UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MAHASIN AHMAD, individually and on behalf of others similarly situated,	)	
Plaintiff,	)	No. 4:21 CV 311 CDP
v.	)	
PANERA BREAD COMPANY,	)	
Defendant.	)	

MEMORANDUM AND ORDER OF REMAND

In March 2021, defendant Panera Bread Company removed this class action lawsuit to this Court from the Circuit Court of St. Louis County, Missouri, invoking federal jurisdiction under the Class Action Fairness Act (CAFA), 28 U.S.C. §§ 1332(d), 1453. Plaintiff Mahasin Ahmad moves to remand the case back to state court, arguing that Panera has failed to show that the amount in controversy meets CAFA's $5 million threshold for federal jurisdiction.[1] For the reasons that follow, I agree and will grant Ahmad's motion to remand. Neither jurisdictional discovery nor a hearing is necessary to this determination. Panera's motion to dismiss shall be reserved for ruling in state court upon remand.

[1] I earlier denied Ahmad's motion to remand in a Memorandum and Order entered June 2, 2021. Because the conclusion in that Order was based on a clear error of fact, I granted Ahmad's motion to reconsider, vacated the June 2 Memorandum and Order, and stayed this action pending my reconsideration of Ahmad's motion to remand. (*See* ECF 53.) I now lift the stay and reconsider Ahmad's motion to remand anew.

Background

Ahmad, a California citizen, filed this class action in the Circuit Court of St. Louis County on February 8, 2021, claiming that defendant Panera, a corporate citizen of Missouri and Delaware, secretly marked up food prices for items on delivery orders, rendering its advertised flat, low-cost $4 delivery fee deceptive to its delivery customers in violation of California's Consumer Legal Remedies Act (CLRA), California's Unfair Competition Law (UCL), and Missouri's Merchandising Practices Act (MMPA). Panera removed the action to this Court on March 11, 2021, invoking federal jurisdiction under CAFA. Ahmad contends that not all the requirements for federal CAFA jurisdiction are met in this case and moves to remand.

Legal Standard

CAFA "confers federal jurisdiction over class actions where, among other things, 1) there is minimal diversity; 2) the proposed class contains at least 100 members; and 3) the amount in controversy is at least $5 million in the aggregate." *Plubell v. Merck & Co.*, 434 F.3d 1070, 1071 (8th Cir. 2006) (citing 28 U.S.C. § 1332(d)); *see also Raskas v. Johnson & Johnson*, 719 F.3d 884, 886-87 (8th Cir. 2013). Ahmad does not dispute that this action satisfies the CAFA requirements of minimal diversity and having at least 100 members, but she claims that Panera has not met its burden of establishing the required $5 million threshold.

Federal courts are courts of limited jurisdiction, and "[i]t is to be presumed that a cause lies outside this limited jurisdiction[.]" *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "[T]he burden of establishing the contrary rests upon the party asserting jurisdiction." *Id.* (citations omitted). I may exercise jurisdiction over this removed case only if this Court would have had original subject-matter jurisdiction had the action initially been filed here. *Krispin v. May Dep't Stores Co.*, 218 F.3d 919, 922 (8th Cir. 2000) (citing 28 U.S.C. § 1441(b)). I review the state-court petition pending at the time of removal to determine the existence of subject-matter jurisdiction. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 291 (1938). I may also look to the notice of removal to determine jurisdiction. 28 U.S.C. § 1446(c)(2)(A)(ii).

Panera, as the removing party invoking jurisdiction, bears the burden of proving that all prerequisites to jurisdiction are satisfied. *Kokkonen*, 511 U.S. at 377; *In re Prempro Prods. Liab. Litig.*, 591 F.3d 613, 620 (8th Cir. 2010). *See also Westerfeld v. Independent Processing, LLC*, 621 F.3d 819, 822 (8th Cir. 2010) ("Although CAFA expanded federal jurisdiction over class actions, it did not alter the general rule that the party seeking to remove a case to federal court bears the burden of establishing federal jurisdiction."). Where, as here, "the class action complaint does not allege that more than $5 million is in controversy, 'a defendant's notice of removal need include only a plausible allegation that the

amount in controversy exceeds the jurisdictional threshold.'" *Pirozzi v. Massage Envy Franchising, LLC*, 938 F.3d 981, 983 (8th Cir. 2019) (quoting *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014)). The defendant need not establish that "'the damages [sought] *are* greater than the requisite amount, but whether a fact finder *might* legally conclude that they are.'" *Id.* at 984 (quoting *Hartis v. Chicago Title Ins. Co.*, 694 F.3d 935, 944 (8th Cir. 2012)) (emphasis in *Hartis*) (alteration in *Pirozzi*). Where such a plausible allegation is made, "the case belongs in federal court unless it is *legally impossible* for the plaintiff to recover that much." *Id.* (internal quotation marks and citations omitted) (emphasis in *Pirozzi*).

"[W]hen a defendant's assertion of the amount in controversy is challenged[, however], both sides submit proof and the court decides, by a preponderance of the evidence, whether the amount-in-controversy requirement has been satisfied." *Dart Cherokee*, 574 U.S. at 88. If the removing party establishes by a preponderance of the evidence that CAFA's jurisdictional minimum is satisfied, "remand is only appropriate if the plaintiff can establish to a legal certainty that the claim is for less than the requisite amount." *Dammann v. Progressive Direct Ins. Co.*, 856 F.3d 580, 584 (8th Cir. 2017) (internal quotation marks and citation omitted). While generally a court must resolve all doubts about federal jurisdiction in favor of remand to state court, *In re Prempro*, 591 F.3d at 620, "no antiremoval

presumption attends cases invoking CAFA[.]" *Dart Cherokee*, 574 U.S. at 89.

Plaintiff's Petition

Ahmad's state-court petition does not seek a specific dollar amount in damages, but Ahmad claims that "hundreds of thousands of Panera customers" have been affected by Panera's deceitful conduct of secretly marking up delivery food by at least 5% and up to 10%. (ECF 6 at ¶¶ 9, 30.)[2] She seeks to represent a class of "all consumers in California who, within the applicable statute of limitations preceding the filing of this action to the date of class certification," ordered food for delivery through Panera's mobile app or website and were assessed the higher food charges. (*Id.* at ¶ 54.) Count 1 of the petition seeks restitution and disgorgement of profits under the UCL, Cal. Bus. & Prof. Code §§ 17200, *et seq.* Count 2 seeks only injunctive relief under the CLRA, Cal. Civ. Code §§ 1750, *et seq.*, but reserves the option to amend to pursue claims for actual and statutory damages. In Count 3, Ahmad seeks damages, injunctive relief, and attorneys' fees and costs under the MMPA, Mo. Rev. Stat. § 407.020, "on behalf of herself and all other Class members similarly situated in Missouri." (ECF 6 at ¶ 119.) In sum, Ahmad requests declaratory and injunctive relief; that Panera be ordered to disgorge its profits made from its alleged deceitful conduct and make

[2] At two other points in her petition, Ahmad contends Panera inflated the food price for delivery orders by 5-to-7%. (*See* ECF 6 at ¶¶ 4, 49.)

restitution, as measured by the excess monies delivery customers paid in food markups; and that Panera be ordered to pay actual, statutory, and compensatory damages, as well as attorneys' fees and costs. Ahmad does not seek recovery of the advertised $4 delivery fees.[3]

Motion to Remand

Ahmad contends that the matter must be remanded to state court because the $5 million threshold for federal CAFA jurisdiction is "indeterminate at this juncture" and Panera has failed to submit evidence with its notice of removal that such threshold is met. (ECF 11 at p. 2.) But "[a] defendant is not required to submit evidence establishing federal-court jurisdiction with its notice of removal unless the plaintiff or the court questions the defendant's claim of jurisdiction." *Pudlowski v. The St. Louis Rams, LLC*, 829 F.3d 963, 964 (8th Cir. 2016) (citing *Dart Cherokee*, 574 U.S. at 89). Indeed, a dispute about a defendant's jurisdiction allegations cannot arise until *after* the defendant files a notice of removal containing those allegations. *See Dart Cherokee*, 574 U.S. at 89. Accordingly, Panera's failure to submit jurisdictional evidence with its notice of removal does not itself affect the jurisdiction of this Court.

In response to Ahmad's challenge to Panera's amount-in-controversy assertion, Panera has submitted the declaration of its Senior Manager of Financial

[3] *See* ECF 6 at ¶¶ 10, 120.

Planning and Analysis, Joshua Hulseberg, who details Panera's average monthly revenue from 1) fees charged for delivery service in California and in Missouri during the six-month period from September 30, 2020, to March 30, 2021; and 2) sales of delivered food in California and in Missouri during this same period. Because Ahmad does not seek recovery of the $4 fees charged for delivery service, I will not consider them as damages in determining the amount in controversy. With respect to the delivered food sales, however, Panera avers that 5-to-10% of that revenue (representing the alleged markup) – when totaled from September 30, 2020, to March 30, 2021, and extrapolated to include another six months into the future to allow for time to certify the class – amounts to a level of monetary relief that, when considered with a potential award of attorneys' fees, the value of injunctive relief, and potential punitive damages, satisfactorily meets the $5 million threshold for CAFA jurisdiction. Ahmad disagrees, averring that Panera misunderstands the case and presents an inaccurate picture of the nature and amount of damages at issue.

I will address Ahmad's contentions and each category of damages in turn.

Definition of the Class

Ahmad first argues that the only class she seeks to represent and thus the only class requesting class-wide relief is the class of California consumers as defined in the petition and that, therefore, the relevant measure of damages is based

on only the revenue earned from delivered food sales in California, not Missouri. To the extent the petition contains an MMPA claim on behalf of a class of Missouri consumers, Ahmad contends the claim is brought only in the alternative to the CLRA and UCL claims and thus that revenue from Missouri sales cannot be combined with California sales to estimate the amount in controversy. Ahmad also contends that, regardless, Missouri sales are irrelevant to the damages in this case because the claims are limited to only the purchases of delivered food in California. (*See* ECF 34, Pltf.'s Mot. for Oral Arg.)

As noted above, I must review the state-court petition pending at the time of removal to determine whether this Court has subject-matter jurisdiction over the case. *St. Paul Mercury Indem. Co.*, 303 U.S. at 291; *see also Grawitch v. Charter Commc'ns, Inc.*, 750 F.3d 956, 959 (8th Cir. 2014) ("The court's jurisdiction is measured at the time of removal.") (citing *Hargis v. Access Capital Funding, LLC*, 674 F.3d 783, 789 (8th Cir. 2012)). Nowhere in Ahmad's state-court petition does she assert that the MMPA claim in Count 3 is pled in the alternative to the California statutory claims raised in Counts 1 and 2. And because nothing on the face of the petition would lead one to believe that Ahmad and the putative class(es) cannot recover under both Missouri and California statutory law, it is reasonable to conclude that at the time of removal, the petition sought to obtain relief for all of the claims raised therein and not in the alternative.

Likewise, the face of the petition does not support Ahmad's present contention that she does not bring a claim on behalf of a Missouri class nor seeks damages for purchases made in Missouri. In the MMPA claim raised in Count 3, Ahmad unequivocally asserts that she is entitled to bring the claim "on behalf of herself and all other Class members similarly situated *in Missouri*[.]" (ECF 6 at ¶ 119. Emphasis added.) Although she avers in her post-removal request for oral argument that the claimed damages under the MMPA "are limited to purchases in California – whether to all purchases in California or perhaps purchases in California by Missouri citizens" (ECF 34 at pp. 1-2), nothing in the petition itself limits the geographical area of actionable purchases to only California. Ahmad's post-removal recharacterizations of the claims raised in her petition cannot serve to avoid CAFA jurisdiction given that I look to the face of the petition at the time of removal in determining whether such jurisdiction exists. *See Brown v. Mortgage Elec. Registration Sys., Inc.*, 738 F.3d 926, 932 (8th Cir. 2013).

Accordingly, for purposes of determining CAFA jurisdiction at the time of removal, I consider the claims brought by Ahmad on behalf of herself and consumers in California and those similarly situated in Missouri, which necessarily includes purchases made in Missouri.

Compensatory Damages

Relevant Time Frame

In her petition, Ahmad defines the class period as "the applicable period of limitations preceding the filing of this action to the date of class certification[.]" (ECF 6 at ¶ 54.) To satisfy the $5 million CAFA threshold, Panera calculates the total damages from the alleged markups beginning September 30, 2020, through March 30, 2021, and extrapolates them six months forward from the date of removal to account for the period up "to the date of class certification." Panera asserts that "[a]ggregating the current and future amounts in controversy produces a total amount in controversy" that exceeds $5 million. (ECF 22 at p. 6.) In her motion to remand, Ahmad argues that projecting future damages is improper in the circumstances of this case given that jurisdiction is determined when the case is filed or at the time of removal. For the following reasons, I agree.

As an initial matter, I note that the applicable statute of limitations for claims brought under the UCL is four years, *see* Cal. Bus. & Prof. Code § 17208; and is five years for claims brought under the MMPA, *see Huffman v. Credit Union of Tex.*, 758 F.3d 963 (8th Cir. 2014). But, as admitted by Panera on Ahmad's motion to reconsider,[4] the challenged online delivery program did not begin until the Fall of 2020. Accordingly, damages could not have accrued on Ahmad's and

[4] *See* n. 1, *supra.*

the putative class members' claims prior to the Fall of 2020. Given that Panera's evidence details its relevant revenue beginning September 30, 2020, I look to the period beginning on that date in estimating the amount-in-controversy damages in this case. And, as discussed below, this period ended when Panera removed the case to this Court.

"Just as post-filing developments do not defeat jurisdiction if jurisdiction was properly invoked as of the time of filing, post-filing events cannot create jurisdiction where it did not exist at the time of filing." *Petkevicius v. NBTY, Inc.*, No. 3:14-cv-2616-CAB-(RBB), 2017 WL 1113295, at *6 (S.D. Cal. Mar. 24, 2017) (internal quotation marks and citation omitted).

> Retail sales that occurred after the complaint was filed are not "future damages" attributable to the wrongful conduct alleged in the complaint (alleged misrepresentations . . . of the products purchased before the complaint was filed). Such sales are new damages arising out of new, albeit similar, wrongful conduct (alleged misrepresentations . . . of the products purchased after the complaint was filed). Claims arising out of any harm that occurred based on sales after the complaint was filed did not accrue until after the complaint was filed. At the time the complaint was filed, it was merely speculative that any future retail sales would occur. Upon being served with the complaints, Defendants could have changed the labeling on their products or stopped selling the products altogether, or the public could simply stop purchasing [the] products or choose to purchase . . . products from Defendants' competitors. In any of these scenarios, there would be no additional damages to the class that could be included in the jurisdictional minimum or much lower additional damages. When the complaint was filed none of these damages existed, and at that time, it would have been entirely speculative to include such amounts in the amount in controversy. Therefore, damages arising out of such sales are not part of the

amount in controversy calculation under CAFA.

Id. (citation and footnote omitted) (text omissions and alteration added).

Nor is this a case where future damages are certain damages caused by Panera's actions from before the case was filed. There is no right to future recovery at issue here, nor is there "continuing damage" arising out of Panera's conduct at the time of removal. The petition here alleges that the putative class members' injury was the amount they overpaid for delivered food. Although the petition alleges that Panera continues to deliver food ordered through its mobile app and website, those sales do not constitute "continuing damage" to the classes or to Ahmad in particular. *See Petkevicius*, 2017 WL 1113295, at *7. *See also Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 593 (2013) (recognizing plaintiff's concession on amount-in-controversy element of CAFA jurisdiction that "[f]ederal jurisdiction cannot be based on contingent future events.").

Choosing an arbitrary date in the future as the cut-off point for calculating jurisdictional damages would render the jurisdiction-upon-removal requirement a fiction in a case such as this where future damages are neither certain nor continuing but instead are contingent on defendant's engaging in the same alleged wrongful conduct and future consumers' making online delivery purchases at the same level as before removal. *See Hughes v. McDonald's Corp.*, No. C 14-1700 PJH, 2014 WL 3797488, at *2 (N.D. Cal. July 31, 2014) ("[I]t is not reasonable for

a defendant to assume that it will continue to violate the Labor Code to the same degree even after the filing of the complaint."). "If a [party] were allowed to speculate as to damages-related future wrongful conduct to obtain CAFA jurisdiction, the $5,000,000 minimum would be satisfied with little more than rank speculation about possible future injuries caused by future conduct of the defendant" and to "consumers who had never purchased Defendants' products before the case was filed" or removed. *Petkevicius*, 2017 WL 1113295, at *7.

Therefore, for purposes of determining the amount in controversy for CAFA jurisdiction at the time of removal, I look to the total of the 5-to-10% markup on sales of delivered food in California and in Missouri for the period from September 30, 2020, through the date of removal.

Calculation of Damages

According to Panera's calculations, revenue from sales of delivered food in Missouri from September 30, 2020, to March 30, 2021, averaged about [redacted] per month. (ECF 22-1 at ¶ 11.) The maximum alleged markup value – that is, 10% – of these sales equals about [redacted] per month. Accordingly, the total alleged markup of sales of delivered food in Missouri from September 30, 2020, to March 30, 2021 – and thus the calculable damages in this action at the time of removal for Panera's alleged conduct in Missouri – is [redacted]. For delivered food in California, Panera calculates the revenue from such sales for the period

September 30, 2020, to March 30, 2021, at about [redacted] per month. (*Id.* at ¶ 12.) Ten percent of these sales equals about [redacted] per month. Accordingly, the total alleged markup of sales of delivered food in California from September 30, 2020, to March 30, 2021 – and thus the calculable damages at the time of removal for Panera's alleged conduct in California – is [redacted]. Adding these two amounts together, the total damages from sales of delivered food in Missouri and California at the time of removal is [redacted]. This amount is a reasonable estimate of the amount in controversy at the time of removal related to the compensatory damages or restitution sought in Ahmad's petition.

Punitive Damages

Ahmad contends that Panera cannot factor punitive damages into the amount in controversy because she did not specifically include a claim for punitive damages in her petition. In response, Panera argues that the MMPA claim raised in Count 3 includes language tracking the standard for recovery of punitive damages under Missouri law, thus signaling Ahmad's intent to seek these damages despite failing to specifically plead a claim for punitive damages.[5]

Under Mo. Rev. Stat. § 510.261.5 (2020), effective for all cases filed on or after August 28, 2020, a party may not seek punitive damages in an initial

[5] Count 3 includes an allegation that Panera's "unlawful acts and practices in violation of the MMPA were performed willfully and wantonly, were outrageous, and were done in reckless indifference to the rights of Plaintiff and Class[.]" (ECF 6 at ¶ 125.)

pleading. A party may later amend its pleading to claim punitive damages, but only with leave of court upon a written motion that is supported by evidence establishing a reasonable basis for a punitive award. *Id.* When Panera removed the case to this Court, therefore, recovery of punitive damages *at the time of removal* was legally impossible under Missouri law since the petition – filed in February 2021 – could not plead such a claim. Moreover, any claim for punitive damages must explicitly state the amount sought to be recovered. Mo. Rev. Stat. § 509.200. The petition here does not seek punitive damages either by claim or in amount. Unclaimed punitive damages are therefore not considered in determining the amount in controversy. *See Waters v. Ferrara Candy Co.*, 873 F.3d 633, 636 (8th Cir. 2017).

Injunctive Relief

The value of injunctive relief is considered in determining the amount in controversy. *James Neff Kramper Fam. Farm P'ship v. IBP, Inc.*, 393 F.3d 828, 833 (8th Cir. 2005). Whether I view this value from Ahmad's viewpoint, *i.e.*, the value of such relief to the class members, or from Panera's perspective, *i.e.*, its potential costs to comply with the injunction, *see Waters*, 873 F.3d at 635, Panera has submitted no evidence from which I can determine any value whatsoever.

"A removing defendant can establish federal jurisdiction with specific factual allegations . . . combined with reasonable deductions, reasonable

inferences, or other reasonable extrapolations. However, the amount in controversy is not established by a preponderance of the evidence if a court must resort to conjecture, speculation, or star gazing." *Waters*, 873 F.3d at 636 (internal quotation marks and citations omitted) (text omission in *Waters*).

In her petition here, Ahmad seeks injunctive relief in the form of ordering Panera to "cease from representing their delivery service as flat, low-cost and to disclose the true nature of their mark-ups." (ECF 6 at ¶ 63.) Although Panera averred in its notice of removal that costs incurred from such an injunction may include those related to revisions to marketing, additional disclosures, and impact resulting from the changes in marketing (ECF 1 at ¶ 24), it provides no evidence in opposing Ahmad's motion to remand demonstrating the value of these costs. Instead, it argues only that the costs of complying with an award of injunctive relief are the delivery fees and percentages of delivered food sales it could no longer add to its bottom line if it was to stop its present practices. (*See* ECF 22 at pp. 9-10.) But the injunctive relief Ahmad seeks is not to prohibit Panera from using marked up prices for delivered food, only that it disclose that it is doing so. Panera is therefore incorrect in its assertion that the injunctive relief Ahmad seeks will cause it to forego proceeds from future food markups.

Even if I were to consider Panera's contention that the costs of complying with an award of injunctive relief includes its inability to enjoy the fruits of its

alleged deceitful behavior, I am aware of no authority, and Panera cites to none, that permits the value of injunctive relief to be based on the amount of an entity's future ill-gotten gains it would have to forego if the lawsuit were successful in its effort to stop this wrongful conduct. To base CAFA jurisdiction on the future value of unlawful conduct *ad infinitum* is not reasonable.

Accordingly, given that Panera has failed to present any evidence as to the amount of costs it would incur in complying with a potential award of the injunctive relief Ahmad actually seeks in this action, I cannot use this factor in calculating the overall amount in controversy for CAFA jurisdiction. *Waters*, 873 F.3d at 636.

Attorneys' Fees

The parties do not dispute that attorneys' fees are included in determining whether CAFA's required amount in controversy is met. *See Faltermeier v. FCA US LLC*, 899 F.3d 617, 622 (8th Cir. 2018); *Waters v. Home Depot USA, Inc.*, 446 F. Supp. 3d 484, 492-93 (E.D. Mo. 2020). Contrary to Ahmad's assertion, however, I am not limited to only the value of attorneys' fees that were accrued at the time of removal in determining the amount in controversy. Instead, I may consider attorneys' fees based on the expected length of the litigation, the expected hours to be worked in this case, and the hourly rates charged. *Faltermeier*, 899 F.3d at 622; *Waters*, 446 F. Supp. 3d at 492-93.

In its notice of removal and in opposition to Ahmad's motion to remand, Panera cites cases that have considered an award of attorneys' fees in an amount representing 25-33% of the total compensatory damages as reasonable in determining the amount in controversy. (*See* ECF 1 at ¶ 23, ECF 22 at pp. 7-8.) Panera contends that Ahmad cannot demonstrate that recovery of fees at a rate of 25-30% is a legal impossibility and, therefore, that fees at such a rate should be included in the amount in controversy. Giving Panera the benefit of the doubt and assuming an attorneys' fee award of 33%, such an award would total [redacted], given that the amount of compensatory damages in controversy for removal purposes is [redacted].

Conclusion

The amount of compensatory damages in controversy for purposes of determining CAFA jurisdiction at the time this case was removed from state court totals [redacted]. Adding a 33% attorneys' fee award to this amount brings the total to [redacted]. There are no punitive damages or injunctive relief values to consider. Accordingly, the total amount in controversy reasonably expected at the time of removal was [redacted], well below the $5 million threshold required for CAFA jurisdiction.

Based on the foregoing, Panera has not met its burden of showing that federal CAFA jurisdiction exists because it has failed to demonstrate by a

preponderance of the evidence that the amount in controversy in this action met the $5 million threshold required for such jurisdiction at the time of removal. I will therefore remand this matter to state court for lack of subject-matter jurisdiction. In view of my findings regarding the amount in controversy, neither jurisdictional discovery nor oral argument is required.

Accordingly,

IT IS HEREBY ORDERED that the stay previously imposed in this action is **LIFTED**.

IT IS FURTHER ORDERED that plaintiff Mahasin Ahmad's Motion to Remand Action [10] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff's Request for Oral Argument [34] is **DENIED as moot.**

IT IS FURTHER ORDERED that this action is **REMANDED** to the Circuit Court of St. Louis County, Missouri, from which it was removed.

Defendant's Motion to Dismiss Plaintiff's Class Action Complaint [19] is reserved for ruling by that court.

CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 16th day of November, 2021.