UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 13-1746 AG (ANx)	Date	December 23, 2013
Title	ASHLEY MELVIN, et al. v. BLUE DIAMOND GROWERS		

Present: The Honorable	ANDREW J. GUILFORD	
Lisa Bredahl	Not Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs: Attorneys Present for Defendants:

Proceedings: [IN CHAMBERS] ORDER RE SUBJECT MATTER JURISDICTION

On November 5, 2013, Plaintiffs Ashley Melvin and Taline Keshishian ("Plaintiffs") filed this purported class action, alleging violations of three laws: (1) California's Unfair Competition Law, (2) California's False Advertising Law, and (3) California's Consumer Legal Remedies Act. Plaintiffs allege this Court has jurisdiction under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d)(2).

On November 20, 2013, this Court issued an Order to show cause why the case should not be dismissed for lack of subject matter jurisdiction. ("OSC," Dkt. No. 6.) Specifically, the Court did not have enough information to determine whether there is $5 million in controversy.

Plaintiffs responded to the OSC shortly thereafter. ("Response," Dkt. No. 7.) In their Response, Plaintiffs argue the following: (1) the Court should presume the amount in controversy is satisfied because Plaintiffs allege in good faith that $5 million is in controversy; and (2) Defendant is a large corporation with sales that exceed $5 million. Neither of these arguments persuades the Court that it has jurisdiction at this time. Plaintiffs' Complaint is DISMISSED.

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"Nothing is to be more jealously guarded by a court than its jurisdiction." *In re Disciplinary Action Against Mooney*, 841 F.2d 1003, 1006 (9th Cir. 1988) *overruled on other grounds by Partington v. Gedan*, 923 F.2d 686 (9th Cir. 1991). "[W]here appropriate, [federal courts] will dismiss a case for lack of subject matter jurisdiction even if the issue is not raised by the parties." *RDF Media Ltd. v. Fox Broad. Co.*, 372 F. Supp. 2d 556, 560 (C.D. Cal. 2005) (citing *In re Mooney,* 841 F.2d at 1006).

Under the Class Action Fairness Act of 2005 ("CAFA"), district courts have original jurisdiction over class actions where (1) "the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs," (2) the parties are minimally diverse, and (3) there are at least 100 proposed class members. 28 U.S.C. § 1332(d). As stated, the Court's primary concern here is whether there is $5 million in controversy. It appears Plaintiffs seek refunds for previous almond milk purchases, and attorney fees and costs. (Complaint, Prayer for Relief.)

To establish subject matter jurisdiction, "a plaintiff must set forth the underlying facts supporting its assertion that the amount in controversy exceeds the statutory minimum." *Baxter v. Rodale, Inc.*, No. 12-00585, 2012 WL 1267880, at *1 (C.D. Cal. Apr. 12, 2012) (internal quotation marks and citation omitted). Conclusory allegations without factual support are not enough. *See, e.g.*, *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090-91 (9th Cir. 2003); *Baxter*, 2012 WL 1267880, at *1-2 ("Plaintiff makes only conclusory allegations with respect to CAFA's $5,000,000 amount in controversy requirement . . . . The Court finds that these allegations . . . are insufficient.") (internal citation omitted); *McCormack v. Stults*, No. 11-08728, 2012 WL 1231995, at *1 (C.D. Cal. Apr. 12, 2012) ("Defendants argue that Plaintiff's conclusory allegation that he is entitled to $100,000 in damages is insufficient to meet the amount in controversy requirement. The court agrees. . . . Plaintiff has not met his burden of offering any specific facts or evidence to support the claimed damages amount.").

Plaintiffs first argue that the Court should take Plaintiffs at their good faith pleading that there is over $5 million in controversy. Citing *Lowdermilk v. U.S. Bank National Ass'n*,

479 F.3d 994, 998 (9th Cir. 2007), Plaintiffs argue that since they pled the minimum amount in controversy, the requirement is presumptively satisfied unless it appears to a legal certainty that the claim is actually for less than the jurisdictional minimum. (Response at 4.)

But this argument is unpersuasive because, among other things, *Lowdermilk* concerned a situation where the plaintiff alleged that *less than* $5 million was in controversy. Plaintiffs here provide no authority to show the *Lowdermilk* test would apply where a plaintiff alleges that *more than* $5 million is in controversy. Moreover, this Court understands the Supreme Court's ruling in *Standard Fire* to have effectively eliminated the legal certainty test. *See Standard Fire Ins. Co. v. Knowles*, ––– U.S. ––––, 133 S.Ct. 1345 (2013). Although some district courts initially ruled to the contrary, when the Ninth Circuit was presented with the issue it agreed that the Supreme Court had "held that such a waiver was ineffective" and "effectively overruled" *Lowdermilk*. *Rodriguez v. AT & T Mobility Servs. LLC*, 13-56149, 2013 WL 4516757 (9th Cir. Aug. 27, 2013) (citing *Standard Fire*, 133 S.Ct. 1345). So Plaintiffs' pleading of $5 million is not as helpful as Plaintiffs say.

So on to Plaintiffs' second argument. Most of the information presented in Plaintiffs' Response supporting the second argument is completely unhelpful. (*See* Response at 5-9.) It seems obvious that it is a complete waste of the Court's time to tell it that "[t]he ladies of The View, a daytime talk show that discusses current events, news and entertainment, indulged in a special treat: *Almond Breeze* Mango Lime Smoothies . . . ," and that Defendant advertises during the Bachelorette, Grey's Anatomy, and Jimmy Kimmel Live (Response at 7). It does not tell the Court anything about how much Plaintiffs stand to recover in this case.

Plaintiffs also tell the Court how much sales and revenue Defendant had from 2010 to 2013. But that Defendant had over $3.8 billion in sales from 2010-2013 does not tell the Court that $5 million is in controversy in this case. That information has no bearing on what damages Plaintiffs claim.

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Plaintiffs come closest to helping the Court when they discuss Defendant's almond milk sales, since the claims in this case relate to alleged false advertising for almond milk. But Plaintiffs only tell the Court that Defendant says its almond milk sales went up 91% for chilled and 22% for non-chilled in 2011. (Response at 8.) As described, a purported increase in almond milk revenues does not help decide the jurisdictional question here.

The Court declines to grant Plaintiffs' request for discovery on subject matter jurisdiction. (Response 9-10.) There is insufficient reason to delay a ruling on this jurisdictional issue.

In sum, the statement of this Court's jurisdiction in Plaintiffs' complaint was inadequate. The Response was similarly inadequate. And this Court must jealously guard its jurisdiction. Plaintiffs' Complaint is DISMISSED.

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