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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE: POM WONDERFUL LLC)	Case No. ML 10-02199 DDP (RZx)
MARKETING AND SALES)	MDL Number 2199
PRACTICES LITIGATION)	
)	
)	ORDER CERTIFYING CLASS
)	
)	[Dkt. No. 75]
)	
)	
_____)	

Presently before the court is Plaintiffs' Motion for Class Certification. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following order.

I. Background

Defendant POM Wonderful LLC ("Pom") produces pomegranate juice products. (Master Consolidated Complaint ("MCC") at 4 ¶ 4.) Pom's advertisements claim that Pom juice products have a variety of health-related benefits, and that these health claims are supported by tens of millions of dollars in medical research. (MCC at 4 ¶¶ 5-10.) Plaintiffs allege that Pom's claims are false and/or

1 misleading. (See, e.g. MCC ¶ 11.) Plaintiffs therefore brought
2 this purported class action, alleging violations of 1) California's
3 False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17200, et
4 seq., 2) California's Unfair Competition Law ("UCL"), Cal. Civ.
5 Code § 17200, et seq., and 3) California's Consumer Legal Remedies
6 Act ("CLRA"), Cal. Civ. Code § 1750, et seq.. Plaintiffs now move
7 to certify a nationwide class comprised of all persons who, between
8 October 2005 and September 2010, purchased one or more Pom
9 Wonderful 100% juice products, excluding Pom, its subsidiaries,
10 parents, divisions, affiliates, officers, and directors.

11 **II. Legal Standard**

12 The party seeking class certification bears the burden of
13 showing that each of the four requirements of Rule 23(a) and at
14 least one of the requirements of Rule 23(b) are met. See Hanon v.
15 Dataprods. Corp., 976 F.2d 497, 508-09 (9th Cir. 1992). Rule 23(a)
16 sets forth four prerequisites for class certification:

17 (1) the class is so numerous that joinder of all members
18 is impracticable, (2) there are questions of law or fact
19 common to the class, (3) the claims or defenses of the
20 representative parties are typical of the claims or
defenses of the class, and (4) the representative parties
will fairly and adequately protect the interests of the
class.

21 Fed. R. Civ. P. 23(a); Hanon, 976 F.2d at 508. These four
22 requirements are often referred to as numerosity, commonality,
23 typicality, and adequacy. See Gen. Tel. Co. v. Falcon, 457 U.S.
24 147, 156 (1982). "In determining the propriety of a class action,
25 the question is not whether the plaintiff has stated a cause of
26 action or will prevail on the merits, but rather whether the
27 requirements of Rule 23 are met." Eisen v. Carlisle & Jacquelin,
28 417 U.S. 156, 178 (1974) (internal quotation and citations

1 omitted). This court, therefore, considers the merits of the
2 underlying claim to the extent that the merits overlap with the
3 Rule 23(a) requirements, but will not conduct a "mini-trial" or
4 determine at this stage whether Plaintiffs could actually prevail.
5 Ellis v. Costco Wholesale Corp., 657 F.3d 970, 981, 983 n.8 (9th
6 Cir. 2011).

7 **III. Discussion**

8 A. FRCP 23(b)(3)

9 Under Rule 23(b)(3), a plaintiff seeking to certify a class
10 must show that questions of law or fact common to the members of
11 the class "predominate over any questions affecting only
12 individual members and that a class action is superior to other
13 available methods for the fair and efficient adjudication of the
14 controversy." Fed. R. Civ. P. 23(b)(3).

15 1. Predominance of Law

16 Pom asserts that the proposed class cannot be certified
17 because California law cannot be applied to consumers nationwide.
18 (Opp. at 12.) Although Pom does not frame it as such, this
19 argument poses a challenge to Plaintiffs' showing under Rule
20 23(b)(3) that a common issue of law predominates. See Mazza v.
21 American Honda Motor Co., Inc., 666 F.3d 581, 589 (9th Cir. 2012).

22 Pom's contention that California's FAL, CLRA, and UCL can
23 never be applied to a nationwide class is based on the Ninth
24 Circuit's recent decision in Mazza. There, plaintiffs sought to
25 certify a nationwide class of consumers who purchased or leased
26 certain vehicles equipped with a particular type of braking
27 system. Mazza, 666 F.3d at 587. The Mazza proposed class members
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1 were spread throughout forty-four different states. Id. at 587
2 n.1.

3 In analyzing whether questions of law common to the class
4 predominated, the Ninth Circuit in Mazza applied California's
5 traditional choice of law analysis. Id. at 589-594. Under that
6 framework, once a plaintiff shows that California has significant
7 contact with each class member's claim, and that application of
8 California would therefore be constitutional, the burden shifts to
9 the defendant to show that some foreign law, rather than
10 California law, should apply. Id. At 589-90 (citing Wash. Mut.
11 Bank v. Superior Court, 24 Cal.4th 906, 921 (2001)).

12 California employs a three-step "governmental interest
13 analysis" to determine which state's (or states') law should
14 apply. Wash. Mut. Bank, 24 Cal.4th at 919. First, the court must
15 determine whether the relevant law of each of the jurisdictions is
16 different. Id. If the laws are identical, there is no conflict
17 of laws issue, and California law may be applied to nationwide or
18 multi-state class claims.

19 Where states' laws do differ, the court proceeds to the
20 second step of the analysis, and "examines each jurisdiction's
21 interest in the application of its own law under the circumstances
22 of the particular case to determine whether a true conflict
23 exists." Mazza, 666 F.3d at 590 (citing McCann v. Foster Wheeler
24 LLC, 48 Cal.4th 68, 81-82 (2010)). In Hurtado v. Superior Court,
25 11 Cal.3d 574 (1974), for example, a Mexican plaintiff sought
26 wrongful death damages from California defendants after the death
27 of a Mexican decedent in California. Mexican law capped the
28 recoverable damages at a fixed amount, while California law did

1 not. Id. at 579. In determining which law to apply, the
2 California Supreme Court conducted a thorough analysis of the
3 motivating concerns behind each respective law, concluding that
4 the Mexican law was intended to influence Mexican defendants'
5 conduct within Mexico. Id. at 583-84. The court then looked to
6 the facts of the case at bar and determined that, under the
7 particular circumstances of that case, application of Mexican law
8 to a California plaintiff in California would have no bearing
9 whatsoever on Mexico's goals, and that California law should
10 apply. Id. at 584, 586-87.

11 In some instances, of course, the particular facts of a case
12 will demonstrate that a true conflict of laws does exist. In such
13 circumstances, the court must proceed to the third step of the
14 governmental interests analysis and compare the strengths of the
15 relative interests at stake. Wash. Mut. Bank, 24 Cal.4th at 920.
16 The question is not which law is "better," but rather which
17 state's interests would be most impaired by application of another
18 state's law. Mazza, 666 F.3d at 593 (internal citation and
19 quotation omitted); Wash. Mut. Bank, 24 Cal.4th at 920. This
20 "comparative impairment" inquiry requires a detailed examination
21 of the states' relative commitment to their respective laws, as
22 well as the history and purpose of those laws. Wash. Mut. Bank,
23 24 Cal.4th at 920.

24 Mazza, upon which Pom so heavily relies, conducted a
25 governmental interests analysis, as required under California law.
26 The Mazza majority, relying upon defendant Honda's "exhaustively
27 detailed" briefing regarding material differences between
28 California's law and that of other jurisdictions, ultimately held

1 that, under the particular facts and circumstances of the case
2 before it, foreign jurisdictions' interests in applying their own
3 consumer protection laws outweighed California's interests.

4 Mazza, 666 F.3d at 594.

5 Citing Mazza, Pom here asserts that "California's choice-of-
6 law rules prohibit Plaintiffs from supplanting the laws of 49
7 other states with those of California," and that "California [l]aw
8 [c]annot [s]upply the [r]ule of [d]ecision." (Opp. at 12.) To
9 the extent that Pom argues that California law cannot be applied
10 to consumers nationwide as a matter of law, Pom is incorrect. See
11 Bruno v. Eckart Corp., 280 F.R.D. 540, 546-547 (C.D. Cal. 2012);
12 see also Allen v. Hylands, Inc., No. CV 12-1150 DMG, 2012 WL
13 1656750 at *2; Forcellati v. Hyland's, Inc., ___ F. Supp. 2d ___,
14 2012 WL 2513481 at * 2 (C.D. Cal. 2012). But see In re High-Tech
15 Employee Antitrust Litigation, 876 F. Supp. 2d 1103, 1125 n.13
16 (N.D. Cal. 2012) ("[T]he Ninth Circuit has foreclosed the
17 certification of nationwide classes under the UCL."). Mazza did
18 not vacate the district court's class certification as a matter of
19 law, but rather because defendant Honda met its burden to
20 demonstrate material differences in state law and show that other
21 states' interests outweighed California's.

22 Here, Plaintiffs have demonstrated that Pom is headquartered
23 and located solely in California, developed its marketing
24 strategies in California, and produced all of its pomegranate
25 juice products in California. (Mot. at 19-20.) Pom does not
26 dispute that Plaintiffs have met their burden to show that
27 California has sufficient contacts to the claims at issue to
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1 ensure that application of California law is constitutional. See
2 Mazza, 666 F.3d at 589-90.

3 The burden thus shifts to Pom to show that foreign law,
4 rather than California law, should apply. Wash. Mut. Bank, 24
5 Cal.4th at 921; Bruno, 280 F.R.D. at 546. Pom has not met its
6 burden. Perhaps relying upon the mistaken assumption that
7 California law cannot be applied to a nationwide class as a matter
8 of law, discussed above, Pom cites, in a footnote, to Exhibit 21
9 to the Declaration of Alicia D. Mew in Support of Pom's
10 Opposition. (Opp. at 13) Exhibit 21 consists of a chart of each
11 state's consumer protection laws. The chart summarizes each law's
12 provisions regarding such elements as scienter, reliance, and
13 timeliness, as well as remedies and defenses. Nowhere, however,
14 does Pom indicate which of these foreign laws differ from
15 California's laws.

16 Whether or not Pom's footnoted exhibit is sufficient to
17 satisfy Pom's burden with respect to the first step of
18 California's three-part governmental interest analysis, Pom makes
19 no attempt whatsoever to complete the remaining two steps. Even
20 assuming, for the sake of argument, that Pom has identified
21 specific differences between California and foreign law, nowhere
22 does Pom apply the facts of this case to those laws or attempt to
23 demonstrate, beyond citation to Mazza, that a true conflict
24 exists. Having failed to identify any true conflict, Pom
25 necessarily fails to carry its burden to demonstrate that the
26 interests of any foreign jurisdiction outweigh California's
27 interest in applying its own consumer protection laws to the facts
28 of this case. Absent such a showing, the court is satisfied that

1 California law applies here to a nationwide class, and that common
2 questions of law predominate.

3 2. Predominance of Fact

4 Pom argues that common questions of fact do not predominate
5 because 1) Pom disseminated several different advertisements, 2)
6 class members may or may not have relied on the various
7 advertisements, 3) class members bought Pom products for different
8 reasons, and 4) class members' claims require individualized
9 damages inquiries. (Opp. at 16-17, 19, 21.) The court disagrees.

10 The MCC alleges that Pom promoted its products as having
11 "special benefits relating to diseases and health-related
12 conditions," and that these claims were backed up by tens of
13 millions of dollars of medical research. (MCC at 4 ¶¶ 5, 9.) The
14 MCC further alleges that these claims are false and/or misleading.
15 (MCC ¶ 11.) As in other consumer fraud cases, the mere fact that
16 Pom used several different advertisements to convey its health
17 message is not dispositive. See, e.g., Johnson v. Gen. Mills,
18 Inc., 275 F.R.D. 282, 288-89 (C.D. Cal. 2011); Guido v. L'Oreal,
19 USA, Inc., __ F.R.D.__ , 2012 WL 1616912 at *8-9 (C.D. Cal. 2012);
20 cf. Mazza, 666 F.3d at 596 (explaining that consumers who were
21 "never exposed to an alleged false or misleading advertising . . .
22 campaign" cannot recover damages under California's UCL) (emphasis
23 added)(quotation and citation omitted). Plaintiffs here have
24 presented evidence that Pom marketed pomegranate juice as "the
25 magic elixir of our age," that "helps all sorts of things in the
26 body." Pom directed its marketing staff that Pom's "[m]ain
27 messaging should be about heart health or longevity," and that
28 "pomegranate juice[] promotes health and prolongs life." (Mot. at

1 4.) A false or misleading advertising campaign need not "consist
2 of a specifically-worded false statement repeated to each and
3 every [member] of the plaintiff class." In re First Alliance
4 Mortg. Co., 471 F.3d 977, 992. Indeed, "the class action
5 mechanism would be impotent if a defendant could escape much of
6 his potential liability for fraud by simply altering the wording
7 or format of his misrepresentations across the class of victims."
8 Id.

9 Pom disseminated its message via radio, billboards, and
10 national print media over a period of several years. (Mot. at 5.)
11 Plaintiff has provided evidence that Pom succeeded in getting its
12 message out, including Pom's co-owner's statement that "72% of
13 people who buy pomegranate juice buy it for the health reason . .
14 . ." (Mot. at 7 (emphasis added).) Even Defendant's survey
15 expert, Ravi Dhar, determined that a significant majority of
16 respondents, in excess of 90%, cited health reasons as a
17 motivating factor behind their purchase of Pom juice. (Dhar.
18 Decl., Ex.2 ¶ 49.) The questions whether Pom's representations
19 regarding the health benefits were material and deceived consumers
20 predominate over individual questions regarding specific
21 advertisements.

22 California's CLRA requires that each class member suffer an
23 actual injury. Stearns v. Ticketmaster Corp., 655 F.3d 1013, 1022
24 (9th Cir. 2011). Though Pom argues that this reliance inquiry
25 would necessarily present predominantly individualized issues, an
26 inference of reliance arises as to the entire class where, as
27 here, material misrepresentations have been made to the entire
28 class. Id.; In re Tobacco II Cases, 46 Cal. 4th 298, 328 (2009)

1 ("[A] plaintiff . . . is not required to necessarily plead and
2 prove individualized reliance on specific misrepresentations or
3 false statements where . . . those misrepresentations and false
4 statements were part of an extensive and long-term advertising
5 campaign.") Materiality, judged by an objective, "reasonable man"
6 standard, is subject to common proof. In re Apple, AT&T iPad
7 Unlimited Data Plan Litig., No. C-10-2553 RMW, 2012 WL 248248 *5
8 (N.D. Cal. June 26, 2012) (citing In re Steroid Hormone Prod.
9 Cases, 181 Cal. App. 4th 145, 157 (2010), United States v.
10 Watkins, 278 F.3d 961, 967-68 (9th Cir. 2002)).

11 Given the wide geographical and temporal scope over which Pom
12 disseminated its health claims and the apparent success of Pom's
13 marketing efforts, Plaintiffs need not present individualized
14 evidence of reliance at this stage, as reliance can be inferred.
15 See Johnson, 275 F.R.D. at 289; Chavez v. Blue Sky Natural
16 Beverage Co., 268 F.R.D. 365, 376 (N.D. Cal. 2010); c.f. Yamada v.
17 Nobel Biocare Holding AG, 275 F.R.D. 573, 578 (C.D. Cal. 2011)
18 ("[A]ssuming arguendo that a presumption of reliance is not
19 warranted and individualized questions do exist - common issues
20 predominate over any individualized reliance issues.") The fact
21 that individualized damage calculations may be necessary cannot
22 alone defeat class certification. Yokoyama v. Midland Nat. Life
23 Ins. Co., 594 F.3d 1087, 1089 (9th Cir. 2010) (citing Blackie v.
24 Barrack, 524 F.2d 891, 905 (9th Cir. 1975); Schulz v. QualxServ,
25 LLC, No. 09-CV-17-AJB, 2012 WL 1439066 at *3, 6-8 (S.D. Cal. Apr.
26 26, 2012). The court is therefore satisfied that common issues of
27 fact predominate for purposes of Rule 23(b)(3).

28 2. Superiority

1 Concerns for the efficient resolution of controversies and
2 conservation of judicial resources underlie Rule 23(b)(3)'s
3 superiority requirement, which is related to Rule 23(a)'s
4 commonality test. Wolin v. Jaguar Land Rover N. Am., LLC, 617
5 F.3d 1168, 1175-76 (9th Cir. 2010). Among the relevant factors
6 are the degree of desirability of concentrating litigation in a
7 "particular forum and the likely difficulties in managing a class
8 action." Fed. R. Civ. P. 23(b)(3). Here, as described above, the
9 extent of Pom's contacts with California and the lack of any
10 demonstrated material conflict with the law of other states weigh
11 in favor of concentrating litigation of class members' claims in
12 this forum. Any potential management difficulties are outweighed
13 by the efficiencies to be gained by litigating class claims, which
14 will almost certainly require detailed scientific and expert
15 evidence, all at once. See, e.g., Spears v. First Am.
16 eAppraiseIT, No. C-08-00868 RMW, 2012 WL 1438709 at *8 (N.D. Cal.
17 April 25, 2012) ("[T]he benefits of a class action seem greater
18 where the common issues are complex and require extensive
19 evidence.").

20 Class actions are also superior where no realistic
21 alternative exists. Gonzalez v. Millard Mall Servs., Inc., 281
22 F.R.D. 455, 468 (S.D. Cal. 2012) (citing Valentino v. Carter-
23 Wallace, Inc., 97 F.3d 1227. 1234 (9th Cir. 1996). Though Pom
24 points out that the veracity of its medical claims are currently
25 at issue in a matter before the Federal Trade Commission, Pom
26 provides no explanation how resolution of that proceeding will
27 provide class members here with any remedy. (Opp. at 24). Nor
28 does the possibility of (at least) dozens of individual actions

1 provide any realistic alternative. As often is the case in
2 consumer actions, injured consumers who purchased a relatively
3 inexpensive product are unlikely to pursue individual claims.
4 See, e.g. Johnson, 275 F.R.D. at 289. Therefore, “[w]here
5 recovery on an individual basis would be dwarfed by the cost of
6 litigating on an individual basis, this factor weighs in favor of
7 class certification.” Wolin, 617 F.3d at 1175. Such is the case
8 here. A class action is the superior method for adjudicating
9 class members’ claims against Pom.

10 B. F.R.C.P. 23(a)

11 The court is satisfied that the numerosity, commonality,
12 typicality, and adequacy requirements of Rule 23(a) are met here.
13 Pom does not dispute that the proposed class is sufficiently
14 numerous. Pom does, however, contest Plaintiffs’ showing with
15 respect to commonality and typicality, for the same reasons
16 underlying Pom’s position with respect to predominance, discussed
17 above. (Opp. at 24.)

18 The Ninth Circuit construes Rule 23(a)(2)’s commonality
19 requirement permissively. Hanlon v. Chrysler Corp., 150 F.3d
20 1011, 1019 (9th Cir. 1998). The commonality requirement is less
21 rigorous than the “companion requirements” of Rule 23(b)(3). Id.
22 “All questions of fact and law need not be common to satisfy the
23 [commonality] rule. The existence of shared legal issues with
24 divergent factual predicates is sufficient” Id. Indeed,
25 “even a single common question will do,” so long as that question
26 has the capacity to generate a common answer “apt to drive the
27 resolution of the litigation.” Wal-Mart Stores, Inc. v. Dukes,
28 131 S.Ct. 2541, 2551, 2556 (2011) (citations, internal quotations,

1 and alterations omitted). As discussed above, questions regarding
2 the truthfulness and materiality of Pom's health claims are shared
3 by all members of the class.

4 The typicality requirement is also a permissive standard.
5 Hanlon, 150 F.3d at 1019. "[R]epresentative claims are 'typical'
6 if they are reasonably co-extensive with those of absent class
7 members; they need not be substantially identical." Id. at 1020.
8 Here, the named Plaintiffs, like the absent members of the class,
9 relied upon Pom's representations and made a purchase they
10 otherwise would not have made. Their claims are at least
11 "reasonably co-extensive" with those of absent class members.

12 Lastly, Pom argues that five Class Representatives are
13 inadequate because they have personal or professional
14 relationships with certain class counsel. (Opp. at 25.) Pom does
15 not appear to contest adequacy with the respect to the remainder
16 of the named Plaintiffs and counsel. To determine whether named
17 plaintiffs or their counsel will adequately represent the class,
18 the court must determine whether the named plaintiffs and counsel
19 1) have any conflicts of interest with other class members and 2)
20 will vigorously prosecute the action on behalf of the class. Id.
21 The court sees no reason why the alleged relationships between
22 certain named plaintiffs and certain counsel would have any
23 bearing on these questions.

24 **IV. Conclusion**

25 For the reasons stated above, Plaintiffs' Motion for Class
26 Certification of a class comprised of all persons who purchased a
27 Pom Wonderful 100% juice product between October 2005 and
28 September 2010 is GRANTED. Plaintiffs Alexander, Brayall,

1 Chapman, Cosmas, Flaherty, Friedman, Giles, Henn, Holter, F.
2 Pirolozzi, and Wilkinson are appointed as class representatives.
3 Kirtland & Packard, LLP is appointed as class counsel.

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5 IT IS SO ORDERED.

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8 Dated: September 28, 2012



DEAN D. PREGERSON
United States District Judge

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