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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ERIC SAVOY, an individual, on his own behalf and on behalf of all others similarly situated,	)	<b>CASE NO.: 8:20-cv-00632 DOC (ADSx)</b>
	)	
Plaintiffs,	)	<b>MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT COLLECTORS UNIVERSE, INC.'S MOTION TO DISMISS PLAINTIFF ERIC SAVOY'S FIRST AMENDED COMPLAINT</b>
vs.	)	
COLLECTOR'S UNIVERSE, INC., dba PROFESSIONAL SPORTS AUTHENTICATOR, a Delaware corporation; PWCC Marketplace, LLC, an Oregon corporation; RICK PROBSTEIN, an individual, dba PROBSTEIN123, and DOES 1 through 20, inclusive,	)	Date: June 22, 2020 Time: 8:30 a.m. Courtroom: 9D Judge: David O. Carter
	)	
Defendants.	)	
	)	

**MEMORANDUM OF POINTS AND AUTHORIES ISO  
MOTION TO DISMISS FIRST AMENDED COMPLAINT**

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1 Collectors Universe, Inc. (**Collectors**) submits the following memorandum of  
2 points and authorities in support of its FRCP 12(b)(6) motion to dismiss the First  
3 Amended Complaint (**FAC**) of plaintiff Eric Savoy (**Savoy**).

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

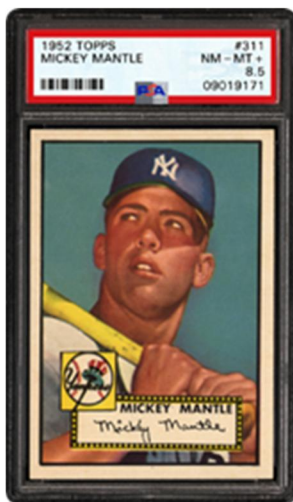
5 **I. SUMMARY OF ARGUMENT.**

6 This motion should be granted and the case should be dismissed with prejudice.

7 This is a trumped up RICO lawsuit concerning sports trading cards. Savoy is a  
8 card hobbyist. Collectors, through its division Professional Sports Authenticator (**PSA**)<sup>1</sup>,  
9 is a company that determines the genuineness of, and assigns grades to, cards.

10 Customers submit their cards to PSA along with PSA's submission agreement.  
11 PSA expert grader(s) then review the cards for authenticity. If PSA determines that the  
12 card is genuine, PSA then looks for evidence of doctoring, such as re-coloring or  
13 trimming. If a card passes the above two steps, PSA grades the condition of each card on  
14 a scale of 1-10, with 10 being best.

15 After grading, PSA encapsulates each card in its own tamper-evident case. A label  
16 within the case (commonly referred to as the "flip") displays the card's pertinent  
17 information (including its grade) and unique certification number. The flip contains  
18 security features that PSA periodically upgrades as new technologies become available.  
19 Below is an example of what a PSA-certified card looks like:



<sup>1</sup> Collectors and PSA are referred to interchangeably throughout this brief.

1 Among card hobbyists, two primary factors drive the value and desirability of  
2 trading cards: (1) authenticity; and (2) aesthetics. Authenticity is by far the most  
3 important factor. Forged or replica cards are typically worthless. What the hobbyist  
4 wants is a piece of history, the actual card that was printed in 1952, 1918, or 1897, as the  
5 case may be.

6 In the art world, restoring, say, the Mona Lisa or Sistine Chapel is viewed as a  
7 necessary measure to preserve a major work. For card hobbyists, restoration is verboten.  
8 They are absolutists on the question of authenticity. As a card goes through life it may be  
9 bent, scratched, chipped, stained. It must bear those marks<sup>2</sup>.

10 The second factor of aesthetics involves two categories: (i) the original printing of  
11 the card; (ii) and its preservation. Cards are mass produced, but they are not identical. As  
12 the cardboard runs through the printing machine, each card comes out slightly different.  
13 Some cards come out of the press centered, brightly colored and glossed. Some cards are  
14 poorly centered or suffer from other printing errors. The better-printed card is considered  
15 the more aesthetically-pleasing card. Well-preserved cards, free from sun or water  
16 damage, bending, creasing, staining, etc. are rated higher than damaged cards.

17 It is against the rules of the hobby to try to improve the aesthetics of a card by  
18 trimming its edges (to improve centering or to eliminate bent corners), filling holes,  
19 recoloring, or any other method of restoration. These “improvements” ruin the  
20 authenticity of a card and reduce or negate its monetary value. Trying to improve the  
21 aesthetics of a card at the expense of its authenticity is known as card doctoring.

22 Trading cards may conjure images of innocence (baseball cards clipped to the  
23 spokes of the Schwinn), but the hobby and its rules are not child’s play. The stakes are  
24 significant. For example, a 1952 Topps Mickey Mantle (card no. 311) rated PSA Mint 9  
25 sells for \$2,500,000. The same card rated PSA Near-Mint 8.5 (depicted above) tops out  
26 at \$825,000. A lay person would likely be unable to distinguish between the 9 and 8.5.

27  
28 <sup>2</sup> It is acceptable to prevent a card from being damaged in the first instance, e.g. putting it in a protective case. However, once damage occurs, the market frowns upon restoration efforts.

1 But to the hobbyist that slight difference is worth \$1,675,000<sup>3</sup>. Card doctoring is a  
2 serious offense because it amounts to fraud: passing altered cards off as authentic to reap  
3 ill-gotten gains from duped card buyers.

4 Against this backdrop Savoy claims that (i) Collectors knowingly grades and  
5 certifies doctored cards; (ii) Collectors does not honor its warranty; (iii) Collectors'  
6 grades are influenced by the grading fee and/or identity of the customer; and (iv) Savoy  
7 and others have been harmed since Collectors' activities have caused a devaluation of  
8 Collectors' certified items.

9 Savoy's charging allegations show that this lawsuit amounts to nothing more than  
10 a shot in the dark:

11 [Savoy] *believes* that he purchased, at a premium price, at least one PSA graded  
12 card that was given a grade on the 1-10 scale despite in fact having been  
13 altered...[b]y creating doubt in the authenticity and value of rated cards,  
14 Defendants have caused all of Plaintiff's cards to decrease in value.

15 (FAC, ¶ 43 [italics added].)

16 *On information and belief*, PSA has failed to honor its guarantee to pay the  
17 difference between the value of the graded cards and what they are worth as  
18 recognized altered cards.

19 (*Id.* ¶ 115 [italics added].)

20  
21 The FAC is completely lacking in specifics. Which allegedly doctored PSA-graded  
22 card did Savoy buy? For how much? Why does he believe it is doctored? Which of  
23 Savoy's cards lost value? How does he know they lost value? Has he been monitoring  
24 auctions? Has he tried to sell his cards? What was their value before the card doctoring  
25 allegations? What was their value after? How was the value determined? The FAC  
26 answers none of these critical questions.

27  
28 <sup>3</sup> See also FAC, ¶ 55. A Gem Mint 10 Pete Rose rookie card sells for \$717,000,  
whereas the same card in Mint 9 condition sells for \$35,000.



1           The most salient flaw in the FAC concerns the guarantee allegations. This case  
2 boils down to the guarantee claim. Were Collectors to grade a doctored card, Collectors  
3 is the ultimate victim, not the consumer. That is because Collectors’ compensates  
4 consumers who have detrimentally relied on a PSA-graded card. (FAC, ¶ 68; Curiel  
5 Decl., Ex. 2.) If Collectors certifies a forged or doctored card, it will compensate a person  
6 who relied on the certification at the current market value of the true card. (*Id.*) If  
7 Collectors “overgraded” an authentic card (assigned it a higher grade than it deserves),  
8 Collectors will pay the person who relied on the certification the difference of value  
9 between the original grade and the new, lower grade. (*Id.*)

10           Savoy’s speculative claim that he “believes” he purchased a doctored PSA-graded  
11 card is not sufficient to show legal injury, among other reasons, since he has a remedy  
12 through the guarantee. The injury can only occur if Collectors refuses to honor the  
13 guarantee.

14           Savoy makes the guarantee allegations on information and belief. (E.g. FAC ¶  
15 115.) This is not excusable because it is the crux of his lawsuit. He must have personal  
16 knowledge of whether or not he was injured. Did Savoy submit any warranty claims to  
17 Collectors? For which cards? What did Collectors do after receiving the guarantee  
18 claim(s)? The FAC is completely silent on all of these necessary facts.

19           In addition to lacking requisite detail to satisfy pleading standards, Savoy’s FAC is  
20 also implausible. The FAC does not plausibly allege that Collectors knowingly grades  
21 doctored cards. On the one hand, Savoy claims Collectors is the savior of the card trading  
22 hobby whose objective standards freed the hobby from forgeries and fraud and created  
23 billions of dollars of value. (FAC ¶¶ 52-55.) On the other hand, Savoy argues that  
24 Collectors is willing to destroy its reputation, on which its whole business depends, to  
25 earn more submission fees by grading altered cards. The FAC offers no plausible  
26 explanation for why Collectors would do that. It simply doesn’t make sense. Not only  
27 would Collectors suffer immense reputational harm if it knowingly graded doctored  
28 cards, it would be subject to staggering liability through its guarantee.



1 The obvious alternate explanation to the card trimming allegations is the only  
 2 plausible one: to the extent that any doctored cards were graded by PSA, it was done by  
 3 mistake. First, Collectors has never claimed infallibility, as evidenced by the guarantee.  
 4 Second, this lawsuit concerns a grand total of three specifically-identified doctored cards  
 5 that Collectors allegedly graded. (FAC, ¶¶ 73-75.) Savoy admits that PSA has been in  
 6 business almost 30 years and grades a million cards each year, which amounts to tens of  
 7 millions of cards graded since its inception. (*Id.* ¶ 54) Thus, even if taken as true, the  
 8 three cards identified in the FAC do not show any pattern or practice of grading altered  
 9 cards, since the FAC admits that Collectors has graded millions upon millions of cards.  
 10 Given the paucity of cards identified, it shows the opposite: Collectors is generally right  
 11 and gets it wrong in only an exceedingly minute fraction of cases. It is more plausible the  
 12 allegedly altered cards were graded by mistake rather than intentionally.

13 The FAC does not plausibly allege that Collectors' grades are influenced by the  
 14 grading fee and/or identity of the customer. This claim is not plausible because, again, it  
 15 goes against Collectors' self-interest to compromise its integrity. Further, the reason for  
 16 the differential pricing structure is stated directly in the submission agreement<sup>4</sup>:  
 17 Collectors pays its customers if Collectors damages a card. When Collectors grades a \$10  
 18 card, it takes \$10 of risk in its handling and shipping of the card. When it grades a  
 19 \$1,000,000 card it takes on \$1,000,000 in risk. The slightest damage, such as the minor  
 20 bending of a corner, can cause significant monetary damage to the card. The differential  
 21 pricing structure exists due to risk and insurance considerations, not a bribery scheme.

22 Based on the reasons above and those set forth below, the FAC fails to state a  
 23 claim and should be dismissed with prejudice.

## 24 **II. SAVOY'S ALLEGATIONS.**

25 Savoy contends that he was personally damaged as follows:

26  
 27 Plaintiff was a victim of the Defendants' scheme. During the relevant time period,

28 <sup>4</sup> The submission agreement is included with this motion based on the  
 incorporation by reference doctrine.

1 Plaintiff has submitted his own cards to PSA for grading and purchased PSA  
2 graded cards. During the relevant time period, Plaintiff believes that he purchased,  
3 at a premium price, at least one PSA graded card that was given a grade on the 1-  
4 10 scale despite in fact having been altered and that he purchased at least one  
5 altered card from PWCC and Probst. By creating doubt in the authenticity and  
6 value of rated cards, Defendants have caused all of Plaintiff's cards to decrease  
7 in value.

8 (FAC ¶ 43.)

9 Savoy also claims that PSA engaged in the following practices:

10 On information and belief, rather than grading cards purely objectively, PSA is  
11 more likely to give a card a higher grade if the consumer submits it a higher  
12 declared value (and pays a higher fee).

13 In other words, on information and belief, each submission can come with an  
14 upfront bribe. By declaring a card at a high value and paying a large fee,  
15 consumers can influence the grade they will receive.

16 Likewise, on information and belief PSA gave preferential treatment to customers  
17 who submitted substantial numbers of cards and paid significant appraisal fees to  
18 them. Such preferential treatment included, on information and belief, graded  
19 altered cards on their behalf and grading cards at higher values than they would  
20 have otherwise garnered.

21 (FAC ¶¶ 86-88.)

22 Savoy claims PSA's alleged practices have caused PSA-graded cards to lose  
23 value:

24 Consumers were impacted to their detriment in a number of ways.

25 First, those who had purchased altered cards learned that they had been defrauded  
26 and the card values plummeted.

27 On information and belief, PSA has failed to honor its guarantee to pay the  
28 difference between the value of the graded cards and what they are worth as  
recognized altered cards.

1 Second, those who were holding unaltered PSA graded cards experienced  
2 declining trust in the rating from potential purchasers and a commensurate drop in  
3 value of their cards.

4 Third, those who had paid PSA to rate their cards were damaged because they were  
5 paying for a service that was not what it purported to be and were receiving lower  
6 grades for their cards than others who submitted altered cards or over-valued their  
7 cards in self-appraisal and received higher grades.

8 Moreover, throughout the scheme, collectors with legitimate PSA graded cards  
9 were damaged by the presence of highly rated altered cards which distorted the  
10 market to make it more difficult to obtain value for lower graded unaltered cards.

(FAC ¶¶ 113-119.)

### 11 **III. THE TERMS & CONDITIONS.**

12 Savoy, and all PSA customers, sign a Submission Agreement and agree to the Terms  
13 & Conditions therein each time they have their cards graded. The Terms & Conditions  
14 provide in pertinent part as follows:

15 PSA will not grade cards which bear evidence of trimming, recoloring, restoration  
16 or any other form of tampering, or are of questionable authenticity, and Customer  
17 agrees not to knowingly submit any such cards. Customer agrees that in the event  
18 PSA rejects any cards for grading, PSA shall not refund the amount paid by  
19 Customer because the determination to reject a card requires a review by PSA's  
20 graders and authenticators. Customer represents and warrants that it has no  
21 knowledge and no reasonable basis to believe that any card submitted for grading  
22 has been altered in any way or is not genuine.

23  
24 (Curiel Decl., Ex. 1, Submission Agreement, PSA Terms & Conditions, ¶ 2 [underlining  
25 added].)

26  
27 Grading involves individual judgments that are subjective and require the exercise  
28 of professional opinion, which can change from time to time. Therefore, PSA

1 makes no warranty or representation and shall have no liability whatsoever to  
2 Customer for the grade assigned by PSA to any card, except pursuant to PSA's  
3 Financial Guarantee of Grade and Authenticity.

4  
5 (*Id.* ¶ 3 [underlining added].)

6 PSA will exercise reasonable care in handling cards submitted for grading, review,  
7 or reholding. However, if PSA determines that Customer's card was lost or  
8 damaged while in PSA's possession, Customer will be compensated based upon  
9 the fair market value of the card as determined by PSA standard procedures which  
10 may include filing a claim with our insurance carrier. The declared value you  
11 stated on the front of this form is for estimating the insurance coverage only, and  
12 the fair market value of the card may be less than your declared value. IN NO  
13 EVENT SHALL THE TOTAL LIABILITY EXCEED THE DECLARED VALUE  
14 OF THE CARD. Such compensation shall be Customer's exclusive remedy for any  
15 loss or damage.

16 (*Id.*, ¶ 5.)

17 **IV. THE FINANCIAL GUARANTEE.**

18 PSA provides a financial Guarantee for all of the cards it grades. The Guarantee  
19 provides in part as follows:

20 The PSA Financial Guarantee of Grade & Authenticity ("Guarantee") is  
21 fundamental to PSA's concept of third-party grading. Subject to the exceptions  
22 noted below, the Guarantee ensures the accuracy of the grade assigned to any PSA-  
23 graded card.

24 PSA guarantees that all cards submitted to it shall be graded in accordance with  
25 PSA grading standards and under the procedures of PSA.

26 If PSA, in fact, concludes that the card in question no longer merits the PSA grade  
27 assigned or fails PSA's authenticity standards, PSA will either:

- 28 1. Buy the card from the submitter at the current market value if the card can no longer receive a numerical grade under PSA's standards or,

1 2. Refund the difference in value between the original PSA grade and the current  
2 PSA grade if the grade is lowered. In this case, the card will also be returned to  
the customer along with the refund for the difference in value.

3 The current market value is determined by PSA, based in part on Sports Market  
4 Report and SMR Online values and/or recent prices realized from the marketplace.  
5 PSA will be the sole determiner of the current market value.

6 (FAC ¶ 68; Curiel Decl, Ex. 2.)

## 7 **V. LEGAL ANALYSIS**

8 Savoy's Complaint fails to state a claim for the reasons set forth below:

### 9 **A. Savoy's Complaint Fails to Meet the *Twombly/Iqbal* Plausibility 10 Standard.**

11 In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) (*Twombly*), the Supreme  
12 Court rejected the notion that "a wholly conclusory statement of a claim would survive a  
13 motion to dismiss whenever the pleadings left open the possibility that a plaintiff might  
14 later establish some set of undisclosed facts to support recovery." (*Twombly*, 550  
15 U.S. at 561 [internal quotation omitted]). Instead, the Court adopted a plausibility  
16 standard, in which the complaint must "raise a reasonable expectation that discovery will  
17 reveal evidence of [the alleged infraction]." (*Id.* at 556.) For a complaint to meet this  
18 standard, the "[f]actual allegations must be enough to raise a right to relief above the  
19 speculative level." (*Id.* at 555.) "[A] plaintiff's obligation to provide the grounds of his  
20 entitlement to relief requires more than labels and conclusions, and a formulaic recitation  
21 of the elements of a cause of action will not do." (*Id.*)

22 In construing the *Twombly* standard, the Supreme Court has advised that "a court  
23 considering a motion to dismiss can choose to begin by identifying pleadings that,  
24 because they are no more than conclusions, are not entitled to the assumption of truth.  
25 While legal conclusions can provide the framework of a complaint, they must be  
26 supported by factual allegations. When there are well-pleaded factual allegations, a court  
27 should assume their veracity and then determine whether they plausibly give rise to an  
28 entitlement to relief." (*Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (*Iqbal*).

1 The court, drawing “on its judicial experience and common sense,” must decide in  
2 the specific context of the case whether the factual allegations, if assumed true, allege  
3 a plausible claim. (*Iqbal*, 556 US at 679.) An inference of liability is not plausible when  
4 the allegations of the complaint give rise to an “obvious alternative explanation” of  
5 legality. (*Id.* at 682.)

6 **B. The Attachments to this Motion Should be Incorporated into the**  
7 **Complaint by Reference.**

8 Collectors respectfully requests that the Court consider the Exhibits attached to the  
9 Declaration of Jackie Curiel in ruling on this motion on the grounds that the FAC (1)  
10 refers to the attached documents; (2) the documents are central to plaintiff's claim; and  
11 (3) the authenticity of the documents are not reasonably subject to dispute.

12 On a motion to dismiss, the Court may consider materials incorporated in the  
13 complaint: “We have extended the doctrine of incorporation by reference to consider  
14 documents in situations where the complaint necessarily relies upon a document or the  
15 contents of the document are alleged in a complaint, the document's authenticity is not in  
16 question and there are no disputed issues as to the document's relevance.” (*Coto*  
17 *Settlement v. Eisenberg* 593 F3d 1031, 1038 (9th Cir. 2010).)

18 When the plaintiff fails to attach key documents to its pleading, the defendant may  
19 attach to a Rule 12(b)(6) motion the documents referred to in the complaint to show that  
20 they do not support plaintiff's claim. (*Tellabs, Inc. v. Makor Issues & Rights, Ltd.* 551 US  
21 308, 322 (2007).) Documents not physically attached to the complaint may nonetheless  
22 be considered by the court on a 12(b)(6) motion to dismiss if: (1) the complaint refers to  
23 such document; (2) the document is “central” to plaintiff's claim; and (3) no party  
24 questions the authenticity of the copy attached to the 12(b)(6) motion. (*United States v.*  
25 *Corinthian Colleges* 655 F3d 984, 999 (9th Cir. 2011).)

26 Some courts have extended the above rule to documents attached to defendant's  
27 Rule 12(b)(6) motion, even though they were *not* mentioned in the complaint. This  
28 prevents plaintiffs from “deliberately omitting references to documents upon which their

1 claims are based.” (*Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998); *Global*  
2 *Network Communications, Inc. v. City of New York*, 458 F3d 150, 156-157 (2nd Cir.  
3 2006) —“prevents plaintiffs from generating complaints invulnerable to Rule 12(b)(6)  
4 simply by clever drafting.”.)

5 Here, all three incorporation by reference factors are met: (1) the FAC refers to the  
6 Terms & Conditions (FAC ¶ 57, 63 , 64 [referring to terms contained in the Submission  
7 Agreement and Terms & Conditions] and Guarantee (*Id.* ¶ 68.); (2) these documents are  
8 central to Savoy’s claims because they contain the representations that Savoy claims  
9 Collectors did not live up to; and (3) no legitimate dispute can exist concerning the  
10 authenticity of the documents since Savoy quotes them in his FAC and because they are  
11 submitted in compliance with the Federal Rules of Evidence.

12 As an additional basis, the Terms & Conditions should be incorporated by  
13 reference because the FAC deliberately omits references to the explanation in the Terms  
14 and Conditions of the differential pricing structure upon which Savoy’s claims are based.  
15 Savoy claims that Collectors conducts a bribery scheme whereby customers who pay  
16 higher fees obtain higher grades for their cards. Savoy deceptively omits the provision in  
17 Terms & Conditions which explain the differential pricing structure is for liability and  
18 insurance purposes. This provision refutes Savoy’s bribery scheme allegations.

19 **C. Savoy’s First Claim for Violation of Business and Professions Code**  
20 **section 17200 Fails.**

21 The Unfair Competition Law (UCL) claim fails. Savoy must establish an “injury in  
22 fact” to prevail his UCL claim. Injury in fact under section 17204 incorporates the  
23 established federal law meaning: “an invasion of a legally protected interest which is (a)  
24 concrete and particularized ...; and (b) actual or imminent, not conjectural or  
25 hypothetical.” (*Kwikset Corp. v. Sup.Ct. (Benson)*, 51 Cal. 4th 310, 322 (2011), internal  
26 quotes omitted); *Lujan v. Defenders of Wildlife* 504 US 555, 560-561(1992).)

27 Savoy must establish that he lost money or property. The “lost money or property”  
28 requirement means plaintiff “must demonstrate some form of *economic injury*.” (*Kwikset*



1 *Corp. v. Sup.Ct. (Benson)*, supra, 51 Cal. 4th at 323 (emphasis added).

2 Savoy contends he was injured based on his (i) “belief” that he paid a premium price  
3 for an allegedly doctored PSA-certified card; (ii) based on his “belief” that PSA does not  
4 honor its guarantee; and (iii) based on the purported widespread devaluation of PSA-  
5 certified items caused by PSA’s alleged practices of grading doctored cards and allowing  
6 card grades to be influenced by submission fees and client relationships. (FAC ¶¶ 43, 86-  
7 88, 113-119.)

8 Savoy’s allegations concerning his alleged damages do no satisfy the *Twombly/Iqbal*  
9 pleading standard because they are vague, speculative, and wholly conclusory. Among  
10 other deficiencies, the FAC does not identify any particular doctored PSA-graded card  
11 that Savoy bought, the basis for believing the card is doctored, the price he paid for it,  
12 whether he made any guarantee claims to PSA, whether any particular cards of his lost  
13 value, how he knows they lost value, their before and after prices, etc. For similar  
14 reasons, he has not pleaded any economic injury as required by *Kwikset*. Accordingly,  
15 the UCL claim fails.

16 **D. Savoy’s Second Claim for Violation of Business and Professions**  
17 **Code section 17500 Fails.**

18 Savoy’s False Advertising Law claim fails. Section 17500 is in the same chapter as  
19 section 17200, thus requiring Savoy to plead an injury in fact under section 17400, as  
20 with the UCL claim. (See e.g. *Buckland v. Threshold Enterprises, Ltd.* 155 Cal.App.4th  
21 798, 819 (2007).) Based on the above analysis, and for identical reasons, the False  
22 Advertising Law claim fails for failing to allege a concrete and particularized injury in  
23 fact.

24 **E. Savoy’s Third Claim for Violation of California Civil Code section**  
25 **1750 Fails.**

26 The Consumer Legal Remedies Act (CLRA) fails. “ ‘The CLRA makes unlawful, in  
27 Civil Code section 1770, subdivision (a) ... various “unfair methods of competition and  
28 unfair or deceptive acts or practices undertaken by any person in a transaction intended to

1 result or which results in the sale or lease of goods or services to any consumer.” ’ The  
2 CLRA proscribes 27 specific acts or practices.” (*Rubenstein v. The Gap, Inc.*, 14  
3 Cal.App.5th 870, 880–881 (2017), internal citation omitted.)

4 To bring a CLRA claim, the consumer must prove that he or she actually suffered  
5 damage “as a result of” a method, act or practice declared unlawful under Civil Code  
6 section 1770. (Civil Code § 1780(a); *Wilens v. TD Waterhouse Group, Inc.* 120  
7 Cal.App.4th 746, 754 (2003) —causation is “a necessary element of proof.”)

8 That plaintiffs can show defendant’s conduct was deceptive is not enough; they  
9 must also prove the deception caused them harm. (*Massachusetts Mut. Life Ins. Co. v.*  
10 *Sup.Ct. (Karges)*, 97 Cal.App.4th 1282, 1292 (2002).)

11 This claim fails for lack of causation and damages. Even assuming arguendo that  
12 Savoy has adequately pleaded that Collectors knowingly grades doctored cards and gives  
13 higher grades to preferred customers who pay higher submission fees, which he hasn’t,  
14 the FAC does not allege in a concrete and particularized manner whether PSA’s alleged  
15 activities caused Savoy to over-pay for PSA-graded cards, or caused any of his PSA-  
16 graded cards to lose value, or otherwise caused him to lose money or suffer any harm.  
17 Accordingly, this claim fails.

#### 18 **F. Savoy’s Fourth Claim for Violation of Consumer Fraud Laws Fails.**

19 The “Violation of Consumer Fraud Laws” claim fails. It presents no cognizable  
20 cause of action whatsoever. It is not even clear which law Savoy purports to sue  
21 Collectors under, as the FAC lists over forty statutes, most of which are out-of-state  
22 claims. (FAC, ¶ 176.) Construed most charitably, the claim is a restatement of the CLRA  
23 and UCL claims discussed above and fails for the same reasons. (*Id.* ¶ 176 d & k.)

24 To the extent Savoy purports to assert out-of-state claims against Collectors, there  
25 is no personal jurisdiction over Collectors to do so. As a general rule, Federal Courts  
26 do not have nationwide personal jurisdiction. With limited exceptions, they have no  
27 broader power over persons outside the state in which they sit than do the local state  
28 courts. (*Omni Capital Int’l, Ltd. v. Rudolph Wolff & Co., Ltd.* 484 US 97, 104-105

1 (1987); FRCP 4(k)(1)(A).) Service of summons in a federal action establishes personal  
2 jurisdiction over a defendant “who is subject to the jurisdiction of a court of general  
3 jurisdiction in the state where the district court is located.” (FRCP 4(k)(1)(A); *Walden v.*  
4 *Fiore*, 571 US 277, 283 (2014) [internal quotes omitted].)

5 Collectors was served with a California state court summons only. (Exs. 2 and 6 to  
6 Notice of Removal [Doc. # 1-1].) Thus, there is no personal jurisdiction over Collectors  
7 with respect to the out-of-state claims. Accordingly, this claim fails.

#### 8 **G. Savoy’s Fifth Claim for Negligent Misrepresentation Fails.**

9 The negligent misrepresentation claim fails. Negligent misrepresentation requires  
10 an assertion of fact, falsity of that assertion, and the tortfeasor’s lack of reasonable  
11 grounds for believing the assertion to be true. It also requires the tortfeasor’s intent to  
12 induce reliance, justifiable reliance by the person to whom the false assertion of fact was  
13 made, and damages to that person. An implied assertion of fact is ‘not enough’ to support  
14 liability.” (*SI 59 LLC v. Variel Warner Ventures, LLC*, 29 Cal.App.5th 146, 154 (2018),  
15 internal citation omitted.)

16 Savoy has not pleaded the elements in a manner sufficient to satisfy the  
17 *Twombly/Iqbal* standard. Savoy makes broad assertions that PSA grades doctored cards,  
18 but the FAC does not tie these assertions to any particular card or any particular failure to  
19 honor the PSA warranty. Nor does the FAC plead any specific reliance on Savoy’s part  
20 or any damages. Accordingly, this claim fails.

#### 21 **H. Savoy’s Sixth Claim for Fraud Fails.**

22 The fraud claim fails. “The elements of fraud that will give rise to a tort action for  
23 deceit are: ‘(a) misrepresentation (false representation, concealment, or nondisclosure);  
24 (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d)  
25 justifiable reliance; and (e) resulting damage.’ ” (*Engalla v. Permanente Medical Group,*  
26 *Inc.*, 15 Cal.4th 951, 974 (1997), internal quotation marks omitted.)

27 A plaintiff's failure to meet FRCP 9 (b) 's heightened pleading requirements for  
28 fraud or mistake may provide the basis for a Rule 12(b)(6) motion to dismiss. (*ESG*

1 *Capital Partners, LP v. Stratos* 828 F.3d 1023, 1031-1032 (9th Cir. 2016).) “At a  
2 minimum, Rule 9(b) requires allegations of the particulars of time, place, and contents of  
3 the false representations, as well as the identity of the person making the  
4 misrepresentation and what he obtained thereby.” (*Tel-Phonic Servs., Inc. v. TBS Int’l,*  
5 *Inc.*, 975 F.2d 1134, 1138-39 (5th Cir. 1992) [quotation marks and citation omitted].)

6 In support of this claim, Savoy contends that “Defendants concealed the fact that  
7 PSA was grading altered cards and continuously affirmatively misrepresented that it  
8 would only grade unaltered cards.” (FAC, ¶ 195.)

9 Savoy fails to adequately plead his fraud claim since he fails to meet the pleading  
10 requirements of *Twombly*, *Iqbal*, and Rule 9. Savoy makes broad, vague assertions of  
11 wrongdoing, but fails to specify the elements of the claim, including identifying any  
12 doctored cards that he owns or lost money on. He states that he merely “believes” he  
13 owns a doctored card and that his cards lost value. Such allegations are not sufficient to  
14 support a fraud claim. Accordingly, this claim fails.

### 15 **I. Savoy’s Seventh Claim for RICO Violations Fails.**

16 This claim, brought under 18 U.S.C. § 1962, subds. (c) and (d), fails. (FAC, ¶¶  
17 204-205.) As discussed in more detail below, Savoy’s RICO allegations lack specifics  
18 and are nothing more than a formulaic recitation of the elements. The allegations satisfy  
19 neither the *Twombly/Iqbal* standard, let alone the stringent requirements of Rule 9.

#### 20 **1. Savoy Lacks Standing.**

21 Savoy lacks standing. Under RICO’s civil enforcement mechanism, “[a]ny person  
22 injured in his business or property by reason of a violation of [18 U.S.C. § 1962] may sue  
23 therefore in any appropriate United States district court.” 18 U.S.C. § 1964(c). To have  
24 standing under § 1964 (c), a plaintiff must allege: (i) “that his alleged harm qualifies as  
25 injury to his business or property;” and (ii) “that his harm was ‘by reason of’ the RICO  
26 violation, which requires the plaintiff to establish proximate causation.” (*Canyon County*  
27 *v. Syngenta Seeds, Inc.*, 519 F.3d 969, 972 (9th Cir. 2008).) Injury to business or property  
28 requires tangible and concrete financial loss, rather than speculative or uncertain harm.

1 (*Guerrero v. Gates*, 357 F.3d 911, 920 (9th Cir. 2004). Reliance “on an attenuated chain  
2 of conjecture” is insufficient to support proximate causation under § 1964 (c). (*Salmon*  
3 *Spawning & Recovery Alliance v. Gutierrez*, 545 F.3d 1220, 1228 (9th Cir. 2008)  
4 (citation omitted).)

5 As demonstrated above, Savoy has failed to plead any tangible and concrete  
6 financial loss. Instead, he speculates that maybe he bought a doctored card and perhaps  
7 his cards lost value. Because Savoy has failed to plead any injury with particularity or  
8 plausibility, he lacks standing to bring a RICO claim.

## 9 **2. The Section 1962(c) Claim Fails.**

10 The section 1962(c) claim fails. To state a RICO claim under section 1962(c), a  
11 plaintiff must allege: (i) conduct (ii) of an enterprise (ii) through a pattern (iv) of  
12 racketeering activity, and (v) injury in the plaintiffs' business or property by the conduct  
13 constituting the violation. (*Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496  
14 (1985).) “The touchstone of [Section 1962(c)] is that each individual defendant must be  
15 shown to have personally participated in a pattern of racketeering activity.” (*Zazzali v.*  
16 *Ellison*, 973 F.Supp.2d 1187, 1200 (D. Idaho 2013).)

17 When, as in this case, a RICO claim is based on a predicate offense of fraud, the  
18 “circumstances constituting fraud ... shall be stated with particularity” pursuant  
19 to Federal Rules of Civil Procedure 9(b). (*Edwards v. Marin Park, Inc.*, 356 F.3d 1058,  
20 1066 (9th Cir. 2004).)

### 21 **i. Savoy Fails to Adequately Allege There Was An** 22 **Enterprise.**

23 Savoy fails to adequately allege the existence of a RICO “enterprise” under section  
24 1962(c). The RICO statute defines “enterprise” to include “any individual, partnership,  
25 corporation, association, or other legal entity, and any union or group of individuals  
26 associated in fact although not a legal entity.” (18 U.S.C. § 1961(4).) To show an  
27 association-in-fact enterprise, plaintiffs must plead four elements. First, plaintiffs must  
28 plead a common purpose. (*Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d

1 990, 997 (9th Cir. 2014).) To show a common purpose, plaintiffs must allege that the  
2 group engaged in enterprise conduct distinct from their own affairs. (*Odom v. Microsoft*  
3 *Corp.*, 486 F.3d 541, 549 (9th Cir. 2007).) Second, plaintiffs must plead an ongoing  
4 structure or organization to the enterprise, which may be either formal or informal.  
5 (*United States v. Turkette*, 452 U.S. 576, 583, (1981).) Savoy must also allege facts  
6 showing “some participation in the operation or management of the enterprise” by  
7 members. (*Reves v. Ernst & Young*, 507 U.S. 170, 176 (1993).) Third, Savoy must plead  
8 that the enterprise had the longevity necessary to accomplish its purpose. (*Odom*, 486  
9 F.3d at 552.) Fourth, Savoy must allege facts indicating that the alleged associates in the  
10 enterprise, over time, “function[ed] as a continuing unit.” (*Turkette*, 452 U.S. at 583.)

11 The FAC fails to adequately plead any of the above four elements showing a RICO  
12 enterprise. Savoy merely alleges, in a vague and conclusory manner, that PSA graded  
13 altered cards and PWCC and Probststein sold altered cards. The FAC states nothing more  
14 than a formulaic recitation of the RICO elements. Savoy does not allege any particulars  
15 showing that defendants acted with a common purpose, coordinated their efforts in any  
16 manner distinct from their own affairs, the structure of the alleged enterprise, the length  
17 of time the alleged enterprise has been in existence, whether any particular officers from  
18 PSA and PWCC were involved, or that any enterprise functioned as a continuing unit.  
19 The FAC only identifies three allegedly altered cards (cards that do not belong to Savoy,  
20 but rather identified in a news article) that were graded, but does not state who sold them,  
21 or any other facts supporting an enterprise. (FAC ¶¶ 73-75.) Accordingly, Savoy fails to  
22 plead a RICO enterprise.

23 **ii. Savoy Fails to Allege a Racketeering Activity Pattern.**

24 The RICO statute defines “racketeering activity” as any act indictable under  
25 several provisions of Title 18 of the United States Code, including the predicate acts of  
26 wire fraud, § 1343, mail fraud, § 1341, and tampering with or retaliating against federal  
27 witnesses, §§ 1512, 1513. (18 U.S.C. § 1961(1).)

28 To make out a claim for the RICO predicate act of wire or mail fraud, Savoy must



1 allege (i) a scheme or artifice devised with (ii) the specific intent to defraud and (iii) use  
2 of the United States mail or interstate telephone wires in furtherance thereof. (*Orr v.*  
3 *Bank of America, NT & SA*, 285 F.3d 764, 782 (9th Cir. 2002).) A mail or wire  
4 communication is in furtherance of a fraudulent scheme if it is “incident to the execution  
5 of the scheme,” meaning that it “need not be an essential element of the scheme, just a  
6 step in the plot.” (*United States v. Garlick*, 240 F.3d 789, 795 (9th Cir. 2001) [citation  
7 omitted].) Honest services fraud entails a scheme or artifice to deprive another, by mail  
8 or wire, of the intangible right of honest services, and it covers only bribery and kickback  
9 schemes. (*United States v. Christensen*, 828 F.3d 763, 785 (9th Cir. 2015) (citing *Skilling*  
10 *v. United States*, 561 U.S. 358, 368 (2010).) A breach of a fiduciary duty is an element of  
11 honest services fraud under 18 U.S.C. § 1346. (*United States v. Milovanovic*, 678 F.3d  
12 713, 722 (9th Cir. 2012) (en banc).)

13 To plead a pattern of racketeering activity, Savoy must allege that defendants  
14 committed at least two of the statutorily enumerated predicate acts. (18 U.S.C. § 1961(5);  
15 *Turner v. Cook*, 362 F.3d 1219, 1229 (9th Cir. 2004) [noting that, while at least two acts  
16 of racketeering activity are required under RICO to establish a pattern, the pleading of  
17 two such acts is not necessarily sufficient to do so].) Where RICO claims under section  
18 1962(c) are asserted against multiple defendants, a plaintiff must allege at least two  
19 predicate acts by each defendant. (*In re WellPoint, Inc. Out-of-Network UCR Rates*  
20 *Litig.*, 903 F.Supp.2d 880, 914 (C.D. Cal. 2012).)

21 To plead a pattern of racketeering activity, plaintiffs must allege: (i) that the  
22 racketeering predicates are related, and (ii) that they amount to or pose a threat of  
23 continued criminal activity. (*Turner, supra* 362 F.3d at 1229 (citations omitted).) The  
24 relatedness requirement is satisfied if the plaintiffs allege criminal acts with the same or  
25 similar purposes, results, participants, victims, or methods of commission, or acts that are  
26 otherwise interrelated by distinguishing characteristics and are not isolated events.  
27 (*Howard v. America Online Inc.*, 208 F.3d 741, 749 (9th Cir. 2000).) The continuity  
28 requirement is satisfied if plaintiffs allege “either a series of related predicates extending



1 over a substantial period of time, i.e., closed-ended continuity, or past conduct that by its  
2 nature projects into the future with a threat of repetition, i.e., open-ended continuity.” *Id.*  
3 at 750; *H.J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 241–42 (1989).)

4 Without specific factual allegations supporting claims of bribery or kickbacks,  
5 plaintiffs cannot allege a predicate offense of honest services fraud. (*Christensen*, 828  
6 F.3d at 785 [explaining that under the Supreme Court's decision in *Skilling v. United*  
7 *States*, 561 U.S. 358 (2010), honest services fraud is now limited to fraudulent schemes  
8 involving bribes or kickbacks supplied by a third party who had not been deceived].)

9 The FAC is hopelessly conclusory and fails to even approach showing  
10 racketeering activity. The FAC has not pleaded a single instance of racketeering, let  
11 alone a pattern. Savoy has identified three alleged doctored cards, out of tens of millions  
12 that have been graded, and nothing more. He has shown no connection between the three  
13 incidents or that defendants somehow coordinated their efforts.

14 Nor has he alleged any bribery scheme. As discussed herein, Savoy attempts to  
15 label PSA’s differential pricing structure as a bribery scheme, but even viewed in a light  
16 most favorable, Savoy does not plead that PSA owed him any fiduciary duty or that the  
17 alleged scheme involved bribes or kickbacks supplied by a third party. Thus, Savoy’s  
18 section 1962(c) claim fails.

### 19 **3. The Section 1962(d) Claim Fails.**

20 Because the section 1962(c) claim fails, so does the 1962(d) claim. The RICO  
21 statute provides that “it shall be unlawful for any person to conspire to violate any of the  
22 provisions of subsection (a), (b), or (c) of this section.” 18 U.S.C. § 1962(d). A plaintiff  
23 “cannot claim that a conspiracy to violate RICO exist[s] if they do not adequately plead a  
24 substantive violation of RICO.” (*Neibel v. Trans World Assurance Co.*, 108 F.3d 1123,  
25 1127 (9th Cir. 1997) [stating that “if the section 1962(c) claim does not state an action  
26 upon which relief could ever be granted, regardless of the evidence, then the section  
27 1962(d) claim cannot be entertained.” (emphasis omitted)].) Accordingly, this claim fails.  
28

