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8 JUSTIN OCAMPO, et al.,
9 Plaintiffs,
10 v.
11 APPLE INC.,
12 Defendant.

Case No. [5:20-cv-05857-EJD](#)

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 38

13 Plaintiffs Justin Ocampo, Fernando Pineiro, Tyler Hutchinson, Hisham Khan, and Diana
14 Crow (“Plaintiffs”) bring this action against Defendant Apple Inc. (“Defendant”) on behalf of
15 themselves and members of a putative class, asserting thirteen claims related to an alleged product
16 defect in certain MacBook Pro laptops. Before the Court is Defendant’s motion to dismiss the
17 second amended class action complaint (“SAC”). Defendant’s Motion to Dismiss Second
18 Amended Complaint (“Mot.”), Dkt. No. 38. On April 2, 2021, Plaintiffs filed an opposition, to
19 which Defendant filed a reply. *See* Plaintiffs’ Opposition to Defendant’s Motion to Dismiss
20 (“Opp.”), Dkt. No. 43; Defendant Apple Inc.’s Reply in Support of Motion to Dismiss (“Reply”),
21 Dkt. No. 50. For the reasons detailed below, the Court **GRANTS** the motion **with limited leave**
22 **to amend.**¹

23 **I. BACKGROUND**

24 In October 2016, Defendant released its new 13-inch and 15-inch MacBook Pro models.
25 SAC ¶ 2. Certain MacBook Pro models include a Touch Bar, a small strip at the top of the screen

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27 ¹ On June 9, 2021, the Court found this motion appropriate for decision without oral argument
28 pursuant to Civil Local Rule 7-1(b). *See* Dkt. No. 52.
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1 that features a light-up touch-based panel that replaces certain function keys on the keyboard.
2 SAC ¶ 2. Defendant advertised the MacBook Pro as the thinnest and lightest MacBook Pro model
3 ever, weighing 3 pounds and measuring 14.9 mm of thickness. SAC ¶ 2. Defendant also
4 announced that display of the MacBook Pro would be 67 percent brighter, have a 67 percent better
5 contrast ratio, and display 25 percent more colors compared to the previous model. SAC ¶ 2.

6 Plaintiff alleges that these representations were false. SAC ¶ 3. To support the compact
7 design, Defendant used thin, flexible ribbon cables (“flex cables”) to connect the display to a
8 display controller board. SAC ¶ 3. These flex cables wrap tightly over the controller board. SAC
9 ¶ 3. Plaintiff alleges that the flex cables wore out over time through normal use of the opening
10 and closing the laptop display because the cables were not long enough. SAC ¶ 3. As a result, the
11 flex cables eventually stopped connecting the controller board to the display screen, which caused
12 the laptop’s display backlight to show dark spots across the screen that interfered with text and
13 images or caused the screen to go completely dark. SAC ¶¶ 3, 4, 36 (“The deterioration of the flex
14 cables results in the display screen exhibiting dark spots and/or in [sic] the display screen turning
15 completely black when the laptop is open[ed] beyond certain angles (with some consumers
16 complaining of experiencing issues if they opened the screen beyond certain degrees) and/or
17 complete monitor failure. Therefore, consumers are prevented from using their laptops for their
18 ordinary and intended purpose: to open the display screen beyond certain degrees when using the
19 laptop and/or using the laptop as a portable device.”). Plaintiffs allege that the 13-inch and 15-
20 inch 2016 Macbook Pros, and all later MacBook Pros, have the same allegedly defective flex
21 cable design. *See* SAC ¶ 4, 12, 43, 167, 194, 205.

22 Defendant provides MacBook Pro purchasers with a one-year limited warranty, and
23 consumers may elect to purchase an AppleCare service plan extending the duration and scope of
24 coverage.² The Limited Warranty warrants “against defects in materials and workmanship when
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27 ² Pursuant to Federal Rule of Evidence 201, the Court takes judicial notice of the Limited
28 Warranty in effect when Plaintiffs allegedly purchased their devices. *See* Declaration of David R.
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Singh (“Singh Decl.”), Ex. A, Dkt. No. 38-1.

1 used normally in accordance with Apple's published guidelines for a period of ONE (1) YEAR
2 from the date of original retail purchase by the end-user purchaser ('Warranty Period')." Signh
3 Decl., Ex. A. The warranty does not warrant against "defects caused by normal wear and tear or
4 otherwise due to the normal aging of the Apple Product." *Id.*

5 In May 2019, Defendant launched the 13-inch MacBook Pro Display Backlight Service
6 Program (the "Backlight Service Program"). SAC ¶ 7. Pursuant to this program, Apple agreed to
7 replace displays for 13-inch 2016 Macbook Pros that experienced a stage lighting effect (e.g.,
8 intermittent vertical bright areas across the bottom of the screen) or a total failure of the display.
9 Singh Decl., Ex. B. Defendant also agreed to refund those who paid to have their displays fixed.
10 Plaintiff Ocampo, who filed the initial complaint in this action, "submitted his MacBook Pro to
11 Apple for a free repair" and "received his laptop approximately 2 to 3 days later." SAC ¶ 54.
12 During this time, "Plaintiff Ocampo was without a laptop and Defendant did not offer to provide
13 [him] a loaner laptop." SAC ¶ 54.

14 Plaintiffs all owned impacted MacBook Pros. Plaintiff Ocampo owned a 13-inch 2016
15 MacBook Pro, SAC ¶ 47; Plaintiff Pineiro owned a 13-inch 2016 MacBook Pro, SAC ¶ 56;
16 Plaintiff Hutchinson owned a 15-inch 2016 MacBook Pro, see SAC ¶ 63; Plaintiff Khan owned a
17 15-inch 2016 MacBook Pro, see SAC ¶ 70; Plaintiff Khan owned a 15-inch 2016 MacBook Pro,
18 SAC ¶ 70; and Plaintiff Crow owned a 15-inch 2016 MacBook Pro, SAC ¶ 76.

19 On January 13, 2021, Plaintiff Ocampo, and four other purchasers of MacBook Pro
20 devices, Fernando Pineiro, Tyler Hutchinson, Hisham Khan, and Diana Crow, filed the SAC,
21 purporting to represent a nationwide class of "[a]ll individual consumers in the United States who
22 purchased model year 2016 or later Mac[B]ook Pro laptops at any time beginning 4 years
23 preceding the filing of this Complaint and continuing to the present" and subclasses limited to
24 consumer residents of California, Florida, Hawaii, and New York. SAC ¶ 89. Plaintiffs assert
25 thirteen claims against Apple: violations of California's Consumer Legal Remedies Act ("CLRA")
26 (Count I), Song-Beverly Consumer Warranty Act ("SBA") (Count II), and the federal Magnuson-
27 Moss Warranty Act ("MMWA") (Count III); violations of the Florida Deceptive and Unfair Trade
28

1 Practices Act (“FDUTPA”) (Count IV), New York General Business Law (“GBL”) Sections 349
2 and 350 (Counts VI and VII), Hawaii Unfair and Deceptive Trade Practices Act (“HUDTPA”)
3 (Count IX), Hawaii Uniform Deceptive Trade Practice Act (“HDTPA”) (Count X), and the
4 consumer fraud statutes of all 50 states and the District of Columbia (the “State Consumer Fraud
5 Acts” claim) (Count XII); violations of implied warranty of merchantability under Florida,
6 Hawaii, and New York law (Counts V, VIII, and XI) (collectively, the “Implied Warranty”
7 claims); and fraudulent concealment (Count XIII).

8 **II. LEGAL STANDARD**

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

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

24 A court generally may not consider any material beyond the pleadings when ruling on a
25 Rule 12(b)(6) motion. If matters outside the pleadings are considered, “the motion must be treated
26 as one for summary judgment under Rule 56.” Fed. R. Civ. P. 12(d). However, documents
27 appended to the complaint, incorporated by reference in the complaint, or which properly are the

1 subject of judicial notice may be considered along with the complaint when deciding a Rule
2 12(b)(6) motion. *Khoja v. Orexigen Therapeutics*, 899 F.3d 988, 998 (9th Cir. 2018); *see also Hal*
3 *Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990).
4 Likewise, a court may consider matters that are “capable of accurate and ready determination by
5 resort to sources whose accuracy cannot reasonably be questioned.” *Roca v. Wells Fargo Bank*,
6 N.A., 2016 WL 368153, at *3 (N.D. Cal. Feb. 1, 2016) (quoting Fed. R. Evid. 201(b)).

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

8 Consumer protection claims that sound in fraud are subject to the heightened pleading
9 requirements of Federal Rule of Civil Procedure 9(b). *See Vess v. Ciba-Geigy Corp. USA*, 317
10 F.3d 1097, 1102 (9th Cir. 2003); *San Miguel v. HP Inc.*, 317 F. Supp. 3d 1075, 1084 (N.D. Cal.
11 2018). Rule 9(b) requires that “a party must state with particularity the circumstances constituting
12 fraud.” Fed. R. Civ. P. 9(b). The circumstances constituting the fraud must be “specific enough to
13 give defendants notice of the particular misconduct which is alleged to constitute the fraud
14 charged so that they can defend against the charge and not just deny that they have done anything
15 wrong.” *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985). Therefore, a party alleging
16 fraud must set forth “the who, what, when, where, and how” of the misconduct. *Vess*, 317 F.3d at
17 1106 (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)). “[I]n a case where fraud is
18 not an essential element of a claim, only allegations . . . of fraudulent conduct must satisfy the
19 heightened pleading requirements of Rule 9(b)” while “[a]llegations of non-fraudulent conduct
20 need satisfy only the ordinary notice pleading standards of Rule 8(a).” *Id.* at 1104–05.

21 With respect to Plaintiffs’ omissions-based fraud claims, “the pleading standard is lowered
22 on account of the reduced ability in an omission suit ‘to specify the time, place, and specific
23 content, relative to a claim involving affirmative misrepresentations.’” *Barrett v. Apple Inc.*, 2021
24 WL 827235, at *7 (N.D. Cal. Mar. 4, 2021) (quoting *In re Apple & AT & TM Antitrust Litig.*, 596
25 F. Supp. 2d 1288, 1310 (N.D. Cal. 2008)); *see also Falk v. Gen. Motors Corp.*, 496 F. Supp. 2d
26 1088, 1099 (N.D. Cal. 2007).

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