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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SANDRA BAXTER and ALLSTATE
INSURANCE COMPANY,

Plaintiffs,

v.

SALTON, INC. and RUSSELL HOBBS,
INC.,

Defendants.

CASE NO. C10-1442 MJP

ORDER GRANTING
DEFENDANTS' MOTION FOR
JUDGMENT ON THE PLEADINGS

This matter comes before the Court on (1) the parties' Responses to this Court's Order to Show Cause (Dkt. Nos. 18 & 20), and (2) Defendants' Motion for Judgment on the Pleadings. (Dkt. No. 10.) The Court, having reviewed the Responses, Defendants' Motion, Plaintiff's Response to Defendants' Motion for Judgment on the Pleadings (Dkt. No. 15), Defendants' Reply in Support of the Motion for Judgment on the Pleadings (Dkt. No. 16), and all related declarations and exhibits, makes the following order:

IT IS ORDERED that

1. The Court finds complete diversity exists and jurisdiction is proper.

1 2. The Court GRANTS Defendants’ motion for judgment on the pleadings.

2 3. The Court GRANTS Plaintiffs leave to amend the complaint with respect to
3 Plaintiffs’ outrage claim and request for emotional distress damages.

4 4. The Court DENIES Plaintiffs leave to amend the complaint with respect to
5 Plaintiffs’ negligence claim and request for punitive damages.

6 **Background**

7 Plaintiff Baxter (“Baxter”) is an individual resident of Washington whose home was
8 destroyed by a fire. Plaintiff Allstate Ins. Co. (“Allstate”) provided insurance for the real and
9 personal property of Baxter that was destroyed in the fire. Defendant Salton, Inc. (“Salton”) was
10 a corporation that manufactured appliances. Salton changed its name to Russell Hobbs, Inc.
11 (“Russell Hobbs”) in December, 2009. Baxter and Allstate (“Plaintiffs”) allege that a toaster
12 manufactured by Salton caused the fire. Plaintiffs bring this action under the Washington
13 Product Liability Act (“PLA”), Washington Consumer Protection Act (“CPA”), and common
14 law torts of negligence and outrage. Plaintiffs seek property damage, personal injury, emotional
15 distress, incidental damages, prejudgment interest, attorneys’ fees, costs, and punitive damages.
16 Defendants removed on the basis of diversity jurisdiction.

17 Defendants filed a motion for partial judgment on the pleadings. (Dkt. No. 10.) While
18 reviewing that motion, the Court observed that Allstate and Salton both appeared to be Illinois
19 citizens. The Court ordered the parties to show cause why jurisdiction is proper. (Dkt. No. 17.)
20 Defendants have submitted documents to establish Salton was no longer an Illinois company at
21 the time the lawsuit was filed. (Dkt. No. 19.)

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1 **Discussion**

2 **A. Jurisdiction**

3 Defendants argue Salton was not an Illinois resident at the time the present suit was filed.
4 Defendants provide adequate evidence to establish jurisdiction is proper.

5 A corporation is a resident of both the state in which it is incorporated and the state in
6 which its “nerve center” is located. Hertz Corp. v. Friend, 130 S.Ct. 1181 (2010). “[D]iversity
7 jurisdiction is determined at the time the action commences[.]” Hill v. Blind Indus. & Services
8 of Maryland, 179 F.3d 754, 757 (9th Cir. 1999).

9 Defendants provide the Court with Salton’s Form 10-K for the fiscal year ended in June
10 30, 2008, which lists Salton’s executive offices in Miramar, Florida. (Dkt. No. 19, Ex. A.)
11 Plaintiffs offer a U.S. Consumer Product Safety Commission product recall notice dated March
12 19, 2008 that names “Salton, Inc., of Lake Forest, Ill” as the distributor of the product. (Dkt. No.
13 20 at 8.) Plaintiffs offer no additional evidence that this recall notice, issued three months before
14 the end of the fiscal year addressed by Defendants’ Form 10-K, is a more accurate representation
15 of Salton’s citizenship than the Form 10-K as of July 2010, when the suit was filed. At the time
16 of filing, the Court finds Salton to be a resident of Florida, not Illinois. As a result, the Court
17 finds complete diversity exists and jurisdiction is proper.

18 **B. 12(c) Motion**

19 Defendants moved pursuant to Rule 12(c) for judgment on the pleadings as to Plaintiffs’
20 claims of negligence and outrage and Plaintiffs’ request for emotional distress and punitive
21 damages. Plaintiffs ask that the motion be denied or, in the alternative, for leave to amend the
22 complaint.

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1 1. Negligence

2 Defendants argue Plaintiffs’ negligence claim is preempted; they are correct. The PLA
3 consolidated all product-related harm claims into one cause of action, thereby preempting any
4 “claim or action previously based on any other substantive legal theory except fraud,
5 intentionally caused harm, or a claim or action under the consumer protection act[.]” RCW
6 7.72.010(4); Wash. Water Power Co. v. Graybar Elec. Co., 112 Wn.2d 847, 853 (1989).

7 Plaintiffs argue that negligence is “specifically part of the statute” and “not precluded as
8 proof[.]” (Dkt. No. 15 at 4.) Plaintiffs do not present any compelling argument that negligence
9 should continue to be a separate cause of action given the PLA’s broad preemption. The Court
10 grants Defendants’ motion for judgment on the pleadings with respect to Plaintiffs’ negligence
11 claim. An amendment would be futile as it could not cure the preemption defect. Plaintiffs’
12 negligence claim is dismissed with prejudice.

13 2. Outrage

14 Plaintiffs’ outrage claim is inadequately pled.

15 Outrage has three elements: “(1) extreme and outrageous conduct, (2) intentional or
16 reckless infliction of emotional distress, and (3) severe emotional distress on the part of the
17 plaintiff.” Reid v. Pierce County, 136 Wn.2d 195, 202 (1998).

18 Plaintiffs have not satisfied the pleading standard announced in Bell Atl. Corp. v.
19 Twombly, 550 U.S. 544, 570 (2007). Although Plaintiffs are suing under state law and
20 originally brought their claim in state court, “federal courts sitting in diversity apply state
21 substantive law and federal procedural law.” Gasperini v. Ctr. for Humanities, Inc., 518 U.S.
22 415, 427 (1996). Under the federal pleading standard, the first analytical step is to “identify[] the
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1 | allegations in the complaint that are not entitled to the assumption of truth.” Ashcroft v. Iqbal,
2 | 129 S. Ct. 1937, 1951 (2009).

3 | Here, Plaintiffs’ allegation of outrage simply asserts

4 | the actions of Defendants through the sale of an electrical product that by its
5 | inherent defects would cause fires in households wherein it was expected to be
6 | used and was used, including the household of [Baxter], committed a tort of
outrage as it placed in jeopardy the goods and lives of purchasers of an ordinary
household appliance.

7 | (Compl. at ¶ 6.1.) The legal conclusion that the Defendants “committed a tort of outrage,” is not
8 | “entitled to the assumption of truth.” Iqbal, 129 S. Ct. at 1951. In both Twombly and Iqbal, the
9 | plaintiffs’ failures were “formulaic recitation[s] of the elements” of the claims. Id. (quoting
10 | Twombly, 550 U.S. at 555). Here, Plaintiffs fail to even address the elements of the tort and
11 | assume its existence.

12 | The second step is to “consider the factual allegations in [Plaintiffs’] complaint to
13 | determine if they plausibly suggest an entitlement to relief.” Iqbal, 129 S. Ct. at 1951. The facts
14 | must be more than consistent with Plaintiffs’ claim, they must “plausibly establish” the claim.

15 | Id.

16 | Plaintiffs allege no facts that establish Defendants’ conduct was extreme and outrageous.

17 | The bar for outrage is very high:

18 | [I]t is not enough that a defendant has acted with an intent which is tortious or
19 | even criminal, or that he has intended to inflict emotional distress, or even that his
20 | conduct has been characterized by ‘malice,’ or a degree of aggravation which
21 | would entitle the plaintiff to punitive damages for another tort. Liability exists
only where the conduct has been so outrageous in character, and so extreme in
degree, as to go beyond all possible bounds of decency, and to be regarded as
atrocious, and utterly intolerable in a civilized community.

22 | Grimsby v. Samson, 85 Wn.2d 52, 59 (1975). Selling a defective toaster that causes a fire could
23 | possibly constitute a tort of outrage, but without supplying more factual allegations to bolster the
24 | claim, Plaintiffs have not shown that outrage is plausible. Plaintiffs refer only to the negligence

1 of Defendants. The Defendants' negligence is also a legal conclusion, but even if it were
2 admitted as true for the purposes of the 12(c) analysis, it still fails to establish outrageousness.

3 In its current form, Plaintiffs have not satisfied the Twombly standard. The Court
4 dismisses the claim.

5 Plaintiffs ask to amend the complaint to correct any defects. The Court grants this
6 request. A "court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). A
7 court should evaluate the amendment for "bad faith, undue delay, prejudice to the opposing
8 party, and futility of amendment" before denying leave to amend under Rule 15. DCD
9 Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987).

10 Here, Defendants have not asserted that they would be prejudiced by an amendment, nor
11 have they alleged any bad faith by Plaintiffs. Defendants' argument against amendment is
12 entirely based on futility, that Plaintiffs' suggested revision fails to "satisfy the factual basis
13 required for a valid outrage claim[.]" (Dkt. No. 16 at 5.) This argument is unpersuasive for two
14 reasons. First, Plaintiffs are not limited to amending the complaint to the suggestions made in
15 the present response, which primarily seeks denial of Defendants' motion and only alternatively
16 addresses amending the complaint. Second, Plaintiffs suggest they will have facts showing
17 recklessness, which is, contrary to Defendants' assertion, a qualifying element for the tort of
18 outrage. Reid, 136 Wn.2d at 202. The Court grants Plaintiffs leave to amend the complaint with
19 respect to the outrage claim.

20 3. Emotional Distress Damages

21 Defendants seek dismissal of Plaintiffs' request for emotional distress damages.
22 However, emotional distress damages are available under a sufficiently pled outrage claim.
23 Given the Court's order permitting amendment, Plaintiff can seek emotional distress damages if
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1 they present a valid claim for outrage. The Court grants Plaintiffs’ motion for leave to amend as
2 to the inclusion of emotional distress damages.

3 It bears noting that Plaintiffs cannot recover emotional distress damages under either of
4 the statutory claims. The Washington Supreme Court “has declined to allow emotional distress
5 damages where the statutory violation requires only proof of negligent, as opposed to intentional,
6 conduct.” White River Estates v. Hiltbruner, 134 Wn.2d 761, 799 (1998). The CPA has five
7 elements: “(1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public
8 interest impact; (4) injury to plaintiff in his or her business or property; (5) causation.” Hangman
9 Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 780 (1986). Plaintiffs can
10 establish these elements without demonstrating intent. Id. at 785. Similarly, Plaintiffs can
11 succeed on a claim under the PLA “if the [plaintiffs’] harm was proximately caused by the
12 negligence of the manufacturer[.]” RCW 7.72.030. Because neither statute requires intent as an
13 element of liability, neither authorizes emotional distress damages. As a result, Plaintiffs cannot
14 obtain emotional distress damages for either the PLA or CPA claim.

15 4. Punitive Damages

16 Plaintiffs concede “[p]unitive damages are generally not available in Washington unless
17 authorized by statute.” (Dkt. No. 15 at 8.) Plaintiffs contend that the request for punitive
18 damages was a reference to the CPA, which authorizes an award of up to “three times the actual
19 damages sustained[.]” RCW 19.86.090. Plaintiffs are permitted to more precisely identify their
20 request for treble damages in an amended complaint. Given that Plaintiffs have not identified
21 any statute authorizing any punitive damages, an amendment should clarify that Plaintiffs seek
22 treble damages, not punitive damages.

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1 **Conclusion**

2 The Court finds complete diversity exists and jurisdiction is proper.

3 Defendants' motion for judgment on the pleadings is GRANTED. Plaintiffs' negligence
4 claim is preempted, and they have not alleged sufficient facts to establish their outrage claim is
5 plausible. Punitive damages are not authorized under any of Plaintiffs' claims, but Plaintiffs
6 have the opportunity to recover treble damages under their CPA claim. Because Plaintiffs
7 cannot cure the preemption defect in the negligence claim or recover punitive damages, those
8 claims are DISMISSED with prejudice.

9 Plaintiffs' motion for leave to amend is GRANTED with respect to the claim of outrage
10 and emotional distress damages. The amended complaint must be filed within ten days of the
11 entry of this order. The Court reminds Plaintiffs the standard for outrage is high, but the Court
12 does not find an amendment futile as a matter of law.

13 The clerk is ordered to provide copies of this order to all counsel.

14 Dated this 14th day of March, 2011.

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17 Marsha J. Pechman
18 United States District Judge