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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: MACBOOK KEYBOARD
LITIGATION

Case No. [5:18-cv-02813-EJD](#)

**ORDER DENYING DEFENDANT’S
MOTION TO DISMISS**

Re: Dkt. No. 130

Plaintiffs claim the Apple MacBook, MacBook Pro, and MacBook Pro with Touch Bar laptops they purchased in 2016, 2017, and 2018 contain a defective “butterfly” keyboard design that causes their keyboards to fail—resulting in sticky keys, unresponsive keys, and keys that do not register strokes properly. First Am. Consolidated Class Action Compl. (“FAC”) ¶¶ 23, 25, 29, 31, 37, 39, 44, 46, 52, 54, 58, 60, 66, 68, 76, 78, 84, 86. Plaintiffs bring a putative class action against Defendant Apple Inc. for allegedly selling MacBook, MacBook Pro, and MacBook Air laptops with defective keyboards in violation of state consumer protection and warranty laws. *Id.* ¶¶ 1, 193-312. Plaintiffs seek monetary damages, equitable relief, attorneys’ fees, and costs. *Id.* ¶ 312. Apple moves to dismiss Plaintiffs’ FAC under Rule 12(b)(1) and Rule 12(b)(6). Mot. to Dismiss (Dkt. No. 130) at 2-3. For the reasons below, the court DENIES Apple’s motion.¹

¹ The court has filed this order under seal because it contains material subject to sealing orders. Dkt. Nos. 135, 157. Within seven days of the filing date of this order, the parties shall provide the court a stipulated redacted version of this order, redacting only those portions of the order containing or referring to material for which the court has granted a motion to seal and for which the parties still request the material remain sealed. The court will then issue a redacted version of the order.

I. PROCEDURAL HISTORY

In October 2018, ten plaintiffs, citizens and residents of California, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, and Washington, filed a putative class action against Apple “on behalf of individuals who purchased model year 2015 or later Apple MacBook laptops and model year 2016 or later MacBook Pro laptops.” Consolidated Class Action Complaint (“CCAC”) (Dkt. No. 66) ¶¶ 1, 8-18. Plaintiffs claimed the MacBook and MacBook Pro laptops have defective “butterfly” keyboards that place consumers at a “constant threat of non-responsive keys and keyboard failure.” *Id.* ¶ 2. Accordingly, Plaintiffs brought ten claims against Apple for alleged violations of: (1) the Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*; (2) Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*; (3) fraudulent concealment; (4) breach of the covenant of good faith and fair dealing (common law); (5) Song-Beverly Consumer Warranty Act (“Song-Beverly Act”), Cal. Civ. Code § 1792, *et seq.*; (6) Washington Consumer Protection Act, Wash. Rev. Code § 19.86.010, *et seq.*; (7) Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.*; (8) Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. § 505/1, *et seq.*; (9) New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, *et seq.*; (10) New York General Business Law § 349; and (11) Michigan Consumer Protection Act, Mich. Comp. Laws § 445.901, *et seq.* *Id.* ¶¶ 174-302. In December 2018, Apple filed a Motion to Dismiss Plaintiffs’ CCAC and Request for Judicial Notice. Dkt. Nos. 72, 74. Soon after, Plaintiffs filed their Opposition and Apple filed a Reply. Dkt. Nos. 79, 82.

In April 2019, the court granted in part and denied in part Apple’s Motion to Dismiss Plaintiff’s CCAC under Federal Rules of Civil Procedure 12(b)(6) and 9(b). Order (Dkt. No. 110). The court denied Apple’s Motion to Dismiss the non-California Plaintiffs’ claims under California law, deciding to defer the choice of law analysis. *Id.* at 5-6. The court also denied the motion as to Plaintiffs’ claims based on fraud by omission (*id.* at 13) and Plaintiffs’ claim under the unfair prong of California’s UCL (*id.* at 16).

The court, however, granted Apple’s Motion to Dismiss Plaintiffs’ claims under the

1 CLRA, Song-Beverly Act, and implied covenant of good faith and fair dealing. *Id.* at 8, 15. In
2 their Opposition, Plaintiffs claimed Apple’s Keyboard Service Program (“Program”) did not moot
3 their CLRA and Song-Beverly Act claims because Apple could not “provide an effective fix to the
4 defect” and the Program “does not provide all of the relief that they seek.” *Id.* at 14-15 (citing
5 Pls.’ Opp’n at 22, 24). But, Plaintiffs did not allege any facts about the Program in the CCAC.
6 Order at 15. Thus, “Plaintiffs d[id] not allege any facts showing that the Keyboard Service
7 Program does not moot their claims under the CLRA and the Song-Beverly Act.” *Id.*

8 Regarding the Program, Apple had requested the court to take judicial notice of an
9 apple.com webpage that described the Program. Dkt. No. 74. The webpage represented that
10 Apple will provide free service to model years 2015-2017 MacBooks and model years 2016-2017
11 MacBook Pros with keyboards that malfunction in ways similar to the alleged failures that
12 Plaintiffs have experienced. *Id.* at 14 (citing Ex. A). The webpage stated that the service “may
13 involve the replacement of one or more keys or the whole keyboard.” *Id.* (quoting Ex. A). The
14 court took judicial notice of the following facts under Federal Rule of Evidence 201(b): “(1)
15 Exhibit A is an accurate depiction of an apple.com webpage, (2) Apple has made the above
16 representations about the Key Board Service Program to the public through that website, and (3)
17 Apple is providing free services to the models of MacBook and MacBook Pro listed on the
18 website.” Order at 14.

19 The order granted Plaintiffs leave to amend. *Id.* at 16. In May 2019, Plaintiffs filed their
20 FAC. Dkt. No. 117. In June 2019, Apple filed a Motion to Dismiss Plaintiffs’ FAC. Dkt. No.
21 130. Plaintiffs and Apple respectively filed an Opposition and Reply. Dkt. Nos. 148, 152. And
22 the court heard oral argument on Apple’s Motion to Dismiss on November 21, 2019.

23 **II. BACKGROUND**

24 **A. Plaintiffs’ Allegations in the FAC**

25 In May 2019, Plaintiffs, nine consumers from California, Florida, Illinois, Massachusetts,
26 Michigan, New Jersey, New York, and Washington, filed a putative class action against Apple on
27 behalf of persons “who purchased model year 2015 or later Apple MacBook laptops, model year

2016 or later MacBook Pro laptops, and model year 2018 or later MacBook Air laptops.” FAC ¶¶ 1, 8-16. Plaintiffs invoke jurisdiction in federal court under the Class Action Fairness Act, 28 U.S.C. § 1332. *Id.* ¶ 18. Plaintiffs bring ten causes of action against Apple, stemming from allegedly defective butterfly keyboards for alleged violations of: (1) the UCL, Cal. Bus. & Prof. Code § 17200, *et seq.*; (2) CLRA, Cal. Civ. Code § 1750, *et seq.*; (3) fraudulent concealment; (4) Song-Beverly Act, Cal. Civ. Code § 1792, *et seq.*; (5) Washington Consumer Protection Act, Wash. Rev. Code § 19.86.010, *et seq.*; (6) Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.*; (7) Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. § 505/1, *et seq.*; (8) New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, *et seq.*; (9) New York General Business Law § 349; and (10) Michigan Consumer Protection Act, Mich. Comp. Laws § 445.901, *et seq.* (“MCPA”). *Id.* ¶¶ 193-312.

Each Plaintiff alleges to have purchased a new MacBook, MacBook Pro, or MacBook Pro with Touch Bar laptop with the defective butterfly keyboard design. *Id.* ¶¶ 23, 29, 37, 44, 52, 58, 66, 76, 84. Plaintiffs purchased their laptops after viewing Apple advertisements and marketing materials that “touted the MacBook’s thinness and represented that it has a highly responsive butterfly keyboard.” *Id.* ¶¶ 24, 30, 38, 45, 53, 59, 67, 77, 85. Specifically, Plaintiffs purchased their laptops after reviewing promotional material on Apple’s website that represented the MacBook as having a “more responsive keyboard.” *Id.*

But, Plaintiffs claim their keyboards failed within one year of purchasing their laptops. *Id.* ¶¶ 23, 25, 29, 31, 33, 37, 39, 44, 46, 52, 54, 58, 60, 66, 68, 76, 78, 84, 86. Plaintiffs experienced various keyboard issues, including sticky keys, unresponsive keys, and keystrokes that would not register. *Id.* ¶¶ 25, 31, 39, 46, 54, 60, 68, 78, 86. Plaintiffs allege they consulted with Apple or Apple certified technicians about their keyboard issues. *Id.* ¶¶ 27, 34, 40-43, 47-48, 50, 55-56, 61-62, 64, 69-70, 73-74, 79-82, 87-89. However, Apple’s troubleshooting and repair efforts did not resolve their issues. *Id.* ¶¶ 28, 36, 43, 51, 57, 65, 75, 83, 90.

Plaintiffs allege that “Apple’s butterfly keyboard and MacBook are designed and produced in such a way that when minute amounts of dust or debris accumulate under or around a key,

1 keystrokes fail to register properly.” *Id.* ¶ 2. The keyboard fails when “the keys stick, register
 2 multiple key strikes when a key is pressed only once, or stop registering keystrokes.” *Id.* ¶ 1. And
 3 “[w]hen one or more keys on the keyboard fail, the MacBook can no longer perform its core
 4 function: typing.” *Id.* ¶ 2.

5 Plaintiffs allege that Apple’s patent filings and in-house testing records show that Apple
 6 was aware of the defective butterfly keyboard design before selling MacBook laptops to the public
 7 in 2015. *Id.* ¶¶ 3, 134-154. [REDACTED]

8 [REDACTED]
 9 [REDACTED] Despite this awareness, Apple
 10 markets “the MacBook as having a superior and highly responsive keyboard” and “continue[s]
 11 selling it at a premium price.” *Id.* ¶¶ 3-4. Apple’s representations of the keyboard are “materially
 12 misleading” to consumers. *Id.* ¶ 4. Each Plaintiff claims: “Had he been aware of the existence of
 13 the keyboard defect, [he] would not have purchased his laptop or would have paid significantly
 14 less for it.” *Id.* ¶¶ 28, 36, 43, 51, 57, 65, 75.

15 Apple provides a one-year limited warranty for each MacBook laptop. *Id.* ¶ 155. In
 16 relevant part, the warranty provides:

17 WHAT IS COVERED BY THIS WARRANTY?

18 Apple Inc. of One Infinite Loop, Cupertino, California 95014, U.S.A.
 19 (“Apple”) warrants the Apple-branded hardware product and Apple-
 20 branded accessories contained in the original packaging (“Apple
 21 Product”) against defects in materials and workmanship when used
 normally in accordance with Apple’s published guidelines for a
 period of ONE (1) YEAR from the date of original retail purchase by
 the end-user purchaser (“Warranty Period”).

22 * * *

23 WHAT WILL APPLE DO IN THE EVENT THE WARRANTY IS
 24 BREACHED?

25 If during the Warranty Period you submit a claim to Apple or an
 AASP in accordance with this warranty, Apple will, at its option:

26 (i) repair the Apple Product using new or previously used parts that
 27 are equivalent to new in performance and reliability,

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