

Montera v. Premier Nutrition Corporation: A Case Study in Aggregate Statutory Damages

Publications

August 15, 2022

By: Alexander M. Smith, Jenna Conwisar

New York’s two principal consumer fraud statutes, N.Y. G.B.L. §§ 349 and 350, authorize statutory damages of \$50 or \$500 per violation respectively. In false advertising cases involving low-cost consumer products, these statutes pose the risk that defendants may face hundreds of millions—if not billions—of dollars in exposure if found liable at trial. And while N.Y. C.P.L.R. § 901(b) seeks to avert this result by prohibiting courts from awarding statutory damages in class actions, the Supreme Court has held that this is a “procedural” rule that does not preclude federal courts sitting in diversity from awarding statutory damages in class actions. *See generally Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2009). Since *Shady Grove*, plaintiffs have routinely used the threat of statutory damages under Sections 349 and 350 to bludgeon defendants into settling false advertising class actions before trial.

That threat materialized in July 2022, however, when a jury in the Northern District of California returned a verdict for the plaintiffs in a certified class action, *Montera v. Premier Nutrition Corporation*. Although the jury determined that the class had suffered less than \$1.5 million in actual damages, the plaintiff nonetheless asserted that the class was entitled to over \$91 million in statutory damages. In a result that will inevitably disappoint both plaintiffs and defendants, the *Montera* court awarded the class only \$8.312 million in statutory damages—less than 10% of what the plaintiffs sought, but over five times the amount of actual damages.

In a critical victory for defendants, the court reduced the aggregate amount of statutory damages based on its finding that “the calculated amount of statutory damages . . . is ‘so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable.’” ECF No. 293 (Damages Order) at 2 (quoting *St. Louis I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63, 66–67 (1919)). In so holding, the court rejected the plaintiff’s assertions that aggregate statutory damages do not present due process concerns and that courts have no discretion to reduce an aggregate award of statutory damages. But other aspects of the court’s ruling—including its decision to calculate statutory damages on a per-product basis and its decision to award statutory damages well in excess of actual damages—illustrate that defendants continue to face a very real threat from aggregate statutory damages.

Background

Montera is one of many cases in the Northern District of California challenging the advertising of a glucosamine supplement called “Joint Juice.” Although Premier claimed that Joint Juice was effective at reducing joint pain, the plaintiff alleged that Joint Juice does not relieve joint pain and is worthless. After certifying a class of California consumers in one of the related actions in 2016, the court certified a class of New York consumers in 2019—raising the possibility that these consumers would obtain aggregate statutory damages under Sections 349 and 350 if they prevailed at trial.

Prior to trial, the parties vigorously disputed how the court should address the plaintiff’s claims for statutory damages. The plaintiff argued that statutory damages should be awarded on a per-transaction basis (rather than a per-customer basis), that the class should receive separate awards of statutory damages under Sections 349 and 350, and that Premier should not be allowed to reference the possibility of statutory or enhanced damages to the jury. Premier, in turn, argued that statutory damages should be awarded on a per-customer basis (if at all) and that the class should receive only—at most—an award of \$50 per customer under Section 349. Premier argued that these limitations were necessary to vindicate the intent of the New York legislature to forbid statutory damages in class actions and to avoid an unconstitutionally excessive award of statutory damages. Premier also argued that the court should allow it to inform the jury of the possibility of statutory damages, as it had a Seventh Amendment right to have the jury decide whether to award enhanced damages.

The court resolved both disputes in the plaintiff’s favor. It prohibited Premier from referencing statutory damages to the jury, and it rejected Premier’s argument that “the Seventh Amendment requires a jury determination as to statutory damages.” ECF No. 215, at 6. Because Sections 349 and 350 prescribe “specific statutory damages amounts, with no room for variation,” the court concluded that the amount of statutory damages presented a purely “legal question once the jury has determined the number of units sold and the amount of actual damages.” *Id.* And while the court left open the possibility that a due process inquiry “may be needed in cases in which the amount of statutory damages is immense in comparison to the actual damages,” the court nonetheless found that “the proper time to consider due process implications of the award of statutory damages is at the time of the . . . award.” *Id.* at 5 n.1. The court also agreed with the plaintiff that Sections 349 and 350 authorize statutory damages on a per-purchase basis, as opposed to a per-person basis. *See* ECF No. 180, at 10–14. The court acknowledged that there were cases supporting both sides’ reading of the statutes and admitted that this question “does not have a clear answer.” *Id.* at 14. But the court nonetheless found that the plaintiff’s position was “more compelling” and agreed that a “reading of [S]ections 349 and 350 that recognizes that a plaintiff experiences a violation each time the product is purchased is consistent with the text and intent of the statute.” *Id.*

After a lengthy jury trial, the jury found in the plaintiff’s favor and concluded that the labeling of Joint Juice was false and misleading. The jury then determined that the class had suffered

\$1,488,078.49 based on a total of 166,249 units of Joint Juice sold during the putative class period.

The Court's Statutory Damages Award

Following the jury's verdict, the plaintiff requested that the court award the class over \$91 million in statutory damages—including \$8,312,450 in statutory damages under Section 349 and \$83,124,500 in statutory damages under Section 350. *See* ECF No. 273. In requesting this award, the plaintiff argued that Sections 349 and 350 make an award of statutory damages mandatory if they exceed the plaintiff's actual damages (which they indisputably did here) and that an award of statutory damages did not offend the Due Process Clause.

Relying heavily on *Bateman v. American Multi-Cinema, Inc.*, 623 F.3d 708 (9th Cir. 2013), the plaintiff argued that, in light of the New York Legislature's judgment that an award of \$50 or \$500 was an appropriate amount of compensation, any "consideration of proportionality to actual harm [is] improper." ECF No. 273, at 3. And even if the Due Process Clause requires a court to scrutinize the amount of a statutory damages award, the plaintiff argued that this inquiry is limited to "whether the penalty prescribed is so severe and oppressive as to be wholly disproportionate to the offense and obviously unreasonable." *Id.* at 4 (quoting *Williams*, 251 U.S. at 66–67) (internal quotation marks omitted). In contrast, the plaintiff asserted, "whether statutory damages are proportional to actual damages does not matter to this analysis." *Id.* In other words, "even where statutory damages are more than actual damages and sufficient enough to deter misconduct, due process is not violated where the aggregate statutory award simply reflects the number of violations multiplied by the statutory amount intended by Congress or the legislature." *Id.* at *5. The plaintiff asserted that this result was consistent not only with *Williams* and *Bateman*, but with two recent Telephone Consumer Protection Act (TCPA) cases in which district courts awarded nine-figure aggregate statutory damages to a certified class and refused to reduce the awards on due process grounds. *See id.* at 5–6.

Premier responded that it was improper to award over \$90 million in statutory damages when the jury found that the class had suffered less than \$1.5 million in actual damages. Leaving aside the fact that awarding damages under both Section 349 and Section 350 would amount to an impermissible double recovery, Premier argued—relying heavily on *Williams*—that the aggregate statutory damages award violated the due process clause because it was wholly disproportional to the actual harm suffered by the class. It also argued that statutory damages of over \$90 million were "so disproportionately large that they amount to de facto punitive damages, but awarded as a matter of strict liability, rather than for the egregious conduct typically necessary to support a punitive damages award." ECF No. 280, at 1 (citation and internal quotation marks omitted). And Premier argued, as it had before, that these statutory damages were not consistent with the intent of the New York legislature—which rendered this case distinct from the TCPA cases in which courts had declined to reduce aggregate statutory damages because Congress knew that TCPA cases would be

brought as class actions. Premier suggested that the statutory damages should be limited to \$50 per class member, which it maintained was both the amount authorized by Section 349 and consistent with due process principles.

On August 12, the court largely sided with Premier and awarded statutory damages of only \$8,312,450—exactly \$50 per unit of Joint Juice sold. The court acknowledged that there was “little guidance” about how to apply *Williams* in cases seeking an award of statutory damages. Damages Order at 6. But the court found that there was “no question” that “a district court may evaluate whether the statutory damages in a case are ‘wholly disproportioned to the offense and obviously unreasonable,’” and it described this inquiry as “the crux for whether a reduction of statutory damages is appropriate.” *Id.* And while the court acknowledged that *Shady Grove* had held that New York’s prohibition on awarding statutory damages in class actions does not apply to federal courts sitting in diversity, it nonetheless found that the New York legislature’s “explicit concern about the punitive nature of aggregate statutory damages differentiates this case from others involving high awards of statutory damages”—such as a recent TCPA case, *Wakefield v. ViSalus, Inc.*, in which the court had awarded over \$900 million in statutory damages. *Id.* at 8.

The court also found that the New York legislature’s view that aggregate statutory damages create “immense punitive consequences” weighed in favor of evaluating an aggregate statutory damages award using the same framework that the Supreme Court had set out to evaluate the constitutionality of a punitive damages award. *See* Damages Order at 9–10. Under that framework, the court concluded that an aggregate statutory damages award of over \$91 million was “grossly excessive.” *Id.* at 10. In so holding, the court noted that there was no evidence that “Joint Juice caused physical harm to any consumer,” emphasized that “the ratio of the statutory damages is immense as compared to the actual damages,” and found that awarding over \$91 million in statutory damages “merely depending on the selection of a federal forum rings of arbitrariness.” *Id.* at 10–11. In light of these factors, the court reduced the statutory damages award to \$8,312,450, which was equivalent to the \$50 per unit permitted Section 349 and “approximately 5.59 times greater than the amount of actual damages.” *Id.* at 11–12.

Implications of the Court’s Decision

Both the plaintiff and Premier have indicated that they intend to appeal, and it is not clear whether the Ninth Circuit will agree with the court’s decision to reduce the statutory damages award. Nonetheless, the decision has significant implications for both plaintiffs and defendants in consumer class actions—if for no other reason than the scarcity of decisions awarding aggregate statutory damages under Sections 349 and 350.

On the one hand, the court’s reduction of statutory damages weakens the threat of astronomical statutory damages and reduces the leverage that Sections 349 and 350 give to plaintiffs seeking to exact hefty settlements. Even if damages of \$50 per unit sold may face defendants with significant liability in consumer class actions involving low-cost goods like Joint Juice, they do not pose the

same existential threat as damages of \$500 per unit sold—or \$550 per unit sold, as the plaintiff requested here—with which defendants are frequently confronted. And by reducing the damages award on due process grounds, the court made clear—despite the plaintiff’s insistence to the contrary—that the award of aggregate statutory damages under Sections 349 and 350 is not automatic, as many plaintiffs have claimed.

But while an award of \$50 per violation may be significantly more palatable for defendants than \$500 or \$550 per violation, few defendants will relish the possibility that a class member could receive \$50 per violation in cases involving low-cost household staples. That is particularly true in cases where the plaintiffs seek “price premium” damages amounting to a fraction of the product’s cost, as opposed to seeking the product’s entire purchase price (as the plaintiff did here). Perhaps most importantly, by declining to evaluate the propriety of an aggregate statutory damages award until *after* the jury has rendered its verdict, the court’s approach still faces defendants with the potential of catastrophic liability, as there remains a possibility that a court may not reduce the statutory damages at all or that it may apply only a modest reduction. Although the decision is hardly an unmitigated victory for class action plaintiffs, it is equally unlikely to embolden defendants to try Section 349 and 350 claims in lieu of settling them.

Related Attorneys



Alexander M. Smith

Partner

asmith@jenner.com

+1 213 239 2262



Jenna Conwisar

Associate

jconwisar@jenner.com

+1 213 239 2210

Related Capabilities

Consumer Brands

© 2026 Jenner & Block LLP. Attorney Advertising. Jenner & Block LLP is an Illinois Limited Liability Partnership including professional corporations. This publication, presentation, or event is not intended to provide legal advice but to provide information on legal matters and/or firm news of interest to our clients and colleagues. Readers or attendees should seek specific legal advice before taking any action with respect to matters mentioned in this publication or at this event. The attorney responsible for this communication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome. Jenner & Block London LLP, an affiliate of Jenner & Block LLP, is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with SRA number 615729. Information regarding the data we collect and the rights you have over your data can be found in our Privacy Notice. For further inquiries, please contact dataprotection@jenner.com.

Stay Informed

