

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 15-20440-CIV-ALTONAGA/O'Sullivan

LEAH DAVIS,

Plaintiff,

vs.

HAMPTON CREEK, INC.,

Defendant.

ORDER

THIS CAUSE came before the Court upon a review of Plaintiff's Complaint [ECF No. 1], filed February 4, 2015. A "district court may act *sua sponte* to address the issue of subject matter jurisdiction at any time." *Herskowitz v. Reid*, 187 F. App'x 911, 912–13 (11th Cir. 2006) (footnote call numbers and citations omitted). This is because federal courts are "empowered to hear only those cases within the judicial power of the United States as defined by Article III of the Constitution,' and which have been entrusted to them by a jurisdictional grant authorized by Congress." *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 409 (11th Cir. 1999) (quoting *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994)). Accordingly, "once a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue." *Id.* at 410.

The Complaint raises two state law causes of action: one count alleges violation of the Florida Deceptive and Unfair Trade Practices Act; the second count alleges unjust enrichment. (*See* Compl. 11–14). The Complaint claims federal subject jurisdiction exists pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. section 1332(d), as Plaintiff purports to bring this lawsuit on behalf of herself and proposed class members consisting of "All persons who purchased Just Mayo in the State of Florida." (*Id.* ¶¶ 10, 33).

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Federal jurisdiction pursuant to 28 U.S.C. section 1332(d) exists where “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). “In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000.” *Id.* § 1332(d)(6). Nonetheless, based on the facts alleged in the Complaint, the Court is unable to determine whether CAFA’s amount in controversy requirement is met.

According to the facts alleged, on two separate occasions Plaintiff purchased Defendant’s “Just Mayo” product for approximately \$4.69 under the false impression she was purchasing mayonnaise and she suffered an ascertainable loss in the amount of the purchase price of the product. (*See* Compl. ¶¶ 30, 31, 32). Without any supporting factual allegations, Plaintiff “reasonably estimates” there exist thousands of other consumers of Just Mayo in Florida and makes the conclusory allegation that the matter in controversy exceeds the sum or value of \$5,000,000. (*Id.* ¶¶ 10, 35).


“Allegations concerning the amount in controversy cannot be based on speculation and conjecture. Plaintiffs may rely on calculations to satisfy their burden so long as their calculations are good faith, reliable estimates based on the pleadings and other evidence in the record. However, estimates by plaintiffs cannot be based on calculations that are devoid of any concrete evidence.” *Baxter v. Rodale, Inc.*, No. CV 12-00585 GAF, 2012 WL 1267880, at *1 (C.D. Cal. Apr. 12, 2012) (internal quotation marks and citations omitted). The Court finds insufficient Plaintiff’s bare allegations that thousands of similarly situated individuals exist and the matter in controversy satisfies CAFA. Based on the facts alleged in the Complaint, Plaintiff claims less than \$10 in damages for herself. Assuming other similarly situated individuals bought two jars of Just Mayo, there would need to be 499,000 other plaintiffs to meet the

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\$5,000,000 amount in controversy. Although this is conceivable, Plaintiff has not alleged nor offered any facts to support this possibility. Accordingly, it is

ORDERED AND ADJUDGED that on or before **February 19, 2015**, Plaintiff shall demonstrate why this case should not be dismissed for lack of subject matter jurisdiction.

DONE AND ORDERED in Miami, Florida, this 5th day of February, 2015.


CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record