UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BARRY N. KAY, et al.,

Plaintiffs,

v.

COPPER CANE, LLC,

Defendant.

Case No. 20-cv-04068-RS

ORDER DENYING IN PART AND GRANTING IN PART WITH LEAVE TO AMEND MOTION TO DISMISS

I. INTRODUCTION

Plaintiffs Barry N. Kay and Bryan J. Dodge Jr. bring this putative class action challenging as misleading the labels affixed to a line of Defendant Copper Cane, LLC's ("Copper Cane") pinot noirs. Specifically, they claim to have been deceived by references to the wine's appellation of origin in Oregon generally and three valleys in Oregon specifically, as well as the grapes' purported coastal roots. Copper Cane now moves to dismiss the operative complaint. For the reasons set forth below, the motion is denied in part and granted in part with leave to amend.

II. BACKGROUND

A. Statutory Background

The Federal Alcohol Administration Act requires that alcoholic beverage labels comply with regulations, issued by the Secretary of the Treasury, which must "prohibit deception of the consumer" and ensure the consumer is equipped "with adequate information as to the identity and quality of the products." 27 U.S.C. §§ 205(e). The Secretary has delegated responsibility to the Alcohol and Tobacco Tax and Trade Bureau ("TTB") which has, in turn, issued regulations

prohibiting labeling likely to mislead a consumer. *See, e.g.*, 27 C.F.R. § 4.64(a)(1) (prohibiting in the advertisement of wine "[a]ny statement that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression"); *id.* § 4.64(g) ("No statement, design, device, or representation which tends to create the impression that the wine originated in a particular place or region, shall appear in any advertisement unless the label of the advertised product bears an appellation of origin, and such appellation of origin appears in the advertisement in direct conjunction with the class and type designation.").

Additionally, the TTB must approve all labels prior to use. 27 C.F.R. § 4.50(a) ("No person shall bottle or pack wine, other than wine bottled or packed in U.S. Customs custody, or remove such wine from the plant where bottled or packed, unless an approved certificate of label approval, TTB Form 5100.31, is issued by the appropriate TTB officer."). To obtain a certificate of label approval ("COLA"), a beverage distributor must submit the appropriate form, which is then reviewed by a TTB officer and stamped if it "complies with applicable laws and regulations." 27 C.F.R. § 13.21. The application form requires a representation by the distributor that "all statements appearing on the application are true and correct" and that "the representations on the labels attached to this form . . . truly and correctly represent the content of the containers to which these labels will be applied." TTB Application for Certification/Exemption of Label/Bottle Approval, Form 5100.31.

The TTB also has the authority to create appellations of origin for wine grapes and American viticultural areas ("AVAs").[1] 27 C.F.R. § 9.0. An appellation is a unit of origin, such as a country, a single state, a grouping of up to three states, a county, a grouping of up to three counties, or an AVA. *Id.* § 4.25(a). To merit a state appellation, (i) at least 75 percent of the wine must be derived from fruit grown in the appellation area, (ii) the wine must be fully finished in the state or an adjacent state, and (iii) the wine must conform to other regulations specific to the

[1] An AVA is a recognized wine grape-growing region in the United States.

appellation area. *Id.* § 4.25(b)(1). To qualify for an AVA designation, (i) the AVA must be recognized by the TTB, (ii) at least 85 percent of the grapes must be grown in the AVA, and (iii) the wine must be fully finished within a state in which the AVA is located. *Id.* § 4.25(e)(3). Relevant here, the TTB recognizes Oregon as an appellation of origin, *id.* § 4.25(a), and the Willamette Valley, Umpqua Valley, and Rogue Valley as separate AVAs. *Id.* § 9.90, 9.89, 9.132.

B. Factual Background[2]

The wine allegedly mislabeled here is a pinot noir called "Elouan." It is distributed by Copper Cane and, as relevant for present purposes, comes in a 2016 and 2017 vintage. Each year sports a different label, though both describe the wine as an "Oregon Pinot Noir." The 2016 label references the "coastal hills" of Oregon as an "ideal region to grow" this type of wine. First Amended Complaint ("FAC") ¶ 37. The 2017 label also references the "coast" and includes a map of Oregon with leaves denoting the locations of the Willamette, Umpqua, and Rogue Valleys. FAC ¶ 39. It contains the phrase "Purely Oregon, Always Coastal." *Id.* Additionally, marketing materials related to the 2016 Elouan designate the same three valleys as "Regions of Origin," and describes them as "premiere growing regions along Oregon's coast." FAC ¶ 38. The boxes in which both vintages were shipped refer to the "Oregon Coast" and the three valleys. Both back labels contain, however, two lines of text referencing California. On both labels, the first line provides: "VINTED & BOTTLED BY ELOUAN." FAC ¶ 37, 39. Below, the 2016 provides: "NAPA, CA • CONTAINS SULFITES."; the 2017 reads "ACAMPO, CA • CONTAINS SULFITES." *Id.*

In 2018, the federal government forced Copper Cane to alter the Elouan labels after a determination that they were misleading, though many bottles bearing the original labels are still available in the marketplace. Plaintiffs do not describe what changes were made or include pictures of the new labels. Copper Cane, however, attaches to its motion to dismiss the TTB

[2] The factual background is based on the allegations in the complaint, which must be taken as true for purposes of this motion, as well as documents which may be incorporated by reference or of which judicial notice may be taken. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

permits for the 2016 label, as well as the original and updated 2017 label. The new label omits any overt reference to any of the Oregon AVA valleys and replaces the phrase "Purely Oregon, Always Coastal." with the phase "Purely Elouan, Always Coastal." Armstrong Declaration Ex. 3. It also clarifies that the wine is "[m]ade in California in the signature Copper Cane style[.]" *Id.*

Plaintiff Kay purchased several bottles of 2016 Elouan in 2018, most recently from Total Wine in Pasadena, California. Dodge purchased one bottle of the 2017 Elouan in his home state of Louisiana in 2018. Asserting large consumer demand for wines from the Oregon AVAs, they contend consumers are willing to pay a premium for wines from these regions. While both Kay and Dodge indicate they would not have purchased the Elouan (nor paid a premium for it) had the labeling not misled them, they claim they will continue to buy it if they can "rely upon the truthfulness of Defendant's labeling." FAC ¶ 61, 64.

Plaintiffs accuse Copper Cane of falsely fostering the belief first that Elouan is a genuine Oregon wine associated with the three AVAs referenced above, and second that the grapes are grown on "coastal" vineyards. They contend the labels violate California's Unfair Competition Law ("UCL"), California's Consumer Legal Remedies Act ("CLRA"), and California's False Advertising Law ("FAL"). They also assert Copper Cane has been unjustly enriched and breached an express warranty. They seek ultimately to represent themselves and a similarly situated class of oenophiles.

III. LEGAL STANDARD

Rule 12(b)(6) governs motions to dismiss for failure to state a claim. A complaint must contain a short and plain statement of the claim showing the pleader is entitled to relief. Fed. R. Civ. P. 8(a). While "detailed factual allegations" are not required, a complaint must have sufficient factual allegations to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007)). A Rule 12(b)(6) motion tests the legal sufficiency of the claims alleged in the complaint. *See Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). Thus, dismissal under Rule 12(b)(6) may be based on either the "lack of a cognizable legal theory" or on "the absence of sufficient

facts alleged" under a cognizable legal theory. *UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 718 F.3d 1006, 1014 (9th Cir. 2013). When evaluating such a motion, courts generally "accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party." *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

IV. DISCUSSION[3]

A. UCL, CLRA, and FAL Claims (Counts One, Two, and Three)[4]

1. Standing

Copper Cane argues Plaintiffs lack "standing" to pursue a UCL violation based on any packaging or marketing materials and the 2017 label. It contends violations premised on misrepresentations on the packaging or marketing materials must be dismissed because neither Kay nor Dodge claims to have relied on anything other than the wine labels. Claims related to the 2017 Elouan must be dismissed, it argues, because Dodge is not a California resident nor did he purchase the wine in California. Plaintiffs conceded at the hearing that their claims rise and fall on the labels and that they do not seek to assert claims based on any other external materials.

The thornier question, however, is whether Dodge, a Louisianan and the only plaintiff alleged to have purchased the 2017 Elouan, has standing to bring a claim under the UCL. California consumer protection statutes "presumptively do not apply to occurrences outside California." *Wilson v. Frito-Lay N. Am. Inc.*, 961 F.Supp.2d 1134, 1147 (internal quotation marks and citation omitted) (citing *Sullivan v. Oracle Corp.*, 51 Cal.4th 1191, 1207 (2011)). Occasionally, however, such application is warranted. *Ehret v. Uber Techs., Inc.*, 68 F.Supp.3d

[3] Defendant's unopposed request to take judicial notice of Elouan's labels and the three COLAs attached to Copper Cane's motion to dismiss is granted.

[4] Because the parties substantially recycle their UCL arguments into their FAL and CLRA discussions, and Copper Cane's arguments as to all three claims fail because Plaintiffs have identified an actionable misrepresentation, the claims are considered together.

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