

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERESA GARR,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:13CV00597 AGF
)	
TOYS “R” US, INC., et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER OF REMAND

This matter is before the Court on the parties’ stipulation for an order of remand. Plaintiff Teresa Garr filed this putative class action in the Circuit Court of Phelps County, Missouri on June 25, 2012, raising claims under Missouri’s Computer Tampering Statute, Merchandising Practices Act, and common law for Defendant’s Toys “R” US, Inc.’s alleged tracking and use of Plaintiff’s internet history and activities. Defendants removed the case to this Court on March 29, 2013, asserting federal jurisdiction under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). Plaintiff filed a motion to remand this action to state court and the parties briefed that motion. In light of a recent ruling by the Eighth Circuit Court of Appeals, the parties have now filed a stipulation for remand. (Doc. No. 21.) For the reasons set forth below, the parties’ stipulation of remand will be approved.

In her complaint, Plaintiff alleges that no class member’s claim exceeds \$75,000, inclusive of costs and fees, and that the total damages suffered by the class, including attorney’s fees, will not exceed \$5 million dollars. In its Notice of Removal, Defendants

conceded that Plaintiff's petition as originally filed in state court was not removable because it failed to allege a sufficient amount in controversy to satisfy the jurisdictional requirements under CAFA, and Defendants did not therefore file a timely petition for removal. Defendants assert, however, that the case became removable on February 28, 2013, when Plaintiff's counsel served, in a "companion case," written discovery responses that included information giving rise to federal jurisdiction in this case. In the "companion case" a different plaintiff alleges similar claims to those alleged here against a different defendant. The plaintiff in each case is represented by the same attorney.

In a case raising the same issue with respect to the jurisdictional import of discovery responses filed in a "companion case," United States District Judge Rodney W. Sippel ordered remand to state court. *See Christiane Dalton and William Aaron, Jr. v. Walgreen Co.*, No. 4:13-CV-603-RWS, slip op. at 4 (E.D. Mo. Apr. 16, 2013) (holding that the fact that a plaintiff's damages in a similar case involving different parties exceeded the required amount in controversy under CAFA is not evidence that another plaintiff's damages might do so). Judge Sippel concluded that facts set forth in discovery responses in one case could not be used to establish the required jurisdictional amount under CAFA in another case. *Id.* The defendants then appealed that ruling, and recently, the Eighth Circuit Court of Appeals issued a decision affirming Judge Sippel's order of remand. *See Christiane Dalton and William Aaron, Jr. v. Walgreen Co.*, No.13-2047, slip op. at 3 (8th Cir. Jul. 12, 2013) (holding that discovery responses in another case are not "other paper" within the meaning of 28 U.S.C. § 1446(b)(3)).

Citing the identity of issues between this case and *Dalton*, the parties have now stipulated to the entry of an order of remand in this case. The Court agrees that such an order is appropriate in light of the Eighth Circuit's holding in *Dalton*.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion to remand is **DENIED as moot**. (Doc. No. 10.)

IT IS FURTHER ORDERED that pursuant to the parties' stipulation (Doc. No. 21), this case is remanded to the Circuit Court of Phelps County, Missouri.

IT IS FURTHER ORDERED that the Clerk of the Court shall take all necessary steps to accomplish the remand and deliver the file to the Circuit Court of Phelps County, Missouri.

IT IS FURTHER ORDERED that all pending motions are **DENIED as moot** without prejudice to refiling in state court.



AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 31st day of July, 2013.