removal in the first instance.” *Gaus*, 980 F.2d at 566.

25           **III. DISCUSSION**

26           At issue between the parties is whether the doctrine of judicial estoppel requires the  
27 Court to remand the case back to state court. “Judicial estoppel ‘is an equitable doctrine  
28 invoked by a court at its discretion.’” *United States v. Ibrahim*, 522 F.3d 1003, 1009 (9th

1 Cir. 2008) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001)). The purpose of  
 2 judicial estoppel is to “protect the integrity of the judicial process by prohibiting parties  
 3 from deliberately changing positions according to the exigencies of the moment.” *New*  
 4 *Hampshire*, 532 U.S. at 749–50 (citations and internal quotation marks omitted). In  
 5 determining whether to apply this doctrine, the Parties agree the Court must consider (1)  
 6 whether a party’s later position is “clearly inconsistent” with its earlier position; (2)  
 7 whether the party successfully persuaded a court to accept its earlier position; and (3)  
 8 whether allowing the party’s inconsistent position allow the party to “derive an unfair  
 9 advantage or impose an unfair detriment on the opposing party.” *Ibrahim*, 522 F.3d at  
 10 1009.

11 Here, the Court finds that all three factors are met and weigh in favor of remanding  
 12 the case to state court. First, the Defendants’ position in *Atik v. Welch Foods, Inc.*, Case  
 13 No. 15-CV-5405, 2016 WL 5678474 (E.D.N.Y. Sept. 30, 2016), is “clearly inconsistent”  
 14 with removing the present case to federal court. In *Atik*, the plaintiffs filed a putative class  
 15 action against the very same Defendants in this case, *Welch Foods and PIM*, seeking  
 16 monetary damages, restitution, and injunctive relief. *Id.* at \*1. The plaintiffs in *Atik*, like  
 17 the Plaintiff here, alleged that Defendants violated the CLRA and the UCL because  
 18 Defendants’ product labeling of *Welch’s Fruit Snacks* misrepresented the fruit content and  
 19 nutritional and health qualities of the snacks.<sup>2</sup> *Id.* In that case, Defendants sought to  
 20 dismiss plaintiffs’ claim for injunctive relief arguing that plaintiffs lacked Article III  
 21 standing because the plaintiffs “failed to allege a likelihood of continuing or future injury.”  
 22 ECF No. 19-1 at 38. In contrast to their position in *Atik*, here, Defendants are seeking to  
 23 remove this case to federal court. But, as Defendants acknowledged in their Motion to  
 24 Dismiss in the *Atik* case, a plaintiff must have Article III standing for a federal court to  
 25 have jurisdiction over a case. *Id.* at 36–37; see also *Whitmore v. Arkansas*, 495 U.S. 149,  
 26 154–55 (1990) (“It is well established . . . that before a federal court can consider the

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 28 <sup>2</sup> In *Atik*, the plaintiffs also sought relief based on common law doctrines and New York  
 statutes. See *Atik*, 2016 WL 5678474, at \*1.

1 merits of a legal claim, the person seeking to invoke the jurisdiction of the court must  
2 establish the requisite [Article III] standing to sue.”).

3 Defendants argue they have never taken a “clearly inconsistent” position because  
4 the Plaintiff here was not a named party in the Atik action; thus, they have not taken any  
5 position on whether this Plaintiff has standing in this case. ECF No. 21 at 12. Defendants  
6 also argue that the application of judicial estoppel is inappropriate when the alleged  
7 inconsistency stems from legal, non-factual inconsistencies. *Id.* But these arguments are  
8 wide of the mark. The Ninth Circuit has explained that “all that’s needed to satisfy this  
9 first factor” is that “the [party] pressed a claim in the earlier lawsuit[] that is inconsistent  
10 with the position [the party] is taking in our case.” *Baughman v. Walt Disney World Co.*,  
11 685 F.3d 1131, 1133 (9th Cir. 2012). Thus, the case law does not require that the  
12 inconsistency occur within the same case. Moreover, an inconsistent claim need not be  
13 factual, as the doctrine has been applied to prevent a party from making a legal assertion  
14 that contradicted its earlier legal assertion. *Baughman*, 685 F.3d at 1133 (citation omitted);  
15 see also *Helfand v. Gerson*, 105 F.3d 530 (9th Cir. 1997) (“[J]udicial estoppel applies to a  
16 party’s stated position, regardless of whether it is an expression of intention, a statement of  
17 fact, or a legal assertion.”). Here, where Defendants have previously argued the Atik  
18 plaintiffs had no Article III standing to pursue injunctive relief claims, it is clearly  
19 inconsistent for Defendants to now seek removal of Plaintiff’s claims for injunctive relief.

20 Second, it is clear that the earlier court was successfully persuaded by Defendants’  
21 earlier position. Indeed, the Atik court dismissed the plaintiffs’ claims for injunctive relief  
22 finding they had no Article III standing. *Atik*, 2016 WL 5678474 at \*6. Defendants do not  
23 contend this point. Thus, the second factor is met and weighs in favor of applying judicial  
24 estoppel.

25 Third, the Court finds that allowing the Defendants to put forth their clearly  
26 inconsistent position here would permit them to forum shop which constitutes an “unfair  
27 advantage.” See *Galitski v. Samsung Telecomms. Am., LLC*, Case No. 8:CV-12-00903-  
28 CJC(JPRx), 2012 WL 12830000, at \*3 (C.D. Cal. Nov. 21, 2012) (finding forum shopping

1 to be unfair and an abuse of the judicial process). This Court finding, too, is clearly  
2 supported by Ninth Circuit case law. In *Baughman*, the court found an unfair advantage  
3 existed when a party’s inconsistent statement would make her claim “significantly  
4 stronger.” *Baughman*, 685 F.3d at 1134. Here, in contrast to *Baughman*, allowing the  
5 Defendants to remove the case to federal court would allow them to seek an outright  
6 dismissal of the injunctive relief claim for lack of Article III standing or for the Court to  
7 dismiss the case sua sponte for the same reason rather than litigating the claim on the  
8 merits.<sup>3</sup> Thus, it seems this case presents a much stronger case than *Baughman* for finding  
9 an inconsistent position would create an unfair advantage.

10 In sum, the Court finds that each of the *Ibrahim* factors supports applying judicial  
11 estoppel here to prevent the Defendants from litigating the case in federal court. And in  
12 light of the strong presumption against removal jurisdiction, the Court finds it appropriate  
13 to remand the case to state court.

14 **IV. CONCLUSION**

15 With good cause appearing, the Court exercises its discretion and GRANTS  
16 Plaintiff’s motion to remand. This matter is hereby remanded to the Superior Court of  
17 California for the County of San Francisco. Consequently, the parties’ joint stipulation to  
18 continue the case management conference scheduled for April 17, 2017 is VACATED.  
19 The Clerk shall close the file.

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21 **IT IS SO ORDERED.**

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23 Dated: 4/4/17

  
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THELTON E. HENDERSON  
United States District Judge

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26 <sup>3</sup> Although Defendants appeared to agree during oral arguments to not seek dismissal of  
27 Plaintiff’s claims based on a lack of Article III standing, “[f]ederal jurisdiction must be  
28 rejected if there is any doubt as to the right of removal in the first instance.” *Gaus*, 980  
F.2d at 566. Here, where Defendants prior standing arguments in *Atik* leave doubt as to  
whether Plaintiff has Article III standing, Defendants cannot avoid the strong presumption  
against remand by agreeing to not seek dismissal for lack of standing. See *id.*