

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 31 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOEL DAVID JOSEPH,

Plaintiff-Appellant,

v.

COSTCO WHOLESALE CORPORATION,

Defendant-Appellee,

and

APOTEX CORPORATION,

Defendant.

No. 16-55370

D.C. No. 2:14-cv-06899-SVW-KK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Submitted May 24, 2017**

Before: THOMAS, Chief Judge, and SILVERMAN and RAWLINSON,
Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Joel David Joseph appeals pro se from district court's summary judgment in his diversity action alleging claims under California's Unfair Competition Law ("UCL") in connection with the labeling of a prescription drug. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Daniel v. Ford Motor Co.*, 806 F.3d 1217, 1221 (9th Cir. 2015). We affirm.

The district court properly granted summary judgment on Joseph's UCL claims because Joseph failed to raise a genuine dispute of material fact as to whether he relied on the absence of a country of origin marking before purchasing atorvastatin from defendant Costco. *See* Cal. Bus. & Prof. Code § 17204 (standing under the UCL requires plaintiff's injury to occur "as a result of" defendant's misconduct); *Kwikset Corp. v. Superior Court*, 246 P.3d 877, 885-88 (Cal. 2011) (to bring a claim under the UCL, a plaintiff must have economic injury caused by the defendant's unfair business practice); *see also Daniel*, 806 F.3d at 1225 ("To prove reliance on an omission, a plaintiff must show that the defendant's nondisclosure was an immediate cause of the plaintiff's injury-producing conduct.").

We do not consider documents and facts not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) ("Documents or facts not presented to the district court are not part of the record on appeal.").

AFFIRMED.