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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MAHAN TALESHPOUR,
Plaintiff,
v.
APPLE INC.,
Defendant.

Case No. [5:20-cv-03122-EJD](#)

**ORDER GRANTING MOTION TO
DISMISS THIRD AMENDED
COMPLAINT**

Re: Dkt. No. 68

Plaintiffs Mahan Taleshpour, Rory Fielding, Peter Odogwu, Wade Buscher, Gregory Knutson, Darien Hayes, Liam Stewart, Nathan Combs, and Kendall Bardin bring this action against Defendant Apple Inc. (“Apple”) on behalf of themselves and members of a putative class, asserting eleven claims related to an alleged product defect in certain MacBook Pro laptops. Before the Court is Apple’s Motion to Dismiss the Third Amended Complaint (“TAC”). Mot. to Dismiss Third Am. Compl. (“Mot.”), Dkt. No. 68. The Court finds the motion appropriate for decision without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons below, the Court GRANTS the motion with limited leave to amend.

I. BACKGROUND

In 2016, Apple introduced its updated 13- and 15-inch MacBook Pro models. Third Am. Compl. (“TAC”), Dkt. No. 66 ¶ 17. To make these MacBook Pros thinner and sleeker than their predecessors, Apple used thin, flexible backlight ribbon cables to connect the lighting mechanism of the display screen to the display controller board. *Id.* ¶ 18. These backlight ribbon cables wrap around the display controller board at the hinge of the laptop and are secured by a pair of spring-

Case No. [5:20-cv-03122-EJD](#)

1 loaded covers. *Id.*

2 This configuration causes the backlight ribbon display cables rub against the control board
3 when the laptop is opened and closed. *Id.* ¶ 20. Over time, the rubbing causes the cables to tear,
4 which leads to various problems with the display screen. *Id.* For example, the tearing of the cable
5 can cause a “stage lighting” effect, consisting of alternating patches of darkness along the bottom
6 of the display. *Id.* ¶ 21. Further tearing can lead to more serious display issues, such as large
7 blocks of color that obscure portions of the screen, and eventually, can cause the display to fail
8 entirely. *Id.* ¶¶ 22-23. To varying degrees, these issues with the display screen all allegedly
9 render the laptop unusable and unfit for its ordinary purpose. *Id.*

10 Plaintiffs allege that the backlight cables tear because they are “too short and do not
11 provide enough slack to withstand the repetitive opening and closing of the MacBook Pros” (the
12 “Alleged Defect”). *Id.* ¶ 20. Faced with complaints from numerous consumers about the stage
13 lighting effect and the failure of the display, Apple attempted to remedy the Alleged Defect by
14 making the backlight cables two millimeters longer in the 13- and 15-inch MacBook Pro models
15 released in July 2018. *Id.* ¶¶ 30, 32.

16 In May 2019, Apple also introduced the “MacBook Pro Display Backlight Service
17 Program,” through which Apple agreed to replace the display on all 13-inch 2016 MacBook Pro
18 models that exhibited the stage lighting effect or a total failure of the display backlight system. *Id.*
19 ¶ 33. Under the service program, Apple will refund the owner of a 13-inch 2016 MacBook Pro
20 who paid to have the display fixed. *Id.* The service program covers only the 13-inch 2016
21 MacBook Pro; it does not cover the 15-inch MacBook Pro, or any MacBook Pro model released
22 after 2016. *Id.*

23 Plaintiffs are all owners of 15-inch 2016 MacBook Pro or MacBook Pro models released
24 after 2016 and allege that their laptops all suffered from the same backlight cable defect as the 13-
25 inch version. *Id.* ¶¶ 35, 41, 46, 51, 56, 61, 66, 71, 76. Plaintiffs all experienced issues with their
26 display screens, including the stage lighting effect or “vertical pink lines,” which ultimately
27 rendered their laptops inoperable. *Id.* ¶¶ 37, 43, 48, 53-54, 58-59, 63-64, 68, 73-74, 78-79. In all

28 Case No. 5:20-cv-03122-EJD

1 cases, these issues manifested after the one-year warranty Apple provided expired. *Compare id.*
 2 ¶¶ 35, 41, 46, 51, 56, 61, 66, 71, 76 with *id.* ¶¶ 37, 43, 48, 53-54, 58-59, 63-64, 68, 73-74, 78-79.

3 **II. LEGAL STANDARD**

4 **A. Rule 12(b)(6)**

5 Federal Rule of Civil Procedure 8(a) requires a plaintiff to plead each claim with enough
 6 specificity to “give the defendant fair notice of what the . . . claim is and the grounds upon which
 7 it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotations omitted). A
 8 complaint which falls short of the Rule 8(a) standard may therefore be dismissed if it fails to state
 9 a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). “Dismissal under Rule
 10 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts
 11 to support a cognizable legal theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097,
 12 1104 (9th Cir. 2008). When deciding whether to grant a motion to dismiss, the Court must accept
 13 as true all “well pleaded factual allegations” and determine whether the allegations “plausibly give
 14 rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). The Court must also
 15 construe the alleged facts in the light most favorable to the plaintiff. *Love v. United States*, 915
 16 F.2d 1242, 1245 (9th Cir. 1989). While a complaint need not contain detailed factual allegations,
 17 it “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is
 18 plausible on its face.’” *Ashcroft*, 556 U.S. at 678 (quoting *Bell Atl. Corp.*, 550 U.S. at 570).

19 A court generally may not consider any material beyond the pleadings when ruling on a
 20 Rule 12(b)(6) motion. If matters outside the pleadings are considered, “the motion must be treated
 21 as one for summary judgment under Rule 56.” Fed. R. Civ. P. 12(d). However, documents
 22 appended to the complaint, incorporated by reference in the complaint, or which properly are the
 23 subject of judicial notice may be considered along with the complaint when deciding a Rule
 24 12(b)(6) motion. *Khoja v. Orexigen Therapeutics*, 899 F.3d 988, 998 (9th Cir. 2018); *see also Hal*
 25 *Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990).
 26 Likewise, a court may consider matters that are “capable of accurate and ready determination by
 27 resort to sources whose accuracy cannot reasonably be questioned.” *Roca v. Wells Fargo Bank*,

28 Case No. 5:20-cv-03122-EJD

1 N.A., No. 15-cv-02147-KAW, 2016 WL 368153, at *3 (N.D. Cal. Feb. 1, 2016) (quoting Fed. R.
2 Evid. 201(b)).

3 **B. Rule 9(b)**

4 Consumer protection claims that sound in fraud are subject to the heightened pleading
5 requirements of Federal Rule of Civil Procedure 9(b). *See Vess v. Ciba-Geigy Corp. USA*, 317
6 F.3d 1097, 1102 (9th Cir. 2003); *San Miguel v. HP Inc.*, 317 F. Supp. 3d 1075, 1084 (N.D. Cal.
7 2018). Rule 9(b) requires that “a party must state with particularity the circumstances constituting
8 fraud.” Fed. R. Civ. P. 9(b). The circumstances constituting the fraud must be “specific enough to
9 give defendants notice of the particular misconduct which is alleged to constitute the fraud
10 charged so that they can defend against the charge and not just deny that they have done anything
11 wrong.” *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985). Therefore, a party alleging
12 fraud must set forth “the who, what, when, where, and how” of the misconduct. *Vess*, 317 F.3d at
13 1106 (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)). “[I]n a case where fraud is
14 not an essential element of a claim, only allegations . . . of fraudulent conduct must satisfy the
15 heightened pleading requirements of Rule 9(b)” while “[a]llegations of non-fraudulent conduct
16 need satisfy only the ordinary notice pleading standards of Rule 8(a).” *Id.* at 1104–05.

17 With respect to Plaintiffs’ omissions-based fraud claims, “the pleading standard is lowered
18 on account of the reduced ability in an omission suit ‘to specify the time, place, and specific
19 content, relative to a claim involving affirmative misrepresentations.’” *Barrett v. Apple Inc.*, No.
20 5:20-CV04812-EJD, 2021 WL 827235, at *7 (N.D. Cal. Mar. 4, 2021) (quoting *In re Apple & AT*
21 *& TM Antitrust Litig.*, 596 F. Supp. 2d 1288, 1310 (N.D. Cal. 2008)); *see also Falk v. Gen. Motors*
22 *Corp.*, 496 F. Supp. 2d 1088, 1099 (N.D. Cal. 2007).

23 **III. DISCUSSION**

24 Plaintiffs bring claims for: (1) violation of the California Unfair Competition Law, Cal.
25 Bus. & Prof. Code §§ 17200, et seq. (“UCL”) (Count 1), (2) violation of the California Consumers
26 Legal Remedies Act, Cal. Civ. Code §§ 1761 and 1770 (“CLRA”) (Count 2), and (3) equivalent
27 deceptive trade practice laws in Alaska, Florida, Massachusetts, Michigan, Missouri, New Jersey,

28 Case No.: 5:20-cv-03122-EJD

1 Texas, and Washington (Counts 4-11) (collectively, “the Deceptive Trade Practice Claims”); and
2 (4) fraudulent concealment (Count 3). Apple seeks to dismiss all of Plaintiffs’ claims pursuant to
3 Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be
4 granted. The Court addresses each claim in turn.

5 **A. Fraud Claims**

6 **1. Affirmative representations**

7 Plaintiffs allege with respect to each of their fraud claims that Apple committed fraud
8 through affirmative representations in its 2016 promotional campaign for MacBook Pros. The
9 TAC includes the same allegations from the Second Amended Complaint (“SAC”) concerning
10 Apple’s description of the displays on the relevant MacBook Pro models as the “brightest and
11 most colorful Retina display yet,” as well as an advertisement and an October 27, 2016 press
12 release stating that the new MacBook Pros had “the best Mac display ever.” *Compare* TAC ¶ 17
13 *with* Dkt. No. 30 ¶ 16. The TAC also includes new allegations of affirmative representations,
14 specifically that: (1) Apple’s promotional campaign stressed that the new display screens are the
15 best in the computer industry (TAC ¶ 17); (2) “the Retina display on the new MacBook Pro at 500
16 nits of brightness is an amazing 67 percent brighter than the previous generation, features 67
17 percent more contrast and is the first Mac notebook display to support wider color gamut” (*id.* ¶
18 24); and (3) Apple products will last for a minimum of four years (*id.* ¶ 16).

19 With respect to the allegations repeated from the SAC, the Court already determined those
20 representations to be nonactionable puffery. Dkt. No. 55 at 14–17 (citing *Ahern v. Apple Inc.*, 411
21 F. Supp. 3d 541 (N.D. Cal. 2019)). With their current amendments, Plaintiffs seek to cure the
22 deficiencies the Court previously identified by distinguishing *Ahern*. Plaintiffs contend that,
23 unlike the *Ahern* plaintiffs, they have pled “a product design defect central to the function and
24 operation of their laptops,” not merely a defect affecting “the quality of the user experience.” Pls.’
25 Opp’n to Mot. to Dismiss Third Am. Compl. (“Opp’n”), Dkt. No. 71, at 8 (citing *Ahern*, 411 F.
26 Supp. 3d at 568); *but see* Opp’n at 9 (“Plaintiffs here plead Apple’s misrepresentations about
27 MacBook Pro monitor *quality*.”) (emphasis original). Plaintiffs appear to confuse *Ahern*’s ruling

28 Case No. 5:20-cv-03122-EJD

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