

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Robert Vickery v. SD Bullion, Inc., Smart Silver Stacker, Silver
Dragons, Yankee Stacking, Silver Seeker, and Does 1 through 10

Vickery · No. 3:25-cv-1915-JES-DDL · Decided January 20, 2026

SUMMARY

The United States District Court for the Southern District of California partially granted and partially denied a motion to dismiss claims arising from SD Bullion’s alleged “Lowest Price. Period.” advertising for precious-metal coins. The court dismissed the plaintiff’s Lanham Act claims for lack of standing, declined to resolve nationwide-class choice-of-law issues at the pleading stage, and allowed the California UCL and FAL claims to proceed. The court dismissed the civil-conspiracy claim, struck references to monetary damages, and granted leave to amend certain claims.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	James E. Simmons Jr.
JURISDICTION	United States District Court for the Southern District of California
DECIDED	January 20, 2026
DOCKET	3:25-cv-1915-JES-DDL
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the complaint and moved under Rule 12(f) to strike the prayer for monetary damages. Plaintiff separately moved for leave to amend.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and construes them in the plaintiff’s favor, but need not credit legal conclusions. The complaint must contain sufficient factual matter to state a plausible claim for relief. False-advertising claims sounding in fraud must also satisfy Rule 9(b)’s particularity requirement. A Rule 12(f) motion to strike is committed to the district court’s discretion and is generally disfavored.
PRECEDENTIAL VALUE	unpublished district court order; nonprecedential

PARTIES

Robert Vickery v. SD Bullion, Inc., Smart Silver Stacker, Silver Dragons, Yankee Stacking, Silver Seeker, Does 1 through 10

TOPICS

motions to dismiss class actions deceptive trade practices consumer protection civil procedure

PRACTICE AREAS

civil procedure consumer protection false advertising class actions commercial litigation

QUESTIONS PRESENTED

1. Whether a consumer may pursue Lanham Act false-advertising and contributory false-advertising claims.
2. Whether the court should determine at the pleading stage that the plaintiff cannot represent a nationwide class on California-law claims.
3. Whether differences among the precious-metal coins defeated the commonality or similarity allegations at the motion-to-dismiss stage.
4. Whether the complaint adequately pleaded California UCL and FAL false-advertising claims under Rules 12(b)(6) and 9(b).
5. Whether the complaint adequately pleaded a civil-conspiracy claim under California law.
6. Whether references to monetary damages should be stricken from the UCL and FAL claims.

HOLDINGS

1. A consumer who purchased a disappointing product may have Article III injury but cannot invoke the Lanham Act's protection absent a commercial injury of the type protected by the statute. Plaintiff therefore lacked statutory standing to pursue his Lanham Act false-advertising and contributory false-advertising claims.
2. The court declined to decide at the motion-to-dismiss stage whether Plaintiff could represent a nationwide class asserting California-law claims because the complaint and record did not sufficiently establish where the alleged harms were felt or the relevant differences among state laws.
3. The allegations that the challenged products were precious-metal coins and that each was subject to the same "Lowest Price. Period." representation were sufficient at the pleading stage to support the alleged class claims despite differences in coin type and weight.
4. The complaint plausibly stated UCL and FAL false-advertising claims and satisfied Rule 9(b) by alleging that SD Bullion advertised "Lowest Price. Period.," that the statement was objectively false, that the statement induced Plaintiff's purchase, and the who, what, when, where, why, and how of the alleged misconduct.
5. The complaint failed to state a civil-conspiracy claim because allegations that defendants knew or should have known the price statement was false and agreed by email to conspire were conclusory and

did not plausibly show a mutual understanding to accomplish an unlawful plan.

6. References to monetary damages were properly stricken because the UCL and FAL provide restitution and equitable relief, not damages.

KEY QUOTATIONS

“A consumer who is hoodwinked into purchasing a disappointing product may well have an injury-in-fact cognizable under Article III, but he cannot invoke the protection of the Lanham Act—a conclusion reached by every Circuit to consider the question.” (at 6)

“For that reason, a determination is better suited for the class certification stage.” (at 7)

“Without some facts plausibly showing that Defendants had a mutual understanding to commit an unlawful act, Plaintiff has not overcome the more plausible presumption that Defendants were merely agreeing on the lawful goal of advertising.” (at 11)

“Damages are not available under the False Advertising and Unfair Competition Laws because restitution is the only available remedy under those statutes.” (at 11-12)

FACTUAL BACKGROUND

Robert Vickery purchased a gold coin from SD Bullion's website for \$1,123.95 after encountering the representation that SD Bullion offered "The Lowest Price. Period." He alleged that the coin cost approximately \$102 more than comparable coins available from other retailers and that he would not have purchased it had he known the representation was false. He also alleged that YouTube and social-media defendants promoted SD Bullion's merchandise and participated in the allegedly misleading advertising.

PROCEDURAL HISTORY

Plaintiff filed suit alleging Lanham Act false advertising and contributory false advertising, California UCL and FAL violations, and civil conspiracy arising from the purchase of a precious-metal coin. Defendant moved to dismiss and strike portions of the complaint. After oral argument, the court granted the motion in part, denied it in part, struck references to monetary damages, dismissed the Lanham Act and civil-conspiracy claims, and granted leave to amend the claims not dismissed with prejudice. Plaintiff's motion for leave to amend was denied as moot.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678-80 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556, 570 (2007)
- Mashiri v. Epsten Grinnell & Howell, 845 F.3d 984, 988 (9th Cir.)
- Wilson v. Hewlett-Packard Co., 668 F.3d 1136, 1140 (9th Cir.)

- Daniels-Hall v. Nat'l Educ. Ass'n, 629 F.3d 992, 998 (9th Cir.)
- Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir.)
- Newcal Industries, Inc. v. Ikon Office Solution, 513 F.3d 1038, 1043 n.2 (9th Cir.)
- Chappel v. Lab. Corp. of America, 232 F.3d 719, 725-26 (9th Cir.)
- Jackson v. Carey, 353 F.3d 750, 758 (9th Cir.)
- Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc., 368 F.3d 1053, 1061 (9th Cir.)
- Saul v. United States, 928 F.2d 829, 843 (9th Cir.)
- Kearns v. Ford Motor Co., 567 F.3d 1120, 1124 (9th Cir.)
- Bly–Magee v. California, 236 F.3d 1014, 1019 (9th Cir.)
- Sidney-Vinstein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir.)
- Diamond S.J. Enter., Inc. v. City of S.J., 395 F. Supp. 3d 1202, 1216 (N.D. Cal. 2019), *aff'd*, 100 F.4th 1059 (9th Cir. 2024)
- Platte Anchor Bolt, Inc. v. IHI, Inc., 352 F. Supp. 2d 1048, 1057 (N.D. Cal.)
- POM Wonderful LLC v. Coca-Cola Co., 573 U.S. 102, 108 (2014)
- Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 132, 140 (2014)
- Krantz v. Old Copper Co., Inc., 794 F. Supp. 3d 724, 748-50 (C.D. Cal. 2025)
- Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496 (1941)
- Bias v. Wells Fargo & Co., 942 F. Supp. 2d 915, 929 (N.D. Cal.)
- Cordes v. Boulder Brands USA, Inc., No. CV 18-6534 PSG (JCx), 2019 WL 1002513, at *2 (C.D. Cal. Jan. 30, 2019)
- Wilson v. Frito-Lay N. Am., Inc., 961 F. Supp. 2d 1134, 1141 (N.D. Cal. 2013)
- Kasky v. Nike, Inc., 27 Cal. 4th 939, 950 (2002)
- Hinojos v. Kohl's Corp., 718 F.3d 1098, 1103 (9th Cir.)
- Hadley v. Kellogg Sales Co., 243 F. Supp. 3d 1074, 1092 (N.D. Cal.)
- In re Tobacco II Cases, 46 Cal. 4th 298, 326 (2009)
- Moore v. Mars Petcare US, Inc., 966 F.3d 1007, 1021 (9th Cir.)
- Friedman v. AARP, Inc., 855 F.3d 1047, 1055 (9th Cir.)
- Semegen v. Weidner, 780 F.2d 727, 731 (9th Cir. 1985)
- Allied Equip. Corp. v. Litton Saudi Arabia Ltd., 7 Cal. 4th 503, 510-11 (1994)
- Kidron v. Movie Acquisition Corp., 40 Cal. App. 4th 1571, 1581 (1995)
- AREI II Cases, 216 Cal. App. 4th 1004, 1022 (2013)
- Colgan v. Leatherman Tool Grp., Inc., 135 Cal. App. 4th 663, 695 (2006)
- Walsh v. Nevada Dep't of Human Resources, 471 F.3d 1033, 1037 (9th Cir.)
- Stichting Pensioenfonds ABP v. Countrywide Fin. Corp., 802 F. Supp. 2d 1125, 1132 (C.D. Cal.)
- Lee v. Summit Tr. Servs., LLC, No. CV 19-3814-DMG (Ex), 2020 WL 1249971, at *3 (C.D. Cal. Jan. 22, 2020)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 ROBERT VICKERY, Case No.: 3:25-cv-1915-JES-DDL 12 Plaintiff,
ORDER: 13 v. (1) GRANTING IN PART AND 14 SD BULLION, INC.. SMART SILVER
DENYING PART MOTION TO STACKER, SILVER DRAGONS, 15 DISMISS; and YANKEE
STACKING, SILVER 16 SEEKER, and DOES 1 through 10, (2) DENYING MOTION FOR
LEAVE 17 Defendants.

TO AMEND AS MOOT 18 [ECF Nos. 6, 9] 19 20 21 22 Plaintiff Robert Vickery (“Plaintiff”) brings this action against Defendants SD 23 Bullion, Inc., (“Defendant”); the YouTube channels Smart Silver Stacker, Silver Dragons, 24 Yankee Stacking, Silver Seeker (collectively, “YouTube Defendants”); and 10 Doe 25 Defendants alleging various causes of action arising from his purchase of precious metal 26 coins from Defendant’s website.

ECF No. 1 (“Compl.”). Defendant moves to dismiss 27 Plaintiff’s complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 6. 28 Plaintiff filed an opposition to the motion to dismiss. ECF No. 8. Plaintiff also filed a 1 motion to amend or correct his complaint. ECF No. 9.

On November 12, 2025, the Court 2 heard oral argument on the motion. ECF No. 10. For the reasons stated herein, Defendant’s 3 motion is GRANTED in part and DENIED in part, and Plaintiff is given leave to amend. 4 I. BACKGROUND 5 On May 25, 2025, Plaintiff purchased a gold coin from Defendant through its 6 website for the price of \$1,123.95. Compl. ¶ 14. Plaintiff states that he relied upon 7 Defendant’s representation through online marketing that its coins were “The Lowest 8 Price.

Period.” in making his purchase. Id. ¶ 2. Plaintiff alleges that Defendant advertises 9 its services and products with the phrase “SD BULLION The Lowest Price. Period.” in all 10 of its promotional materials and online advertisements. Id. ¶ 12.

However, Plaintiff alleges 11 that he later learned that the coins sold by SD Bullion were \$102 more expensive per coin 12 than coins available through other retailers that day. Id. ¶ 17. Plaintiff alleges that 13 Defendant knew or should have known that its “Lowest Price” advertisement was false, 14 and that he would not have purchased the coins had he known the statement was false.

Id. 15 ¶¶ 19-20. 16 Plaintiff alleges that Defendant is a premium dealer that benefits from the “halo 17 effect” conferred by others who promote its products on their platforms. Id. ¶ 15. YouTube 18 Defendants are YouTube channels and social media platforms. Id. ¶¶ 4-8. Plaintiff alleges 19 that the YouTube Defendants advertised SD Bullion’s merchandise and false or misleading 20 statements regarding price, and that they knew or should have known of the statement’s 21 falsity.

Id. ¶¶ 21-25. Plaintiff brings causes of action for violations of (1) False Advertising 22 pursuant to 15 U.S.C. § 1125 (“Lanham Act”); (2) Contributory False Advertising pursuant 23 to the Lanham

Act; (3) California Unfair Competition Law (“UCL”) pursuant to Business 24 & Profession Code § 17200; (4) California False Advertising Law (“FAL”) pursuant to 25 Business & Profession Code § 17500; and (5) Civil Conspiracy.

Id. ¶¶ 33-77. 26 // 27 // 28 1 II. LEGAL STANDARD 2 A. Rule 12(b)(6) 3 A motion to dismiss for failure to state a claim should be granted when the 4 allegations do not “state a claim to relief that is plausible on its face.” *Aschroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). 6 “A claim has facial plausibility when the plaintiff pleads factual content that allows the 7 court to draw the reasonable inference that the defendant is liable for the misconduct 8 alleged.” Id. at 678 (citing *Twombly*, 550 U.S. at 556). “The plausibility standard... asks 9 for more than a sheer possibility that a defendant has acted unlawfully.” *Mashiri v. Epsten* 10 Grinnell & Howell, 845 F.3d 984, 988 (9th Cir.

2017) (internal quotations omitted). 11 When evaluating the sufficiency of a complaint's factual allegations, the court must 12 accept as true all well-pleaded material facts alleged in the complaint and construe them in 13 the light most favorable to the non-moving party. *Wilson v. Hewlett-Packard Co.*, 668 F.3d 14 1136, 1140 (9th Cir. 2012); see *Daniels-Hall v. Nat'l Educ.*

Ass'n, 629 F.3d 992, 998 (9th 15 Cir. 2010). Allegations in a complaint “may not simply recite the elements of a cause of 16 action, but must contain sufficient allegations of underlying facts to give fair notice and to 17 enable the opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 18 (9th Cir. 2011). While the court must draw all reasonable inferences from the factual 19 allegations in favor of the plaintiff, *Newcal Industries, Inc. v. Ikon Office Solution*, 513 20 F.3d 1038, 1043 n.2 (9th Cir.

2008), the court need not credit legal conclusions that are 21 couched as factual allegations, *Iqbal*, 556 U.S. at 678-79. 22 When a court dismisses a complaint under FRCP 12(b)(6), it must then decide 23 whether to grant leave to amend. FRCP 15(a) provides that a district court should “freely 24 give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a).

A district court has 25 discretion to deny leave to amend when a proposed amendment would be futile. *Chappel* 26 v. *Lab. Corp. of America*, 232 F.3d 719, 725-26 (9th Cir. 2000). Dismissal without leave 27 to amend is appropriate only when the Court is satisfied that the deficiencies of the 28 complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 1 (9th Cir.

2003). In other words, if allowing a party to amend its pleading would be futile, 2 district courts properly decline to grant leave to amend. *Thinket Ink Info. Res., Inc. v. Sun 3 Microsystems, Inc.*, 368 F.3d 1053, 1061 (9th Cir. 2004) (citing *Saul v. United States*, 928 F.2d 4 829, 843 (9th Cir. 1991)). 5 B. Rule 9(b) 6 Plaintiffs bringing UCL false advertising claims in federal court are subject to the 7 heightened pleading requirements of Federal Rule of Civil Procedure 9(b), which mandates 8

that a plaintiff alleging fraud must “state with particularity the circumstances constituting 9 fraud.” Fed.

R. Civ. P. 9(b); See also *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009). Such allegations must set forth the “who, what, when, where, and how” of the 11 alleged misconduct. *Id.* The allegations must be “specific enough to give defendants notice 12 of the particular misconduct so that they can defend against the charge and not just deny 13 that they have done anything wrong.” *Id.* (quoting *Bly–Magee v. California*, 236 F.3d 1014, 14 1019 (9th Cir.

2001)) (internal quotation marks omitted). 15 C. Rule 12(f) 16 Rule 12(f) permits the court to strike from a pleading “any redundant, immaterial, 17 impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “[T]he function of a 12(f) motion 18 to strike is to avoid the expenditure of time and money that must arise from litigating 19 spurious issues by dispensing with those issues prior to trial[.]” *Sidney-Vinstein v. A.H.*

20 *Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983). “Motions to strike are generally disfavored 21 and should not be granted unless the matter to be stricken clearly could have no possible 22 bearing on the subject of the litigation.” *Diamond S.J. Enter., Inc. v. City of S.J.*, 395 F. 23 Supp. 3d 1202, 1216 (N.D. Cal. 2019), *aff’d*, 100 F.4th 1059 (9th Cir. 2024) (citation 24 omitted). “With a motion to strike, just as with a motion to dismiss, the court should view 25 the pleading in the light most favorable to the nonmoving party.” *Platte Anchor Bolt, Inc. 26 v. IHI, Inc.*, 352 F. Supp. 2d 1048, 1057 (N.D.

Cal. 2004) (citation omitted). “Ultimately, 27 whether to grant a motion to strike lies within the sound discretion of the district court.” 28 *Diamond S.J. Enter., Inc.*, 395 F. Supp. 3d at 1216 (citation omitted). 1 III. DISCUSSION 2 Defendant argues that Plaintiff’s class allegations are insufficient to survive a motion 3 to dismiss because (1) Plaintiff lacks standing to represent a class under the Lanham Act 4 in counts one and two; (2) Plaintiff may not represent a nationwide class for his state claims 5 arising under California law; (3) Plaintiff has not satisfied the commonality requirement of 6 Federal Rule of Civil Procedure 23(b)(3); (4) Plaintiff fails to state a cause of action under 7 the UCL; (5) Plaintiff fails to state a cause of action under the FAL; and (6) Plaintiff fails 8 to state a cause of action for Civil Conspiracy.

ECF No. 6-1 (“Mot.”) at 7-12. The Court 9 analyzes each of Defendant’s arguments below. 10 A. Standing 11 Defendant argues that, as a consumer, Plaintiff lacks standing to sue under the 12 Lanham Act. Mot. at 9-10. The Court agrees. 13 The “Lanham Act’s purpose [is] protecting persons engaged in commerce within the 14 control of Congress against unfair competition.” *POM Wonderful LLC v. Coca-Cola Co.*, 15 573 U.S. 102, 108 (2014) (cleaned up).

In *Lexmark International*, cited by both Defendant 16 and Plaintiff for the standard for Lanham Act violations, the Supreme Court held that the 17 Lanham Act protects commercial injuries

proximately caused by competitor 18 misrepresentations. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 19 140 (2014). “A consumer who is hoodwinked into purchasing a disappointing product may 20 well have an injury-in-fact cognizable under Article III, but he cannot invoke the protection 21 of the Lanham Act—a conclusion reached by every Circuit to consider the question.” *Id.* 22 at 132.

23 Here, Plaintiff is a non-commercial real person. Compl. ¶ 2. Plaintiff seems to 24 suggest that the Court should interpret the Lanham Act to include individuals based on its 25 plain language, without citing any caselaw. ECF No. 7 at 4. This is not persuasive, given 26 the Supreme Court’s clear statement to the contrary. See *Lexmark Int’l*, 572 U.S. at 140.

27 Thus, Defendant’s motion to dismiss Plaintiff’s Lanham Act claims in counts one and two 28 is GRANTED without leave to amend. 1 B. Representation of Nationwide Class 2 A class action plaintiff may only represent a putative class consisting of members 3 who share common questions of law with the plaintiff. Fed. R. Civ. P. 23(b)(3). Whether 4 a plaintiff may represent a nationwide class for state law claims is a choice-of-law question, 5 which courts will only decide prior to the class certification stage if it is evident from the 6 complaint that “any questions of law are clear and not in dispute, and that under no set of 7 circumstances could the claim or defense succeed.” *Krantz v. Old Copper Co., Inc.*, 794 F. 8 Supp. 3d 724, 748 (C.D.

Cal. 2025). District Courts sitting in diversity follow forum state 9 choice-of-law rules as a form of substantive law. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 10 U.S. 487, 496 (1941). While Plaintiffs bear the burden of showing that their choice of law 11 is proper to certify a class under California law, Defendants bear the burden at the motion 12 to dismiss stage to show that Plaintiffs have not stated a claim.

See *Bias v. Wells Fargo & 13 Co.*, 942 F. Supp. 2d 915, 929 (N.D. Cal. 2013) (“Ultimately, Plaintiffs will bear the burden 14 of establishing whether issues relating to choice of law can survive the test 15 for class certification.”); Fed. R. Civ. P. 12(b)(6). Courts may decline to make choice-of- 16 law determinations prior to a motion for class certification when the record as to where the 17 harms are felt or the difference in law between states is underdeveloped by the parties.

See, 18 e.g., *Bias*, 942 F. Supp. 2d at 929 (declining to make choice-of-law determination prior to 19 class certification motion due to lack of record on where harms were felt); *Krantz*, 794 F. 20 Supp. 3d at 749-50 (declining to make choice-of-law determination in motion to strike 21 contract claims due to lack of record on differences in law). 22 Here, the record is underdeveloped as to where the harms are felt or the difference 23 in law between states, making it difficult for the Court to decide whether Plaintiff may 24 represent a nationwide class.

This decision should be made based on a more complete record than currently exists. Whether Plaintiff's UCL and FAL claims are ultimately tied to California cannot be discerned without the benefit of discovery.

For that reason, a determination is better suited for the class certification stage. For the foregoing reasons, the Court DECLINES to hold, at this juncture, that Plaintiff is unable to represent a nationwide class. This issue is better suited for determination at the class certification stage, and Defendant's motion to dismiss on this ground is hereby DENIED.

C. Commonality for Class Allegations Defendant argues that Plaintiff's class allegations cannot plausibly meet the commonality requirement for a class action because (1) the precious metal coins Defendant sells are very different from each other and (2) Plaintiffs may not represent a nationwide class of plaintiffs for claims arising under California law.

Mot. at 8-9. The Court has previously addressed Defendant's second argument regarding Plaintiff's ability to represent a nationwide class and will only address Defendant's first argument below. 1. The differences between coins "The prevailing view in the Ninth Circuit is that class action plaintiffs can bring claims for products they did not purchase as long as the products and alleged misrepresentations are substantially similar." *Cordes v. Boulder Brands USA, Inc.*, No. CV 16-18-6534 PSG (JCx), 2019 WL 1002513, at *2 (C.D.

Cal. Jan. 30, 2019) (cleaned up) (quotations and citations omitted). "Factors that other courts have considered include whether the challenged products are of the same kind, whether they are comprised of largely the same ingredients, and whether each of the challenged products bears the same alleged mislabeling." *Wilson v. Frito-Lay N. Am., Inc.*, 961 F. Supp. 2d 1134, 1141 (N.D.

Cal. 2013). "Courts often postpone the inquiry about the similarity of the products until the class certification stage." See *Cordes*, 2019 WL 1002513, at *2. Here, the two putative classes consist of all California persons and all persons who resided in the United States who purchased precious metal coins and paid more than they would elsewhere based on SD Bullion's low price assurance.

Compl. ¶ 26. Plaintiff's allegation that all the coins purchased were made of precious metal is sufficient to plausibly allege that the coins are "of the same kind" and "comprised of largely the same ingredients." See *Wilson*, 961 F. Supp. 2d at 1141. Further, Plaintiff sufficiently alleges that "each of the challenged products bears the same alleged mislabeling" by alleging that Defendant made its low-price statement in all of its advertisements.

Id.; Compl. ¶ 12. Defendant's argument that specific types of coins have many iterations such as weight is better suited for class certification than motion to dismiss because it gets into the

minutiae 5 of claims, rather than general similarity and common false statement. See Cordes, 2019 6 WL 1002513, at *2.

Thus, the motion to dismiss Plaintiff's claims on the basis that the 7 Plaintiff cannot represent class members who purchased distinct coins is DENIED. 8 D. UCL and FAL 9 Defendant argues that Plaintiff's claims arising under the UCL and FAL should be 10 dismissed because Plaintiff's allegations are conclusory and unconnected to his claim, and 11 do not meet the heightened pleading requirement for allegations of fraud.

Mot. at 11-12. 12 As explained below, the Court disagrees. 13 The UCL prohibits "unlawful, unfair or fraudulent business act or practice and 14 unfair, deceptive, untrue, or misleading advertising" as a form of unfair competition. Cal. 15 Bus. & Prof. Code § 17200.

The FAL similarly prohibits "untrue or misleading" 16 advertising "which is known, or which by the exercise of reasonable care, would be known 17 to be untrue or misleading." Cal. Bus. & Prof. Code § 17500. "[A]ny violation of the false 18 advertising law ... necessarily violates the UCL." Kasky v. Nike, Inc., 27 Cal. 4th 939, 950 19 (2002). "The UCL expressly incorporates the FAL's prohibition on unfair advertising as 20 one form of unfair competition." Hinojos v. Kohl's Corp., 718 F.3d 1098, 1103 (9th Cir.

21 2013). To state a claim for false advertising under California law, a plaintiff must allege an 22 advertisement which is "either actually misleading or which has a capacity, likelihood or 23 tendency to deceive or confuse the public," and "likely to deceive a reasonable consumer." 24 Hadley v. Kellogg Sales Co., 243 F. Supp. 3d 1074, 1092 (N.D. Cal. 2017) (internal 25 quotations omitted).

California's Supreme Court has held that plaintiffs who bring UCL 26 claims on a theory of fraud, such as false advertising claims, must also show actual reliance, 27 because "reliance is the causal mechanism of fraud." In re Tobacco II Cases, 46 Cal. 4th 28 298, 326 (2009). "[A]t the motion to dismiss stage, 'actual reliance ... is inferred from the 1 misrepresentation of a material fact.'" Moore v. Mars Petcare US, Inc., 966 F.3d 1007, 2 1021 (quoting Friedman v. AARP, Inc., 855 F.3d 1047, 1055 (9th Cir.

2017)). Because the 3 UCL and FAL are premised on the same alleged false statements, the Court evaluates the 4 sufficiency of the false advertising claims collectively. 5 Here, Plaintiff alleges that SD Bullion advertised "Lowest Price. Period.," that the 6 statement was objectively false, and that it induced his purchase of their coins. 7 Compl. ¶¶ 18-19, 52-59.

These allegations are sufficient to state a UCL and FAL claim 8 under California law because, taken as true, they show a misrepresentation through a false 9 statement, and that the misrepresentation was material because it induced Plaintiff to 10 purchase a coin. See Moore, 966

F.3d at 1021. Defendant argues that these allegations are insufficient because they do not show a connection to the specific coin purchased by Plaintiff.

Mot. at 14. However, interpreting the allegations in the light most favorable to Plaintiff as the nonmoving party, the Court finds it plausible that a consumer could be induced to buy a precious metal coin by an advertisement contained throughout marketing materials for a business that primarily sells such coins. See Compl. ¶ 12.

Thus, Plaintiff has sufficiently alleged a UCL and FAL false advertising claim under California law. Regarding Rule 9(b)'s heightened pleading standard, Defendant argues that these allegations contain insufficient detail to put it on notice of the fraud claims. Mot. at 15. However, Plaintiff's allegation that Defendant intentionally falsely stated that its prices were "the lowest" to induce customers to buy its coins does contain who (Defendant), what (false statements), when (before Plaintiff purchased his coin), where (on Defendant's website), why (to sell coins), and how (through advertisements) of the misconduct charged.

See Kearns, 567 F.3d at 1124; Compl. ¶¶ 61-62. Based on Plaintiff's theory of straightforward false advertising, the allegations contained in the complaint of the false statement, knowledge, and where it was advertised are sufficient to put the Defendant on notice of the charged conduct of making a false statement and advertising it. See *id.*; Semegen v. Weidner, 780 F.2d 727, 731 (1985).

Therefore, Defendant's motion to dismiss Plaintiff's UCL and FAL claims are DENIED. 1 E. Civil Conspiracy 2 Defendants argue that Plaintiff fails to state a claim for conspiracy because he does 3 not allege an agreement between SD Bullion and the YouTube Defendants to achieve an 4 unlawful goal. Mot. at 16.

The Court agrees. 5 As a threshold matter, civil conspiracy under California law "is not a cause of 6 action," but instead "a legal doctrine that imposes liability on persons who, although not 7 actually committing a tort themselves, share with the immediate tortfeasors a common plan 8 or design in its perpetration." *Allied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal.4th 9 503, 510-11 (1994).

To state a claim for civil conspiracy, a plaintiff must allege "(1) the 10 formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the 11 conspiracy, and (3) damages arising from the wrongful conduct." *Kidron v. Movie 12 Acquisition Corp.*, 40 Cal. App. 4th 1571, 1581 (1995).

To show the first element, "bare 13 allegations and rank conjecture do not suffice," because a plaintiff must show that 14 defendants "acted in concert and came to a mutual understanding to accomplish a common 15 and unlawful plan." *AREI II Cases*, 216 Cal. App. 4th 1004, 1022 (2013) (internal 16 quotations and citations omitted). 17 Here, Plaintiff alleges that SD Bullion

and the YouTube Defendants all knew or 18 should have known that SD Bullion's low price statement was false, and that they reached 19 an agreement to conspire over email.

Compl. ¶¶ 11-12. However, nothing in the complaint 20 shows more than "rank conjecture" to prove that the defendants acted towards an unlawful 21 goal. See AREI II Cases, 216 Cal. App. 4th at 1022. Without some facts plausibly showing 22 that Defendants had a mutual understanding to commit an unlawful act, Plaintiff has not 23 overcome the more plausible presumption that Defendants were merely agreeing on the 24 lawful goal of advertising.

See *Iqbal*, 556 U.S. at 680 (requiring federal courts to look 25 beyond mere statements of conspiracy for facts that show "plausible suggestion of 26 conspiracy"). Therefore, the Court GRANTS Defendant's motion to dismiss Plaintiff's 27 civil conspiracy claims. 28 // 1 F. Motion to Strike 2 Defendant argues that Plaintiff's prayer for monetary damages, Prayer 9E, should be 3 stricken because Plaintiff is limited to equitable relief for California UCL and FAL causes 4 of action.

Mot. at 5. Plaintiff does not address this argument at all in his opposition. By 5 failing to address this issue, Plaintiff concedes it. See *Walsh v. Nevada Dep't of Human 6 Resources*, 471 F.3d 1033, 1037 (9th Cir. 2006) (holding plaintiff who failed to address 7 issues raised in defendant's motion in his opposition brief "has effectively abandoned his 8 claim, and cannot raise it on appeal"); *Stichting Pensioenfonds ABP v. Countrywide Fin.*

9 Corp., 802 F. Supp. 2d 1125, 1132 (C.D. Cal. 2011) ("[F]ailure to respond in an opposition 10 brief to an argument put forward in an opening brief constitutes waiver or abandonment in 11 regard to the uncontested issue."); *Lee v. Summit Tr. Servs., LLC*, No. CV 19-3814-DMG 12 (Ex), 2020 WL 1249971, at *3 (C.D. Cal. Jan. 22, 2020) (granting motion to dismiss 13 because plaintiff's opposition "[did] not address Defendants' arguments to dismiss" and 14 thus "conceded that those claims should be dismissed").

15 Even though Plaintiff did not respond to this argument, the Court agrees with 16 Defendant. "Damages are not available under the False Advertising and Unfair 17 Competition Laws because restitution is the only available remedy under those statutes." 18 *Colgan v. Leatherman Tool Grp., Inc.*, 135 Cal. App. 4th 663, 695 (2006). Further, "[t]he 19 relief provided by those statutes may involve 'equitable considerations.'" *Id.* (internal 20 quotations and citations omitted).

For those reasons, the Court GRANTS Defendant's 21 motion to strike and STRIKES any reference to monetary damages from the complaint 22 IV. CONCLUSION 23 For the foregoing reasons, Defendant's motion to dismiss is GRANTED in part and 24 DENIED in part. 25 At the hearing on this motion, Plaintiff's counsel stated that the issues in the 26 complaint could be remedied with leave to amend.

Thus, finding that leave to amend would not be futile, such leave is GRANTED to the counts that were not dismissed with prejudice. Plaintiff's motion for leave to amend is therefore MOOT. Plaintiff may file an amended complaint on or before February 20, 2026. IT IS SO ORDERED. Dated: January 20, 2026
Honorable James E. Simmons Jr.
United States District Judge