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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ARLEEN CABRAL, et al.,
Plaintiffs,
vs.
SUPPLE, LLC, et al.,
Defendants.

CASE NO. ED 12-00085-MWF (OPx)
**ORDER GRANTING PLAINTIFF
CABRAL’S MOTION FOR CLASS
CERTIFICATION [35]**

This matter is before the Court on the Motion for Class Certification (the “Motion”) filed by Plaintiff Arleen Cabral. (Docket No. 35). The Court has read and considered the papers filed on this Motion and held a hearing on December 3, 2012. (See Docket No. 90). For the reasons stated below, the Motion is GRANTED.

BACKGROUND

As this Court twice has discussed on the motions to dismiss filed by Defendant Supple, LLC (“Supple”), this action relates to Supple’s sales, marketing and distribution of the Supple Beverage (the “Beverage”). (See Docket Nos. 29, 49). The gravamen of Cabral’s First Amended Complaint (“FAC” (Docket No. 33))

1 is that Supple claims the Beverage’s key ingredients – *i.e.*, glucosamine
2 hydrochloride and chondroitin sulfate – are clinically proven effective, produce
3 evidence-based solutions for joint problems, and provide fast relief from joint
4 suffering caused by ailments such as arthritis. However, Cabral alleges that a series
5 of clinical trials demonstrate that the combination of these ingredients is no more
6 effective than placebo.

7 Cabral alleges that she purchased the Beverage after viewing Supple’s
8 infomercial in 2009. The FAC alleges claims for relief for violation of the
9 following statutes: (1) California’s Unfair Competition Law (“UCL”), Cal. Bus. &
10 Prof. Code § 17200 *et seq.*; (2) California’s False Advertising Law (“FAL”), Cal.
11 Bus. & Prof. Code § 17500 *et seq.*; and (3) California’s Consumer Legal Remedies
12 Act (“CLRA”), Cal. Civ. Code § 1750 *et seq.*

13 On this Motion, Cabral seeks to certify the following statewide class: All
14 persons residing in the State of California who purchased Supple for personal use
15 and not for resale since December 2, 2007.

16 **LEGAL STANDARD**

17 The party seeking class certification bears the burden of showing that each of
18 the four requirements of Federal Rule of Civil Procedure 23(a) and at least one of
19 the requirements of Rule 23(b) are met. *See Hanon v. Dataprods. Corp.*, 976 F.2d
20 497, 508-09 (9th Cir. 1992). Rule 23(a) sets forth four prerequisites for class
21 certification, commonly referred to as numerosity, commonality, typicality and
22 adequacy of representation. *Hanon*, 976 F.2d at 508.

23 “In determining the propriety of a class action, the question is not whether the
24 plaintiff has stated a cause of action or will prevail on the merits, but rather whether
25 the requirements of Rule 23 are met.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156,
26 178, 94 S. Ct. 2140, 40 L. Ed. 2d 732 (1974) (internal quotation and citations
27 omitted). Therefore, the Court considers the merits of the underlying claims to the
28 extent that the merits overlap with the Rule 23(a) analysis but does not conduct a

1 “mini-trial” or determine at this stage whether Cabral actually could prevail. *Ellis v.*
2 *Costco Wholesale Corp.*, 657 F.3d 970, 981, 983 n.8 (9th Cir. 2011).

3 Cabral moves for certification pursuant to Rule 23(b)(3). Under Rule
4 23(b)(3), a plaintiff seeking to certify a class must show that questions of law or fact
5 common to the members of the class “predominate over any questions affecting only
6 individual members, and that a class action is superior to other available methods for
7 the fair and efficient adjudication of the controversy.” *Id.*

8 **DISCUSSION**

9 As a preliminary matter, Supple does not contest numerosity. Supple’s
10 argument against commonality is intertwined with its argument as to predominance
11 – particularly on the question whether Supple’s marketing and advertising
12 constitutes a “uniform message.” While Supple makes passing arguments as to
13 typicality and adequacy (and superiority), the briefing and the hearing largely
14 focused on predominance. For this reason, the Court turns first to this question.
15 (The Court also notes that in their briefing and at the hearing the parties did not
16 differentiate among the three statutory bases for relief in the FAC.)

17 **Predominance (Rule 23(b)(3))**

18 As noted above (and in the Court’s prior motion to dismiss orders), the FAC
19 alleges that Supple promoted the Beverage as clinically proven effective in treating
20 joint pain such as that caused by arthritis. According to the FAC, this claim is false
21 and/or misleading. Supple advances four arguments as to why this claim does not
22 satisfy Rule 23(b)(3).

23 Supple argues that common questions of fact do not predominate because (1)
24 the Beverage is effective and class members therefore were not misled; (2) Cabral
25 has not demonstrated that class members were exposed to the advertisement on
26 which she bases her claim; (3) materiality varies among class members; and (4)
27 reliance cannot be presumed on a class-wide basis.

28

1 (1) Supple is correct that a “consumer protection suit will not lie where a
2 plaintiff actually receives the ‘benefit of the bargain.’” *In re Actimmune Mktg.*
3 *Litig.*, No. C 08-02376 MHP, 2010 WL 3463491, at *9 n.2 (N.D. Cal. Sept. 1,
4 2010). But this is a merits question as much as a predominance question. Indeed, *In*
5 *re Actimmune*, on which Supple relies, is a decision on a motion to dismiss and not
6 for class certification. *See id.*

7 Nevertheless, the thrust of Supple’s opposition to the Motion is that the
8 “evidence here shows that the putative class includes a substantial number of
9 satisfied customers, which demonstrates that individual issues predominate.” (Opp.
10 at 9). This argument rests only on the fact, which Cabral concedes, that “most
11 customers purchase[d] the [Beverage] multiple times.” (*See* Opp. at 11; Mot. at 9).

12 Supple cites a raft of cases in which class certification has been denied
13 because the evidence demonstrated that absent class members benefitted from the
14 product at issue or otherwise suffered no injury and lacked standing to sue. *See*
15 *Moheb v. Nutramax Labs.*, CV 12-3633-JFW (JCx), slip op. at 3-4 (Sept. 4, 2012)
16 (“In this case, the Class will include members who derived benefit from Cosamin
17 and are satisfied users of the product. However, ‘[s]uch members have no injury
18 and no standing to sue.’” (citation omitted)); *Hovsepian v. Apple, Inc.*, No. 08-5788
19 JF (PVT), 2009 WL 5069144, at *6 (N.D. Cal. Dec. 17, 2009) (“[T]he class is not
20 ascertainable because it includes members who have not experienced any problems
21 with their iMac display screens. Such members have no injury and no standing to
22 sue.”); *Stearns v. Select Comfort Retail Corp.*, 763 F. Supp. 2d 1128, 1152 (N.D.
23 Cal. 2010) (“Defendants argue that because the class does not exclude persons who
24 already have received refunds or replacement parts or who have not suffered any
25 damages at all, it is not ascertainable. The Court agrees.”); *Bishop v. Saab Auto.*
26 *A.B.*, No. CV 95-0721 JGD(JRX), 1996 WL 33150020, at *5 (C.D. Cal. Feb. 16,
27 1996) (“The courts have refused to certify class actions based on similar ‘tendency
28 to fail’ theories because the purported class includes members who have suffered no

1 injury and therefore lack standing to sue.” (citations omitted)); *Akkerman v. Mecta*
2 *Corp.*, 152 Cal. App. 4th 1094, 1101, 62 Cal. Rptr. 3d 39 (2007) (class definition
3 “would require a windfall award of restitution to all who received [therapy at issue]
4 even if the procedures were successful and beneficial”); *In re Vioxx Class Cases*,
5 180 Cal. App. 4th 116, 133-34, 103 Cal. Rptr. 3d 83 (2009) (“evidence indicated
6 that Vioxx did not present ‘an increased risk of death’ . . . for all patients”); *Konik v.*
7 *Time Warner Cable*, No. CV 07-763 SVW (RZx), 2010 WL 8471923, at *9 (C.D.
8 Cal. Nov. 24, 2010) (“The evidence presented to the Court establishes that a large
9 component of the proposed class did not experience any raises in price or
10 deprivations in service. . . . Plaintiffs do not dispute the substance of this
11 evidence.”); *Campion v. Old Republic Home Prot. Co.*, 272 F.R.D. 517, 533 (S.D.
12 Cal. 2011) (“A determination as to whether class members were harmed . . . requires
13 review of the particular circumstances pertaining to the handling of each class
14 member’s claim to assess whether the claim was approved or denied and, if it was
15 denied, whether the denial was legitimate.”); *Faralli v. Hair Today, Gone*
16 *Tomorrow*, No. 1:06 CV 504, 2007 WL 120664, at *8 (N.D. Ohio Jan. 10, 2007)
17 (reasoning that “the end result of the treatment is critical to determining which
18 customers suffered damage as a result of the false representation. That is, those who
19 suffered damage would be those who relied on the statement that the hair would be
20 permanently reduced or eliminated, but in fact it was not.”).

21 These cases are distinguishable both factually and legally. ***Factually***, the
22 record does not demonstrate that there are a “substantial number of satisfied
23 customers.” The fact that most customers purchased the Beverage multiple times
24 arguably does give rise to an inference that at least some of these customers were
25 satisfied and/or that the Beverage was in some sense “effective.” But this (arguable)
26 inference does not threaten class ascertainability or demonstrate that most or all
27 potential class members lack of standing. *See, e.g., Joseph v. Gen. Motors Corp.*,
28 109 F.R.D. 635 (D. Colo. 1986) (“[T]he fact that the class may initially include

1 persons who have not had difficulties with the [relevant product] or who do not wish
2 to have these purported problems remedied is not important at this stage of the
3 litigation, unless, of course, it is shown that most, if not all, of the potential class
4 members have no claims to be asserted by the class representatives.” (citations
5 omitted) (cited in 6 William B. Rubenstein, Alba Conte & Herbert B. Newberg,
6 *Newberg on Class Actions* § 21:32 n.3 (4th ed. 2012)); *Galvan v. KDI Distrib. Inc.*,
7 No. SACV 08-0999-JVS (ANx), 2011 WL 5116585, at *5 (C.D. Cal. Oct. 25, 2011)
8 (“In this case, the class definition may include individuals who did not perceive that
9 they were short changed by the minutes provided on their calling cards, individuals
10 who do not wish to pursue action, and individuals that have inadequate proof to go
11 forward with the class. However, . . . these ascertainability issues are not fatal to
12 class certification and may be addressed later in the litigation.”).

13 ***Legally***, even accepting the premise that some repeat customers are satisfied
14 customers (or at the very least that there are individual issues as to why repeat
15 customers purchased the Beverage multiple times), common issues of fact and law
16 still predominate. Class-wide harm nevertheless can be established through
17 common proof. *Cf., e.g., Champion*, 272 F.R.D. 517, 532 (“Plaintiff’s efforts to
18 certify the class break down under a causation analysis, as it is apparent that the
19 causal link between Defendant’s alleged unlawful business practices and any harm
20 suffered by class members can not be established on a class-wide basis.”).

21 In this regard, *Johnson v. General Mills, Inc.*, 275 F.R.D. 282 (C.D. Cal.
22 2011), is instructive:

23 common issues of great importance to this litigation are also subject to
24 classwide litigation and common proof, further evidencing that common
25 issues predominate. Most importantly, General Mills could defeat the
26 claims of the entire class by proving that YoPlus promotes digestive
27 health in the manner that General Mills allegedly represented. The
28 digestive health benefit of YoPlus, or the lack thereof, is a common issue
that is particularly appropriate for classwide resolution because it will

1 turn on complex and expensive scientific evidence and expert testimony.

2 . . .

3 *Id.* at 289.

4 The truth or falsity of Supple’s advertising will be determined on the basis of
5 common proof – *i.e.*, scientific evidence that the Beverage is “clinically proven
6 effective” (or not) – rather than on the question whether repeat customers were
7 satisfied or received multiple shipments of the Beverage because of automatic
8 renewals.

9 (2) Supple argues that its advertising does not amount to the “uniform
10 message” described above – *i.e.*, that the Beverage is clinically proven effective in
11 treating joint pain. But, as in other consumer protection cases, the fact that Supple
12 may have marketed the Beverage through different statements in order to convey
13 this message is not dispositive. *See, e.g., Johnson*, 275 F.R.D. 282, 289 (“[T]he
14 common issue that predominates is whether General Mills’ packaging and
15 marketing communicated a persistent and material message that YoPlus promotes
16 digestive health.”); *cf. Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 595 (9th
17 Cir. 2012) (stating that class cannot be certified where “it is likely that many class
18 members were never exposed to the allegedly misleading advertisements”).

19 Cabral has introduced evidence that Supple’s infomercial states, for example:
20 “If you have arthritis, joint pain, back pain, kne[e] pain, this is a product you
21 absolutely have to try”; “Our glucosamine is clinically proven to rebuild damage[d]
22 cartilage cells”; “It’s our chondroitin that’s clinically proven effective to reduce
23 joint space narrowing, that’s clinically proven to reduce swelling and inflammation,
24 and that protects your joints.” (Wade Decl. Ex. 14 (Docket No. 36)). Cabral also
25 has introduced evidence of comparable statements on Supple’s website, for
26 example: “Clinically Proven Effective and Safe”; “[C]ompletely relieve the
27 symptoms of arthritis.” (*Id.* at Ex. 22).

1 In addition, the record evidence indicates that from December 1, 2007, to
2 November 20, 2011, approximately \$8.9 million of the revenue from Supple’s sale
3 of the Beverage was generated from direct telephone sales (Supple’s infomercial
4 includes “1-800” telephone numbers for viewers then to purchase the Beverage).
5 (*Id.* at Ex. 2). The remaining \$1.4 million in revenue was generated from online
6 sales. (*Id.*) Supple did not sell to retail merchandisers.

7 Consequently, class members purchased the Beverage either over the
8 telephone after viewing the Supple infomercial or from the Supple website. The
9 Beverage label also appeared on the Supple website. (*See, e.g., id.* at Ex. 23, 24).
10 The record demonstrates that class members necessarily would have been exposed
11 to Supple’s advertising before purchasing the Beverage.

12 Clearly, the statements in the infomercial differ in some respects from those
13 on the website (or even among different iterations of the infomercial). But a false or
14 misleading advertising campaign need not “consist of a specifically-worded false
15 statement repeated to each and every [member] of the plaintiff class.” *In re First*
16 *Alliance Mortgage Co.*, 471 F.3d 977, 992 (9th Cir. 2006). “The class action
17 mechanism would be impotent if a defendant could escape much of his potential
18 liability for fraud by simply altering the wording or format of his misrepresentations
19 across the class of victims.” *Id.*; *Johns v. Bayer Corp.*, 280 F.R.D. 551, 558 (S.D.
20 Cal. 2012) (“[W]hen plaintiffs are exposed to a common advertising campaign,
21 common issues predominate.”).

22 (3) Supple next argues that common issues do not predominate because the
23 alleged misrepresentations may not have been material to all class members.
24 However, “[u]nder California law, a misrepresentation is material ‘if a reasonable
25 man would attach importance to its existence or nonexistence in determining his
26 choice of action.’ Materiality is thus an objective standard that may be subject to
27 common proof.” *In re Apple, AT & T iPad Unlimited Data Plan Litig.*, No. C-10-
28 02553 RMW, 2012 WL 2428248, at *5 (N.D. Cal. June 26, 2012) (citation omitted);

1 *see also, e.g., Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008)
2 (“Appellants’ claims under these California statutes are governed by the ‘reasonable
3 consumer’ test.”).

4 Importantly, “at this stage in the litigation, the issue is not whether the alleged
5 misrepresentations were in fact material. The proper inquiry for class certification
6 purposes is whether plaintiff can use common proof to prove whether a
7 misrepresentation or nondisclosure is material.” *Krueger v. Wyeth, Inc.*, Civil No.
8 03CV2496 JAH (AJB), 2011 WL 8971449, at *6 (S.D. Cal. Mar. 30, 2011)
9 (distinguishing *In re Vioxx Class Cases*, 180 Cal. App. 4th 116, 103 Cal. Rptr. 3d 83
10 (2009)).

11 Under the facts of this case, the question is whether a reasonable person
12 contemplating purchase of the Beverage would attach importance to Supple’s
13 alleged misrepresentation – *i.e.*, that the Beverage is clinically proven effective for
14 the treatment of joint pain. *See id.* at *4 (“Under the facts of this case the question
15 is: would a reasonable person contemplating purchase of Wyeth’s hormone therapy
16 drugs attach importance to the nondisclosed fact that the drug increases the risk for
17 breast cancer, heart disease, Alzheimers disease, and dementia”). That answer
18 is subject to common proof.

19 Supple nevertheless asks the Court to weigh whether the alleged
20 misrepresentation, in fact, would be material to certain class members. Common
21 sense dictates that the alleged misrepresentation (practically speaking, that the
22 Beverage would do what it was advertised to do) would be material to not only the
23 reasonable purchaser but every purchaser. *See, e.g., In re Yasmin and Yaz*
24 *(Drospirenone) Mktg., Sales Practices & Prods. Liab. Litig.*, No. 3:09-md-02100-
25 DRH-PMF, 2012 WL 865041, at *10 (S.D. Ill. Mar. 13 2012) (noting that the
26 “drugs at issue” in a related case “purportedly had the opposite effect of their
27 advertised benefits” and that “[r]epresentations or omissions of this nature would
28 clearly be material to putative class members”).

1 (4) According to the Ninth Circuit, a “presumption of reliance does not
2 arise when class members ‘were exposed to quite disparate information from
3 various representatives of the defendant.’” *Mazza*, 666 F.3d at 596 (citation
4 omitted) (“Here the limited scope of that advertising makes it unreasonable to
5 assume that all class members viewed it.”).

6 However, an inference of reliance arises as to the entire class where material
7 misrepresentations have been made to the entire class. *See Stearns v. Ticketmaster*
8 *Corp.*, 655 F.3d 1013, 1022 (9th Cir. 2011). Because the Beverage was sold only
9 over the telephone and on Supple’s website, class members necessarily were
10 exposed to the alleged misrepresentation in Supple’s infomercial or on its website.
11 While the individual statements or iterations of the alleged misrepresentation may
12 have differed depending on the specific infomercial or website page, the message
13 was the same. Based on these facts, a presumption of reliance is warranted in this
14 case.

15 Accordingly, Cabral has demonstrated that common issues of fact and law
16 predominate for purposes of Rule 23(b)(3) and established commonality under Rule
17 23(a).

18 **Superiority (Rule 23(b)(3))**

19 Similarly, Cabral has established superiority under Rule 23(b)(3). Supple
20 argues that a class action is not superior where, as here, the defendant offers refunds
21 to dissatisfied customers. But the record evidence demonstrates that during the
22 putative class period Supple has offered at most a sixty-day money-back guarantee
23 and that this does not include processing and handling or shipping. (*See Apatow*
24 *Decl.* ¶ 44 (Docket No. 60)). Given these limitations, Supple is not offering the
25 “very relief” sought by means of the class action. (*See Opp.* at 24).

26 Supple also argues that an apparent lack of multiplicity of suits undercuts
27 superiority. But such a lack of multiplicity does not necessarily weigh against class
28 certification. *See, e.g., Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1191

1 (9th Cir. 2001) (“If the court finds that several other actions already are pending and
2 that a clear threat of multiplicity and a risk of inconsistent adjudications actually
3 exist, a class action may not be appropriate” (citation omitted)). Supple’s
4 arguments are unavailing.

5 **Rule 23(a)**

6 *Typicality*

7 Likewise, Supple’s argument as to typicality fails. The typicality requirement
8 is a permissive standard. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th
9 Cir. 1998). “[R]epresentative claims are ‘typical’ if they are reasonably co-
10 extensive with those of absent class members; they need not be substantially
11 identical.” *Id.* at 1020. Again, Cabral purchased the Beverage in reliance on
12 Supple’s alleged misrepresentation as to its effectiveness. Cabral’s claim is
13 “reasonably co-extensive” with those of absent class members who purchased the
14 Beverage after necessarily being exposed to Supple’s advertising. The Court is not
15 persuaded by Supple’s arguments that the specific statements on which Cabral
16 allegedly relied, her specific arthritic condition and/or her discontinued use of the
17 Beverage make her claim atypical.

18 *Adequacy*

19 Supple’s adequacy argument appears to overlap with its argument as to
20 typicality. But “[t]o determine whether named plaintiffs will adequately represent a
21 class, courts must resolve two questions: ‘(1) do the named plaintiffs and their
22 counsel have any conflicts of interest with other class members and (2) will the
23 named plaintiffs and their counsel prosecute the action vigorously on behalf of the
24 class?’” *Ellis*, 657 F.3d at 985 (citing *Hanlon*, 150 F.3d at 1020). “Adequate
25 representation depends on, among other factors, an absence of antagonism between
26 representatives and absentees, and a sharing of interest between representatives and
27 absentees.” *Id.* Supple has made no showing as to either of these questions.

28

1 Therefore, Cabral has established that she and her counsel meet the
2 prerequisites of Rule 23(a).

3 **The Subsequent Briefing**

4 After the hearing, on December 10, 2012, Supple filed a Statement of Recent
5 Decision in Support of Opposition to Class Certification (the “Statement”). (Docket
6 No. 93). Supple’s Statement attached the slip opinion in *Moheb* (cited above) and
7 argued that the court denied class certification in that case because “some of the
8 putative class members relied on the recommendations of doctors or on other
9 outside information in deciding to purchase the product,” because the “evidence
10 showed that the product worked for at least some consumers,” and “because many
11 customers were satisfied with their purchases.” (Statement at 1).

12 On December 11, 2012, Cabral filed a Response to the Statement. (Docket
13 No. 95). Cabral argued that the product at issue in *Moheb* “was sold primarily at
14 retail outlets, which led to issues of class-wide exposure,” and that “unlike in *Moheb*
15 there can be little question that the falsity of [Supple]’s uniform marketing message .
16 . . can be determined by classwide proof, namely, complex and expensive scientific
17 evidence.” (Response at 1-2).

18 While not binding here, the Court carefully has read and considered the
19 *Moheb* decision. The Court notes that *Moheb* also involved a
20 glucosamine/chondroitin supplement. *Moheb*, slip op. at 1. However, *Moheb* is
21 distinguishable from this case. **First**, as discussed above, issues of standing and
22 ascertainability do not preclude class certification here. *But see id.* at 3-4 **Second**,
23 in *Moheb*, “some of the members of the Class never saw or relied upon Defendant’s
24 representation that [the relevant product] has been proven to reduce joint pain.” *Id.*
25 at 5; *see also id.* at 8. Here, as discussed above, the record demonstrates that class
26 members necessarily would have been exposed to Supple’s advertising before
27 purchasing the Beverage, which also warrants a presumption of reliance. **Third**,
28 unlike in *Moheb*, Supple does not argue on this Motion that “[s]cientific data

1 suggests that [the Beverage] works for some, but may not work as well for others.”
2 *Id.* at 5; *see also id.* at 8.

3 **Finally**, the Court declines to rule that Cabral is an inadequate class
4 representative based on either her specific arthritic condition or her discontinued use
5 of the Beverage, notwithstanding the *Moheb* court’s conclusion with respect to the
6 plaintiff in that case. In *Moheb*, the court concluded that the plaintiff “would not be
7 an adequate representative because she had extremely limited experience” with the
8 relevant product, and that she “would not be an adequate representative for those
9 members of the Class that did derive benefits” from the product, “those that used [it]
10 for cartilage protection, or those who purchased [it] for their pets.” *See id.* at 6.
11 Furthermore, the court noted that, “unlike other members of the Class who continue
12 to use [the product], she does not have any risk of future harm from the product.”
13 *Id.* The court also found that the plaintiff “became class representative in this action
14 through her long-time friendship with the mother of one of her counsel, and that
15 counsel had been researching the possibility of a class action with respect to [the
16 product] prior to [the p]laintiff becoming a client.” *Id.* (“While Plaintiff denies that
17 a conflict exists, it is the appearance of a conflict that is inescapable.”). Therefore,
18 the ruling as to adequacy in *Moheb* relied on a different factual record.

19 **CONCLUSION**

20 Accordingly, the Motion (Docket No. 35) is GRANTED.

21 The Court hereby sets a Scheduling Conference for **March 18, 2013, at 11:00**
22 **a.m.** (*See* Docket No. 99).

23 IT IS SO ORDERED.

24 DATED: February 14, 2013.



25
26
27 MICHAEL W. FITZGERALD
United States District Judge
28