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**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF CALIFORNIA**

JUSTIN FRANKS, JACK BACIGALUPI, individually and on behalf of others similarly situated,

Plaintiffs,

vs.

SIDEPRIZE LLC d/b/a PRIZEPICKS, AND DOES 1-20,

Defendants.

Case No. 3:25-cv-04916-CRB

Related Cases:
3:25-cv-4618-CRB
3:25-cv-5542-CRB

**PLAINTIFFS' OPPOSITION TO PRIZEPICKS' MOTION TO DISMISS**

Assigned to: Hon. Charles R. Breyer
Hearing Date: October 31, 2025
Time: 10:00 AM

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## I. INTRODUCTION AND SUMMARY OF ARGUMENT

In the Motion to Dismiss, Defendant SidePrize LLC d/b/a PrizePicks ("PrizePicks") does not address the central legal question in this case—do its daily fantasy sports products violate the California Penal Code. It does not do so for a simple reason. PrizePicks knows that squarely addressing Plaintiffs' theory of the case would result in a finding that its daily fantasy sports contests constitute illegal "bets" and "wagers" within the meaning of California Penal Code Section 337a(a)(6), effectively ending the case in Plaintiffs' favor. In fact, after this lawsuit was filed, the California Attorney General confirmed that PrizePicks' gambling enterprise violates California law: "California law prohibits the operation of daily fantasy sports games . . . . Such games constitute wagering on sports in violation of Penal Code section 337a."[1] Despite this, PrizePicks continues to operate in the state, raking in millions of dollars in bets in direct violation of the law.

Rather than addressing the central theory of Plaintiffs' case and the Attorney General's Opinion, PrizePicks has run away from both, doubling down on technicalities that PrizePicks claims exempt it from civil liability in an attempt to keep tens—if not hundreds—of millions of dollars that have been illegally taken from Californians since 2018. As shown below, each of PrizePicks' arguments fail, and Plaintiffs' claims must be allowed to proceed to discovery.

**First,** PrizePicks does not dispute that Plaintiffs state an unlawful claim under California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.,* ("UCL") based on PrizePicks' violations of the Penal Code—nor could it. "Virtually any law—federal, state or local—can serve as a predicate for a section 17200 action." *Smith v. Wells Fargo Bank, N.A.*, 135 Cal. App. 4th 1463, 1480 (2005). Instead, PrizePicks contends that the portions of claims arising under the UCL and the Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* ("CLRA"), predicated on false representations cannot proceed. This is a non-starter. PrizePicks spends over $100 million per year on ads and marketing—including California-specific ad campaigns, sponsorships, and promotions—that are designed to entice law abiding Californians to engage in illegal gambling activities by creating the false impression that PrizePicks' activities are legal and permitted in

[1] Opinion of the California Attorney General No. 23-1001 ("AG Opinion"), available online at https://oag.ca.gov/system/files/attachments/press-docs/23-1001.pdf (July 3, 2025); ECF No. 18.

California when they are not. In fact, on the Gambling Websites, PrizePicks states that it requires users to share their location in order to ensure "compl[iance] with applicable laws." Compl. ¶ 109. While PrizePicks now attempts to disclaim these representations, contending that the majority of *current* statements simply reflect that PrizePicks is "available" in California, "[a] perfectly true statement couched in such a manner that it is likely to mislead or deceive the consumer, such as by failure to disclose other relevant information, is actionable under the UCL" and the CLRA. *Morgan v. AT&T Wireless Servs., Inc.,* 177 Cal. App. 4th 1235, 1255 (2009) (cleaned up). In the Complaint, Plaintiffs identify the specific false statements PrizePicks made, state their reasonable reliance on those statements, and confirm that but for the false statements, they would not have used PrizePicks' Gambling Websites in California. Nothing more is required at the pleading stage.

**Second,** PrizePicks attempts to invoke the "public policy doctrine" that was articulated in *Kelly v. First Astri Corp.*, 72 Cal. App. 4th 462 (1999) to argue that California imposes a categorical bar on civil litigation related to gambling. PrizePicks' extreme reading of *Kelly* is not the law. As Judge Chhabria recently found, the "policy [in *Kelly*] stems from the general rule against enforcing contracts founded on illegal consideration, which is intended to prevent the guilty party from reaping the benefit of his wrongful conduct[.]" *Colvin v. Roblox Corp.*, 2024 WL 4231090, at *4 (N.D. Cal. Sept. 19, 2024) (cleaned up). Indeed, in *Kyablue v. Watkins*—which was decided after *Kelly*— the California Court of Appeal held that the public policy doctrine must be applied flexibly, weighing the "relative moral fault of the plaintiff and the defendant" as well as "the degree of moral turpitude involved" instead of applying a categorical bar to gambling-related claims. 210 Cal. App. 4th 1288, 1292-93 (2012). This balancing inquiry is fundamentally factual in nature, and *Kelly* itself was only decided at summary judgment. 72 Cal. App. 4th at 496. Moreover, by its own terms, the public policy doctrine articulated in *Kelly* does not apply to statutory causes of action—the only claims at issue here—and does not address injunctive relief. *See id.* at 466.

**Third,** PrizePicks argues that Plaintiffs lack statutory standing because they received what they paid for—entry into a sports betting contest. But PrizePicks' self-serving characterization does not fit Plaintiffs' theory of the case. Plaintiffs allege that what they agreed to purchase was a *legal* entry into a gambling contest, but what they received from PrizePicks was *per se* defective because

it was actually an entry into an *illegal* gambling contest, which inherently has less value. *See* Compl. ¶¶ 116, 123, 129, 135, 155. The "difference between what was paid and what a reasonable consumer would have paid *at the time of purchase* without the fraudulent or omitted information" is a classic economic injury sufficient to create statutory standing under the UCL and CLRA. *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 989 (9th Cir. 2015).

**Fourth,** PrizePicks contends that the CLRA does not apply to online gambling transactions because they are not "goods" or "services" within the meaning of the CLRA. However, "[i]n light of the CLRA's underlying purpose to protect consumers and the liberal construction with which courts should interpret it," the case law recognizes that "Plaintiffs' claims [arising from online gambling] fall within the purview of the CLRA." *Ochoa v. Zeroo Gravity Games LLC*, 2023 WL 4291650, at *13 (C.D. Cal. May 24, 2023).

**Finally,** PrizePicks argues that this Court lacks equitable jurisdiction over Plaintiffs' claims because Plaintiffs fail to use the magic words "no adequate remedy at law" in their Complaint. This is not the law. Plaintiffs' Complaint shows—and PrizePicks' Motion confirms—that Plaintiffs lack an adequate remedy at law. For example, by PrizePicks' reasoning, *Kelly* bars all claims for monetary relief, leaving (on PrizePicks' take) only injunctive relief at issue. Plaintiffs are certainly entitled to hedge these risks by stating their equitable claims at this early stage of these proceedings.

Put simply, and as shown in detail below, the Motion should be denied in its entirety.

## II. FACTUAL BACKGROUND

### A. PrizePicks' California Gambling and Marketing Operations.

PrizePicks is "the largest daily fantasy sports operator in North America," offering "daily fantasy sports" products—i.e., gambling services—in at least 45 states, including California. Compl. ¶¶ 5, 93. The primary gambling service that PrizePicks offers in California is "Pick 'Em," which involves placing "over and under" bets on scores and other statistical lines set by PrizePicks. Pick 'Em contests are played directly against the house (i.e., against PrizePicks) and do not involve competition against other PrizePicks customers. *See id.* ¶¶ 42-80. PrizePicks offers these contests in California through its website, PrizePicks.com, and its mobile applications (collectively, the "Gambling Websites"). *Id.* ¶ 41.

PrizePicks spends more than one hundred million dollars each year promoting its gambling services (*id.* ¶¶ 81-82), including California specific marketing campaigns, featuring statements such as "California PrizePicks is now available in your state!" (*id.* ¶ 89), in stadium sponsorships of California sports teams such as the S.F. Giants (*id.* ¶¶ 83-84), and promoting California specific signup bonuses (*id.* ¶ 90). *See also id.* ¶¶ 81-91 (additional examples of California specific marketing). In those marketing materials and on the Gambling Websites themselves, PrizePicks repeatedly presents Californians with information that is designed to cause them to believe that PrizePicks has analyzed the gambling laws of California and confirmed that its services are legal in the state. *E.g.*, Compl. ¶¶ 81-112. For example, on PrizePicks' website, one of the first things a user encounters is a map showing that PrizePicks operates in California, but not certain other states. *Id.* ¶ 93. Users are also assured by the "Where Can You Play PrizePicks Page" that California is a proper jurisdiction for users "18+," while other states have more stringent age and use requirements. *Id.* ¶¶ 106, 110. PrizePicks even requires California users to share their location information with it to ensure "compl[iance] with applicable laws." Compl. ¶ 109 (quoting PrizePicks' website).

Despite PrizePicks' representations of legality, in reality, its gambling services violate the California Penal Code, including Section 337a(a)(6), which makes it a crime punishable by up to "one year . . . in the state prison," for "offer[ing] or accept[ing] any bet or bets, or wager or wagers, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of person or animal, or between persons, animals, or mechanical apparatus." Compl. ¶ 17; *see also id.* ¶¶ 14-26 (additional Penal Code violations).

**B. Plaintiffs File Suit on Behalf of Themselves and the Putative California Class.**

On June 11, 2025, Plaintiffs Justin Franks and Jack Bacigalupi filed this lawsuit on behalf of themselves and a putative California class. Each Plaintiff explicitly alleges that PrizePicks' solicitations and representations were material in their respective decisions to use PrizePicks' services, and that "[i]f PrizePicks had not solicited bets and wagers from Plaintiff[s] while representing that such activities were legal (when, unknown to Plaintiff[s] at the time, they in fact were not legal), [they] would not have made any of those bets or wagers and would not have paid any money to PrizePicks." *See* Compl. ¶¶ 116-121 (Franks); ¶¶ 129-132 (Bacigalupi).

Plaintiffs bring equitable claims on behalf of themselves and the putative class of California consumers under the UCL and the CLRA. Compl. ¶¶ 152-184.

**C. The California Attorney General Confirms that PrizePicks' Gambling Services Violate the California Penal Code, Yet PrizePicks Continues to Operate.**

After this lawsuit was filed, the California Attorney General confirmed the unlawful nature of PrizePicks' gambling enterprise, issuing an Opinion that "California law prohibits the operation of daily fantasy sports games . . . . Such games constitute wagering on sports in violation of Penal Code section 337a."[2] Despite the AG's Opinion, PrizePicks continues to offer its illegal gambling services in California and continues to solicit Californians to unwittingly violate the Penal Code through ads and false statements on the Gambling Websites.

## III. ARGUMENT

**A. Plaintiffs' Detailed Allegations Sufficiently State UCL and CLRA Claims.**

In the Motion, PrizePicks does not dispute that Plaintiffs state a UCL unlawful claim based on PrizePicks' violations of the Penal Code—nor could it: "[v]irtually any law—federal, state or local—can serve as a predicate for a section 17200 action." *Smith*, 135 Cal. App. 4th at 1480. Instead, PrizePicks contends that the portions of the UCL and CLRA claims predicated on false and deceptive representations cannot proceed due to a supposed failure to plead specific false statements made by PrizePicks, but as shown below, this argument fails.

**1. Plaintiffs' Allegations—Supported by Screen Captures—Satisfy Rule 9(b).**

As a threshold matter, PrizePicks contends that Plaintiffs' misrepresentation claims—which are supported by over three dozen screen captures and detailed step-by-step allegations of what has occurred—have somehow failed to satisfy Rule 9(b)'s pleading standard. This argument is a non-starter. All Rule 9(b) requires is sufficient allegations to give "notice of the particular misconduct [claimed against the defendant] . . . so that [it] can defend against the charge and not just deny that [it has not] done anything wrong." *Bly-Magee v. California*, 236 F.3d 1014, 1019 (9th Cir. 2001).

[2] AG Opinion, available online https://oag.ca.gov/system/files/attachments/press-docs/23-1001.pdf (July 3, 2025); *see also* ECF No. 18 (attaching opinion).

Plaintiffs have plainly done so here, alleging the "Who," "What," "When," "Where," and "How" of their claims:

- **Who:** Plaintiffs (Compl. ¶¶ 113-137); the class (*id.* ¶ 153); PrizePicks (*id.* ¶¶ 41-112).
- **What:** Unlawful gambling on the PrizePicks Gambling Websites (*id.* ¶¶ 14-26, 41-80), and false and deceptive representations about the legality of those gambling services in California (*id.* ¶¶ 81-112, 115-117, 128-130).
- **When:** Since at least 2018 and continuing to present, as to the putative class (*id.* ¶¶ 143-147, 153), between 2020 present for Plaintiff Franks (*id.* ¶ 114), and between 2022 and present for Plaintiff Bacigalupi (*id.* ¶ 127).
- **Where:** On the Gambling Websites, namely PrizePicks.com and the PrizePicks mobile apps (*id.* ¶¶ 41-112), with users physically located in California (*id.* ¶¶ 113, 126, 153).
- **How:** Taking bets and wagers in violations of the California Penal Code (*id.* ¶¶ 14-26, 41-80) and falsely representing that the transactions were legal (*id.* ¶¶ 81-112).

While PrizePicks attempts to land an ace-in-the-hole by claiming that Plaintiffs fail to identify the specific false statements they were exposed to, this argument misses the mark. Plaintiffs expressly identify that at the time of account signups "PrizePicks represented to Plaintiff[s] that the products and services it offered in California were legal." *Id.* ¶ 114 (2020 for Franks), ¶ 127 (2022 for Bacigalupi). Further, they allege that "[s]ince that time, PrizePicks has continued to represent to Plaintiff[s,] including on the Gambling Websites themselves—that the services it provides in California are legal." *Id.* ¶115 (Franks), ¶ 128 (Bacigalupi). For example, "in October of 2024, relying on PrizePicks' representations, Plaintiff Bacigalupi, while in San Francisco California, lost several hundred dollars betting on NFL Pick 'Em contests hosted by PrizePicks on the Gambling Websites." *Id.* ¶ 131. Plaintiffs also specifically allege the recent types of representations they were exposed to on the Gambling Websites, including by providing screen captures of statements. Compl. ¶¶ 41-112. This is more than sufficient to put PrizePicks on notice of the claims against it, satisfying Rule 9(b). *See, e.g.*, *Harvey v. World Mkt., LLC*, 2025 WL 1359066, at *1, 6-7 (N.D. Cal. May 9, 2025) (Breyer, J.) (Plaintiff's CLRA claim satisfied Rule 9(b) by identifying the details of the transaction and associated representations).

PrizePicks' authorities do not dictate a different result. For example, PrizePicks misinterprets *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009) to mean that Plaintiffs must specifically allege *when* they were exposed to and relied on PrizePicks' representations. Mtn. at 11. But "*Kearns* did not require such specific allegations." *Bronson v. Johnson & Johsnon*, 2013 WL 5731817, at *6 (N.D. Cal. Oct. 22, 2013). Indeed, "it would be unfair to require plaintiffs to recall and specify precisely which of the many advertisements they [saw or] the particular advertisements they relied upon. It suffices for plaintiffs to provide examples of advertisements similar to those they saw as long as all the advertisements convey the core allegedly fraudulent message." *In re Oreck Corp.*, 2012 WL 6062047, at *15 (C.D. Cal. Dec. 3, 2012).

Further, and contrary to PrizePicks' contentions, Plaintiffs also sufficiently allege "actual reliance" for purposes of its UCL claim. In *In re Tobacco II Cases*, 46 Cal. 4th 298 (2009), the California Supreme Court held that to satisfy this requirement the plaintiff must show that he personally lost money or property because of his own actual and reasonable reliance on the allegedly untrue or misleading statements. *Id.* at 326-28. Plaintiffs have satisfied this requirement by alleging that they relied on PrizePicks' representations concerning the legality of its gambling services, that they would not have used PrizePicks' gambling services if they had known that they were not legal, and that they each personally lost money as a result. Compl. ¶¶ 116-117, 129-132.

**2. PrizePicks' False and Deceptive Representations Regarding Its Gambling Services Cannot be Resolved on the Pleadings.**

In the face of Plaintiffs' robust and particularized allegations, in its Motion, PrizePicks attempts to raise factual disputes over the reasonableness of Plaintiffs' understanding of PrizePicks' representations. However, "the Court may not resolve factual disputes at the pleading stage." *In re Splunk Inc. Sec. Litig.*, 592 F. Supp. 3d 919, 946 (N.D. Cal. 2022); *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1014 (9th Cir. 2018). Instead, the Court must assess the UCL and CLRA claims "by the 'reasonable consumer' test" based on plaintiffs' allegations of what was represented to them by defendant. *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008) (citations omitted). Under the reasonable consumer test, plaintiffs need only "show that members of the public are likely to be deceived, whether by explicitly false representations or by misleading,

deceptive, or confusing representations." *Gilbert v. MoneyMutual, LLC*, 2018 WL 8186605, at *18 (N.D. Cal. 2018) (cleaned up). "A perfectly true statement couched in such a manner that it is likely to mislead or deceive the consumer, such as by failure to disclose other relevant information, is actionable under the UCL" and the CLRA. *Morgan*, 177 Cal. App. 4th at 1255 (cleaned up).

The crux of PrizePicks' argument seems to be that the statements, maps, advertisements, FAQs, and other materials *currently* appearing on the Gambling Websites generally use the words "available" or "offered" as opposed to "legal" to describe PrizePicks' California gambling services. From there, they argue that no reasonable consumer could infer that PrizePicks was representing that its gambling services are legal in California. But this argument fails for at least four reasons.

**First,** and tellingly, PrizePicks ignores the Complaint—quoting the PrizePicks website—explicitly alleges that PrizePicks requires users to share their location in order to ensure "compl[iance] with applicable laws." Compl. ¶ 109. This representation alone is sufficient to sustain Plaintiffs' reasonable conclusion that "PrizePicks represents to its customers that 'Pick 'Em' is legal in the state." *Id.* ¶ 41; *see also Pirozzi v. Apple, Inc.*, 966 F. Supp. 2d 909, 923 (N.D. Cal. Aug. 5, 2013) (finding that plaintiff reasonably relied on website representations).

**Second,** PrizePicks waves off Plaintiffs' specific allegations that they each personally saw representations of legality at the time of account signup in 2020 and 2022, and that they each continued to see similar statements on the Gambling Websites in the years that followed: "PrizePicks represented to Plaintiff[s] that the products and services it offered in California were legal" at the time of account signup, and "[s]ince that time, PrizePicks has continued to represent to Plaintiff[s], including on the Gambling Websites themselves—that its services are legal in California." *Id.* ¶¶ 114-115 (Franks), ¶¶ 127-128 (Bacigalupi). Plaintiffs do not have access to historic captures of the Gambling Websites or ad campaigns to include exact quotes in the current Complaint, but Plaintiffs will seek those specific statements in discovery from PrizePicks. For the time being, their recollection is sufficient, and certainly plausible given PrizePicks' current representations that are captured verbatim in the Complaint: "It suffices for plaintiffs to provide examples of advertisements similar to those they saw as long as all the advertisements convey the core allegedly fraudulent message." *In re Oreck Corp.*, 2012 WL 6062047, at *15.

**Third**, as shown in the Complaint, the aggregate impact of PrizePicks' representations that its gambling services are permitted and available in California—such as maps depicting California as a state where PrizePicks' gambling products are offered and statements concerning the ages by state where customers can use PrizePicks' gambling services—leads reasonable consumers to believe that PrizePicks "has carefully reviewed the gambling laws of California and other states and concluded that certain products are lawful in California and others are not." Compl. ¶ 107. At this stage of the litigation, these allegations are sufficient to show that a reasonable consumer, viewing these statements, would believe that PrizePicks' gambling services are legal in California. *See, e.g.*, *Li v. Amazon.com Servs., LLC*, 751 F. Supp. 3d 1138, 1158 (W.D. Wash. 2024) (applying California law and finding that defendant's statements would lead reasonable consumers to believe that the products received FDA approval).

**Finally,** none of PrizePicks' authorities require a different result. For example, in *Moore v. Trader Joe's Co.*, 4 F.4th 874, 882 (9th Cir. 2021), while the Ninth Circuit found on the unique honey-specific facts of the case that the plaintiffs' misrepresentation claims could not proceed, it also explained that a defendant who prominently uses ambiguous representations to maintain "some level of deniability about the intended meaning" while separately hedging with "back-label" disclosures could still be liable. *Id.* at 882-83. The same is true here. PrizePicks cannot escape liability by including a "back-label" disclosure in its Terms of Service when it otherwise prominently represents that its gambling products are "available" in California to lead reasonable consumers to conclude the gambling services are legal here. *See id.*; Compl. ¶¶ 1, 41, 92-96, 99, 101, 106-110. Indeed, Plaintiffs are explicit that they never saw or read the Terms. *Id.* ¶¶ 123, 135.

**B. The "Public Policy Doctrine" Does Not Defeat Plaintiffs' Claims.**

Continuing to play the odds and hoping that one of its arguments will hit the dismissal jackpot, PrizePicks attempts to invoke *Kelly v. First Astri Corp.*, 72 Cal. App. 4th 462 (1999) to argue that the "public policy doctrine" categorically bars Plaintiffs' claims. But the odds (and the law) are against PrizePicks, and its argument fails for at least six reasons.[3]

[3] To the extent the Motion is read to separately attack Plaintiffs' claims based on the doctrine of *in pari delicto*, the *in pari delicto* defense fails for the same reasons as the public policy doctrine.

**First,** and as a threshold matter, PrizePicks overstates the public policy doctrine as a categorical bar on the recovery of gambling losses and ignores that *Kelly* is not the California Court of Appeal's final word on the public policy doctrine. In *Kyablue v. Watkins*, 210 Cal. App. 4th 1288, 1292 (Cal. 2012)—decided 13 years after *Kelly*—the Court of Appeal examined *Kelly* and clarified that the public policy doctrine should not be applied "inflexibly," and courts instead must weigh the "relative moral fault of the plaintiff and the defendant" as well as "the degree of moral turpitude involved" in determining whether the doctrine bars a particular claim:

> *The rule is intended to prevent the guilty party from reaping the benefit of his wrongful conduct*, or to protect the public from the future consequences of an illegal contract. To serve these objectives courts recognize varying forms and degrees of illegality, and that *the particular facts of the case must be considered before remedy is refused*. The rule is not intended to be inflexibly applied in its fullest rigor under any and all circumstances, but involves *weighing the relative moral fault of the plaintiff and the defendant*, whether refusing a remedy can protect the public, *the degree of moral turpitude involved, and whether application of the rule will result in the unjust enrichment of the defendant at the expense of the plaintiff. . . .*
>
> *Stated another way, granting relief to one who repudiates an illegal contract is entirely different from granting relief to one who seeks to enforce it.*

*Kyablue,* 210 Cal. App. 4th 1292-93, 1295 (cleaned up; emphasis added); *see also Tri-Q, Inc. v. Sta-Hi Corp.*, 63 Cal. 2d 199, 218 (1965) ("These rules are intended to prevent the guilty party from reaping the benefit of his wrongful conduct[.]").

As the more recent and comprehensive statement of the public policy doctrine by the California Court of Appeal, *Kyablue* governs here—not PrizePicks' self-serving and extreme interpretation of *Kelly*.

**Second,** even by *Kelly's* own terms, the public policy doctrine does not apply to this case because the doctrine only applies "*in the absence of a statute* authorizing a recovery[.]" *Kelly*, 72 Cal. App. 4th at 489-90 (emphasis added); *see also Wallace v. Opinham*, 73 Cal. App. 2d 25, 26 (1946) (same). Here, Plaintiffs' causes of action arise only under statute—the UCL and CLRA—and not at common law. The UCL and CLRA are broad remedial statutes designed to protect consumers from all forms of unlawful, unfair, deceptive, and fraudulent conduct and must "be liberally construed and applied to promote [their] underlying purposes, which are to protect

consumers against unfair and deceptive business practices." *See* Cal. Civ. Code § 1760. Against these policy goals, interpreting the UCL and the CLRA to not apply to a massive consumer facing industry is non-sensical. *See Ochoa*, 2023 WL 4291650, at *13 (evaluating policy goals of the CLRA and finding UCL and CLRA applicable to online gambling); *Colvin*, 2024 WL 4231090, at *4 (UCL applies to online gambling).

In its Motion, PrizePicks does not meaningfully address this important distinction between common law and statutory claims, and ignores Judge Chhabria's recent decision in *Colvin v. Roblox Corp.*, which explicitly found that a "California UCL unlawful claim [based] on allegations that [defendant] facilitated illegal gambling" can proceed despite the public policy doctrine. 2024 WL 4231090, at *2 (UCL unlawful claim based on underlying CLRA violation). Numerous other courts have also rejected PrizePicks' extreme construction of the public policy doctrine and allowed UCL claims that arose from gambling transactions to proceed. *See, e.g., Los Angeles Turf Club v. Horse Racing Labs*, 2017 WL 11634526 (C.D. Cal May 15, 2017), at *9 (granting summary judgment in favor of *plaintiff* on UCL claim arising from fantasy sports gambling); *Ochoa*, 2023 WL 4291650, at *5, 13 (finding *Kelly* inapplicable to claim for UCL injunctive relief and stating that CLRA applies to online gambling).

**Third,** even if the public policy doctrine could apply in some circumstances to statutory claims, the "policy [in *Kelly*] stems from the general rule against enforcing contracts founded on illegal consideration, which is intended to prevent the guilty party from reaping the benefit of his wrongful conduct, or to protect the public from the future consequences of an illegal contract." *Colvin*, 2024 WL 4231090, at *4 (cleaned up). As detailed in the Complaint, PrizePicks spent hundreds of millions of dollars on a comprehensive marketing campaign that was designed to solicit users to engage in unlawful conduct—including California specific marketings—(*e.g.,* Compl. ¶¶ 81-91), repeatedly presented Californians with information that was designed to cause them to believe that PrizePicks had carefully reviewed the gambling laws of California and confirmed the products were legal in the state (*e.g.,* Compl. ¶¶ 81-112), and in fact expressly required California users to share their location information so that PrizePicks could ensure that each of the gambling contests "comply with applicable laws." Compl. ¶ 109 (quoting PrizePicks' website).

Moreover, each of the Plaintiffs explicitly alleges that these solicitations and representations were material in their respective decisions to use PrizePicks' gambling services: "In setting up and using his PrizePicks account, Plaintiff Franks expressly relied upon PrizePicks' representations that the services it provides in California are legal." Compl. ¶ 116; *id.* ¶ 129 (Bacigalupi). Moreover, "[i]f PrizePicks had not solicited bets and wagers from Plaintiff Franks while representing that such activities were legal (when, unknown to Plaintiff Franks at the time, they in fact were not legal), he would not have made any of those bets or wagers and would not have paid any money to PrizePicks." *See* Compl. ¶¶ 119-121; *id.* ¶¶ 130-132 (Bacigalupi). These allegations are more than sufficient to establish that the "relative moral fault of the plaintiff and the defendant" as well as "the degree of moral turpitude involved" rests squarely with PrizePicks, not Plaintiffs. *Kyablue,* 210 Cal. App. 4th at 1292-93.

**Fourth,** consistent with the factual nature of the public policy doctrine inquiry, *Kelly* itself was decided on summary judgment, with a fully developed record regarding the parties' respective degrees of fault. Accordingly, even if the Court were inclined to apply *Kelly* here (and it should not), application at the pleading stage would be premature. *See Kelly,* 72 Cal. App. 4th at 496.

**Fifth,** none of PrizePicks' authorities require a different result. *Wallace* addressed a common law claim and expressly recognized that the public policy doctrine only applied "*in the absence of a statute*[.]" *Id.* at 26 (emphasis in original). *Jamgotchian v. Sci. Games Corp.* is an unpublished opinion that explicitly states that it "is not precedent," and regardless, did not address the arguments raised in this Opposition, did not address *Kyablue,* and did not involve statutory causes of action. 371 F. App'x 812, at n.** (9th Cir. 2010). *Strickland v. Bicycle Casino, Inc.,* 2012 WL 3756980, at *4 (Cal. Ct. App. Aug. 30, 2012) suffers a similar fate—it is unpublished and importantly pre-dates the California Court of Appeals *published* decision in *Kyablue*. PrizePicks' other authorities are similarly distinguishable. *See, e.g., Alves v. Players Edge, Inc.,* 2007 WL 6004919 (S.D. Cal. Aug. 8, 2007) (decided pre-*Kyablue*); *Ochoa*, 2023 WL 4291650 (not addressing *Kyablue* and allowing injunctive relief claim to proceed); *Mason v. Mach. Zone, Inc.*, 140 F. Supp. 3d 457, 466 (D. Md. 2015) (addressing *Kelly* in dicta and not considering *Kyablue*).

**Finally,** even if this Court were to find that application of the public policy doctrine was appropriate at the pleading stage (and it should not), the result would simply be a narrowing of the *remedies* available to Plaintiffs. *Kelly* "did not purport to preclude from going forward any claim seeking public injunctive relief based on deceptive advertising under California's consumer protection statutes. The Court would find that the public policy rationale articulated in *Kelly* does not so extend." *Ochoa*, 2023 WL 4291650, at *5; *see also Los Angeles Turf Club*, 2017 WL 11634526, *9 (allowing UCL injunctive relief claim to proceed).

Put simply, the public policy doctrine does not prevent Plaintiffs' claims from proceeding.

**C. Plaintiffs Have Statutory Standing to Pursue Their Claims.**

Making another bad bet, PrizePicks next argues that Plaintiffs lack statutory standing to pursue their UCL and CLRA claims because Plaintiffs supposedly received what they paid for—a chance to gamble on the outcome of a sporting event. But PrizePicks' self-serving re-characterization of Plaintiffs' claims is disingenuous. Plaintiffs' theory of this action is that what they agreed to was a *legal* bet on a gambling contest, that the legality was material to their decision to make the bet, and that they would not have made the bet if the unlawful nature of the activity was accurately disclosed. *See* Compl. ¶¶ 116-121 (Franks); ¶¶ 129-132 (Bacigalupi). What Plaintiffs received was *per se* defective because it was entry into an *illegal* contest and inherently less valuable than a legal product—in fact, it has no value. *See Doe v. Roblox Corp.*, 602 F. Supp. 3d 1243, 1260 (N.D. Cal. 2022) (purchase of virtual currency gave rise to UCL statutory standing where material aspects of purchase were not disclosed); *Colvin v. Roblox Corp.*, 725 F. Supp. 3d 1018, 1024-25 (N.D. Cal. 2024) (economic injury arising from online gambling transactions).[4] The "difference between what was paid and what a reasonable consumer would have paid *at the time of purchase* without the fraudulent or omitted information" is a classic economic injury sufficient to create statutory standing under the UCL and CLRA. *Pulaski*, 802 F.3d at 989 (emphasis added).[5]

[4] If the Court determines that an amended pleading is required (it should not), Plaintiffs can add details further explaining the difference in value between legal gambling contracts (what Plaintiffs bargained for) and illegal gambling contracts (what they received).

[5] PrizePicks' authorities do not dictate a different result. *Mai v. Supercell Oy*, 2024 WL 2077500, at *1, n.** (9th Cir. May 9, 2024) "is not precedent" and did not address a claim that the illegality

**D. The CLRA Applies to Online Gambling Services.**

Not knowing when to fold, PrizePicks also argues that the CLRA does not apply to online gambling transactions because they are not "goods" or "services" as defined by the CLRA. However, the Gambling Websites are "comfortably classified as an online entertainment *service.*" *See Doe*, 602 F. Supp. 3d at 1263 (emphasis added); *see also Ochoa,* 2023 WL 4291650, at *13 (CLRA claim against online gambling operator can proceed as a "service"). And even putting these decisions aside, PrizePicks' argument also runs afoul of the CLRA's broad mandate to "liberally construe[] and appl[y] [the act] to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices" and should be rejected. Cal. Civ. Code § 1760.

**E. Plaintiffs' Equitable Claims Are Not Barred by *Sonner* and Its Progeny.**

With its bankroll of arguments running thin, PrizePicks concludes the Motion by claiming that this Court lacks equitable jurisdiction over Plaintiffs' claims pursuant to *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020) because Plaintiffs fail to use the "magic words" in the Complaint that they "lack an adequate remedy at law." However, as Your Honor has previously recognized, "*Sonner* does not require Plaintiffs to 'demonstrate' anything at the pleading stage" and has "minimal application at the pleading stage." *Murphy v. Olly Pub. Benefit Corp.*, 651 F. Supp. 3d 1111, 1129 (N.D. Cal. 2023) (Breyer, J.).

Here, PrizePicks' other arguments confirm that Plaintiffs' legal remedies are inadequate. **First,** as PrizePicks' arguments based on the public policy doctrine make clear, common-law claims are unlikely to be available to Plaintiffs, confirming the inadequacy of such legal claims. *See Kelly,* 72 Cal. App. 4th at 471. **Second,** and similarly, PrizePicks insists that the CLRA—the only statutory *legal* claim that PrizePicks identifies in its Motion—does not apply to this dispute. PrizePicks cannot have this issue both ways—the CLRA either applies or it does not. **Third,** PrizePicks speculates that the monetary remedies available to Plaintiffs at law and at equity will be

decreased the value of the purchased item and that the purchase would not have occurred if the true nature of the product had been disclosed. Similarly, *Ward v. Crow Vote LLC*, 634 F. Supp. 3d 800, 829 (C.D. Cal. 2022) does not defeat Plaintiffs' claims because it found that plaintiff had received the actual value of the item purchased. Likewise, *Kenney v. Fruit of the Earth, Inc.*, 2024 WL 4578981, at *1, n** (9th Cir. Oct. 25, 2024) is also not precedential, but even if it were, it expressly recognized that the risk of renewed false statements by a defendant gave rise to statutory standing to pursue an injunction, confirming that Plaintiffs do in fact have standing here.

precisely the same in this action. However, it is premature at this early stage for the parties (and the Court) to land on final damages models. Moreover, such perfect parity between remedies is far from certain, and for this reason "[c]ourts in this district typically permit the pursuit of alternative remedies at the pleadings stage." *Libman v. Apple, Inc.,* 2024 WL 4314791, at *19 (N.D. Cal. Sept. 26, 2024); *Nacarino v. Chobani, LLC,* 668 F. Supp. 3d 881, 897 (N.D. Cal. 2022) ( "[t]he issue of Plaintiff's entitlement to seek the equitable remedy of restitution may be revisited at a later stage").

**Finally,** even if this Court were to find that Plaintiffs do have adequate *monetary* remedies at law, "*Sonner* is specifically limited to restitution claims and does not preclude claims for injunctive relief to prevent future harm." *Linton v. Axcess Fin. Servs., Inc.*, 2023 WL 4297568, at *3 (N.D. Cal. June 30, 2023) (J. Breyer). Here, Plaintiffs seek to prevent future harm under both their UCL and CLRA causes of action (Compl. ¶¶ 174, 184), state their respective interests in continued use of *legal* gambling products in California (*id.* ¶¶ 122, 134), and allege a future risk of injury to themselves if PrizePicks is not enjoined (*id.*). Accordingly, at a minimum, Plaintiffs' claims for injunctive relief to prevent future injury must be permitted to proceed past the pleadings. *See, e.g., Grausz v. Hershey Co.*, 713 F. Supp. 3d 818, 831 (S.D. Cal. 2024) ("Plaintiff may seek equitable relief in the form of an injunction under the UCL and FAL to the extent her claims are premised on alleged future harm").[6]

## IV. CONCLUSION

The Motion should be denied in full. To the extent the Court grants any portion, Plaintiffs respectfully request leave to amend. *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

Respectfully submitted,

Dated: September 18, 2025

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[6] To the extent the Court concludes Plaintiffs' current equitable claims are barred under *Sonner*, Plaintiffs should be granted leave to amend to add additional factual allegations. If the Court instead dismisses (it should not), any dismissal must be without prejudice to allow Plaintiffs to refile in state court. *Ruiz v. Bradford Exchange, Ltd.*, 2025 WL 2473007, at *4 (9th Cir. Aug. 28, 2025).

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**CERTIFICATE OF SERVICE**

I hereby certify that on the below date, I caused to be served a true and correct copy of the foregoing, which was served on all counsel of record using the Court's CM/ECF system.

Dated: September 18, 2025

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