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United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRIS CHAVEZ, an individual, on)	No. C-06-6609 SC
behalf of himself, the general)	
public and those similarly)	
situated,)	ORDER GRANTING
)	DEFENDANTS' MOTION TO
Plaintiffs,)	DISMISS AND VACATING
)	<u>MOTION TO TRANSFER</u>
v.)	
)	
BLUE SKY NATURAL BEVERAGE CO., a)	
foreign corporation; HANSEN)	
BEVERAGE COMPANY, a foreign)	
corporation; HANSEN NATURAL CORP.,)	
a foreign corporation; and DOES 1)	
THROUGH 10.)	
)	
Defendants.)	
_____)	

I. INTRODUCTION

Presently before the Court are a Motion to Dismiss and Motion to Transfer filed by Defendants Blue Sky Natural Beverage Co., Hansen Beverage Company, and Hansen Natural Corp. ("Defendants" or "Blue Sky"). See Mot. to Dismiss, Docket No. 6; Mot. to Transfer, Docket No. 8. Plaintiffs Chris Chavez and those similarly situated ("Plaintiffs") oppose both motions. See Opp'n, Docket Nos. 13, 14.

For the reasons discussed herein, the Court GRANTS Defendants' Motion to Dismiss with prejudice. Defendants' Motion to Transfer is VACATED.

1 **II. BACKGROUND**

2 Defendants develop, market, sell, and distribute beverages
3 including natural or healthy sodas, fruit juices, energy sports
4 drinks, and other beverages under a variety of brand names.
5 Compl., ¶¶ 20-21. In September of 2000, Defendants acquired the
6 Blue Sky natural soda business from the Blue Sky Natural Beverage
7 Co., a company that had been based in and operated from Santa Fe,
8 New Mexico since approximately 1980. Id. at ¶ 22. From that time
9 until at least May of 2006, the Blue Sky containers indicated that
10 their contents were made in and/or originated from Santa Fe, New
11 Mexico. Id. at ¶ 24. Specifically, the cans and bottles
12 prominently stated "SANTA FE, NEW MEXICO" or "SANTA FE, NM." Id.
13 In addition, every can stated "CANNED FOR THE BLUE SKY NATURAL
14 BEVERAGE COMPANY SANTA FE, NM 87501" or "CANNED UNDER THE
15 AUTHORITY OF BLUE SKY NATURAL BEVERAGE CO., SANTA FE, NM USA."
16 Id. According to Plaintiffs, the packaging of Blue Sky beverages
17 also has a "particularly Southwestern look and feel" including
18 "stylized Southwestern Indian tribal bands" across the top and
19 bottom and "pictures of what appear to be the Sangre de Cristo
20 mountains that border Santa Fe, New Mexico on the eastern side of
21 the city." Id. at ¶ 25. Finally, until May of 2006, Defendants'
22 website stated "Santa Fe, New Mexico, U.S.A. (505) 995-9716" (the
23 505 area code is assigned to Santa Fe). Id. at ¶ 26.

24 Plaintiffs contend that despite Defendants' representations,
25 Blue Sky beverages are not manufactured or bottled anywhere in New
26 Mexico. Id. at ¶ 30. Plaintiffs assert that Defendants outsource
27 all manufacturing to third parties, all located outside New
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1 Mexico. Id. In addition, Plaintiffs assert that the Blue Sky
2 Natural Beverage Co. no longer exists in Santa Fe because one
3 month after Hansen's acquisition, the company was dissolved in New
4 Mexico and re-registered with the California Corporation
5 Commission as a Delaware corporation with its principal place of
6 business in Corona, California. Id. at ¶ 31.

7 According to the Complaint, the named Plaintiff is a native
8 of New Mexico and has purchased a variety of Blue Sky beverages
9 since he was a child. Id. at ¶ 27. Plaintiff relocated to
10 California in August of 1999 and has continued purchasing Blue Sky
11 beverages "due to the fact that he believed Blue Sky Beverages
12 were made in Santa Fe, New Mexico and/or by a company that was
13 located in Santa Fe, New Mexico" and because Plaintiff "desired to
14 (i) support a New Mexico company and (ii) to associate himself
15 with a product from Santa Fe, New Mexico." Id. at ¶ 28.

16 Plaintiff asserts that he "would not have purchased Blue Sky
17 Beverages had he known where they were really manufactured and/or
18 where the company that owned or controlled the canning of Blue Sky
19 Beverages was located." Id. at ¶ 36. Plaintiff, on behalf of
20 himself and those similarly situated, filed a class action
21 complaint alleging causes of action for (1) false advertising
22 under California Business and Professions Code § 17500 et seq.,
23 (2) unfair trade practices under California Business and
24 Professions Code § 17200 et seq., (3) violation of the Consumers
25 Legal Remedies Act under California Civil Code § 1750 et seq., and
26 (4) common law fraud, deceit and misrepresentation.

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1 **III. LEGAL STANDARD**

2 Under Federal Rule of Civil Procedure 12(b)(6), a motion to
3 dismiss can be granted if the plaintiff fails "to state a claim
4 upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).
5 When evaluating a motion to dismiss, the court accepts the facts
6 as stated by the nonmoving party and draws all inferences in its
7 favor. See Everest & Jennings, Inc. v. Am. Motorists Ins. Co., 23
8 F.3d 226, 228 (9th Cir. 1994). Furthermore, courts must assume
9 that all general allegations "embrace whatever specific facts
10 might be necessary to support them." Peloza v. Capistrano Unified
11 Sch. Dist., 37 F.3d 517, 521 (9th Cir. 1994). At the pleading
12 stage, the plaintiff "need only show that the facts alleged, if
13 proved, would confer standing upon him." Warren v. Fox Family
14 Worldwide, Inc., 328 F.3d 1136, 1140 (9th Cir. 2003). If a
15 complaint is dismissed for failure to state a claim, "leave to
16 amend should be granted unless the court determines that the
17 allegation of other facts consistent with the challenged pleading
18 could not possibly cure the deficiency." Schreiber Distrib. Co.
19 v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986).

20 This case was removed to federal court based on diversity
21 jurisdiction under the Class Action Fairness Act, 28 U.S.C. §
22 1332(d). See Not. of Removal, Docket No. 1. A federal court
23 sitting in diversity jurisdiction applies state law on substantive
24 issues. See Erie R.R. Co. v. Tompkins, 304 U.S. 64, 79-80 (1938).
25 Thus, the Court will apply California law in evaluating
26 Defendants' motion.

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1 **IV. DISCUSSION**

2 **A. Plaintiffs' Three Statutory Claims**

3 In the Complaint, Plaintiffs assert causes of action under
4 California false advertising law, Cal. Bus. & Prof. Code § 17500
5 et seq. ("FAL"), California unfair competition law, Cal. Bus. &
6 Prof. Code § 17200 et seq. ("UCL"), and the Consumers Legal
7 Remedies Act, Cal. Civ. Code § 1750 et seq. ("CLRA"). As a basis
8 for their motion to dismiss, Defendants assert that Plaintiffs
9 have failed to allege any remediable damage as required to state a
10 claim under the FAL, UCL, and CLRA. See Mot. to Dismiss, 10.

11 In 2004, Proposition 64 amended the express language of the
12 UCL and FAL with respect to damages. As a result, a plaintiff
13 with standing under the UCL is "any person who has suffered injury
14 in fact and has lost money or property as a result of such unfair
15 competition." Cal. Bus. & Prof. Code § 17204. In addition, a
16 plaintiff with standing under the FAL is "any person who has
17 suffered injury in fact and has lost money or property as a result
18 of a violation of this chapter." Cal. Bus. & Prof. Code § 17535.
19 Similarly, the CLRA limits relief to "[a]ny person who suffers any
20 damage as a result of the use or employment by any person of a
21 method, act, or practice declared to be unlawful by [the CLRA]."
22 Cal. Civ. Code § 1780(a).

23 Plaintiffs do not dispute the damages requirements for the
24 three statutory claims. See Opp'n, 11. Instead, Plaintiffs argue
25 that they have properly alleged injury in fact. See id. The
26 named Plaintiff claims that he would not have purchased Blue Sky
27 beverages had he known the truth about the geographic origin of
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1 the products. Compl. at ¶ 52. Thus, Plaintiffs assert that they
2 lost the full value of the price paid for each can or bottle of
3 soda. Id. Specifically, Plaintiffs claim that Defendants'
4 alleged misrepresentations frustrated their desire to "support a
5 New Mexico company" and/or "associate [themselves] with a product
6 from Santa Fe, New Mexico." Id. at ¶ 28.

7 **B. Plaintiffs' Common Law Claim**

8 Plaintiffs fourth cause of action seeks to recover damages
9 for alleged fraud, deceit, and misrepresentation. See id. at ¶¶
10 90-100. It has long been established that under California law,
11 "Fraud, without damage, furnishes no ground for action, nor is
12 fraud without damage a defense." S. Tahoe Gas Co. v. Hofmann Land
13 Improvement Co., 102 Cal. Rptr. 286, 296 (Cal. Ct. App. 1972),
14 quoting Holton v. Noble, 83 Cal. 7, 9 (1890); see Charnay v.
15 Cobert, 51 Cal. Rptr. 3d 471, 482 (Cal. Ct. App. 2006) (listing
16 the elements of fraud, including "resulting damage"). Thus,
17 similar to their statutory claims, Plaintiffs must allege actual
18 damages to pursue their common law claims.

19 **C. Plaintiffs' Allegations of Damages**

20 Under the relevant law, Plaintiffs' damages allegations are
21 insufficient to state a claim under the FAL, UCL, CLRA, or common
22 law fraud. Thus, Plaintiffs do not have standing to pursue any of
23 their claims. On this issue, Plaintiffs assert that their damages
24 equal the amount paid for the Blue Sky beverages because they
25 would not have purchased the drinks had they known the drinks and
26 company were no longer related to Santa Fe, New Mexico . See
27 Compl. at ¶¶ 36, 52. However, Plaintiffs' alleged injury and
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1 damages are nonexistent because Defendants' alleged promise had no
2 value. In other words, Plaintiffs have not alleged damages
3 resulting from Defendants' supposed misrepresentation of the
4 location of its bottling operations and/or corporate headquarters.

5 The relevant case law confirms that Plaintiffs must
6 adequately plead "injury in fact" to survive Defendants' motion to
7 dismiss. In contrast to this case, in Daghlian v. DeVry Univ.,
8 Inc., the court found that Plaintiff had stated a claim under the
9 FAL and UCL by properly pleading injury in fact. 461 F. Supp. 2d
10 1121, 1153-57 (C.D. Cal. 2006). The Daghlian plaintiff incurred
11 \$40,000 in educational debt based on a recruiter's promise that
12 DeVry's academic credits would be transferable to a wide variety
13 of other schools. See id. at 1156. When the plaintiff discovered
14 that the credits "probably would not transfer to other educational
15 institutions," he sued. See id. at 1124. Daghlian's injury or
16 damage was clear: the difference in value between what he was
17 promised and what he received. He was promised an accredited
18 degree with transferable credits, but actually received a degree
19 worth much less. Similarly, in Laster v. T-Mobile USA, Inc., the
20 plaintiffs thought they were getting a free or substantially
21 discounted phone, but were charged sales tax on the full retail
22 value of the phone. 407 F. Supp. 2d 1181, 1194 (S.D. Cal. 2005).
23 The court found the assertions concerning the shifted tax burden
24 sufficient to allege injury in fact. See id. As such, the
25 plaintiffs in Laster suffered injury because they did not get the
26 benefit of their bargain and paid more taxes than promised.

27 In contrast to Daghlian and Laster, the Plaintiffs in this
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1 case suffered no injury or damages as a result of Defendants'
2 conduct. Plaintiff did not pay a premium for Defendants'
3 beverages because the drinks purportedly originated in Santa Fe,
4 New Mexico. Accepting the facts as stated by Plaintiffs and
5 drawing all inferences in their favor, Defendants' promise
6 concerning geographic origin had no value and Plaintiffs have
7 suffered no damages by purchasing beverages they thought were
8 produced in New Mexico by a New Mexico-based company, but actually
9 originated in California. As a result of Plaintiffs' failure to
10 allege any damages under all four causes of action, Plaintiffs
11 have no standing to pursue their claims against Defendants.

12 **D. Dismissal with Prejudice**

13 When evaluating a Rule 12(b)(6) motion to dismiss, the court
14 must accept all material allegations in the complaint as true and
15 construe them in the light most favorable to the non-moving party.
16 Barron v. Reich, 13 F.3d 1370, 1374 (9th Cir. 1994). The court is
17 not required, however, to accept conclusory legal allegations
18 "cast in the form of factual allegations if those conclusions
19 cannot reasonably be drawn from the facts alleged." Clegg v. Cult
20 Awareness Network, 18 F.3d 752, 754-55 (9th Cir. 1994). Rule
21 12(b)(6) must be read in conjunction with Rule 8(a) which requires
22 "a short and plain statement of the claim showing that the pleader
23 is entitled to relief." Fed. R. Civ. P. 8(a)(2). The notice
24 pleading standard set forth in Rule 8 establishes "a powerful
25 presumption against rejecting pleadings for failure to state a
26 claim." Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 249
27 (citations omitted). Therefore, a court must not dismiss a
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1 complaint for failure to state a claim unless the plaintiff has
2 failed to plead "enough facts to state a claim to relief that is
3 plausible on its face." Bell Atlantic Corp. v. Twombly, 127 S.Ct.
4 1955, 1974 (2007).

5 Where plaintiff's complaint should be dismissed for failure
6 to state a claim, the plaintiff should generally be given "at
7 least one chance to amend the complaint" under Fed. R. Civ. Proc.
8 15(a) before dismissing the action with prejudice. Bank v. Pitt,
9 928 F.2d 1108, 1112 (11th Cir. 1991). However, a plaintiff should
10 be denied leave to amend a complaint if the court determines that
11 "allegations of other facts consistent with the challenged
12 pleading could not possibly cure the deficiency." Schreiber
13 Distrib. Co. v. Serv-Well Furniture Co. Inc., 806 F.2d 1393, 1401
14 (9th Cir. 1986).

15 In this case, Plaintiffs' complaint gives Defendants proper
16 notice of Plaintiffs' claims and sets forth its theory with
17 specificity. Even so, the complaint is clearly deficient because
18 no set of facts consistent with the complaint could possibly cure
19 Plaintiffs' inability to plead damages resulting from Defendants'
20 conduct. As the Supreme Court recently stated, "we do not require
21 heightened fact pleading of specifics, but only enough facts to
22 state a claim to relief that is plausible on its face. Because
23 the plaintiffs here have not nudged their claims across the line
24 from conceivable to plausible, their complaint must be dismissed."
25 Bell Atlantic, 127 S.Ct. at 1974. The Court finds that there are
26 no other facts Plaintiffs could present to cure their lack of
27 standing. Plaintiffs suffered neither injury nor damages because

1 they bought cans of Defendants' beverages which contained text
2 stating "Santa Fe, New Mexico." As a result, the Court must
3 dismiss Plaintiffs' complaint with prejudice.

4
5 **V. CONCLUSION**

6 For the reasons discussed herein, Defendants' Motion to
7 Dismiss is GRANTED with prejudice. All other pending motions in
8 this case, including Defendants' Motion to Transfer are VACATED.

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10 IT IS SO ORDERED.

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12 Dated: June 11, 2007

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UNITED STATES DISTRICT JUDGE