

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

RODNEY CARVALHO, et al.,

Plaintiffs,

v.

HP, INC.,

Defendant.

Case No. 21-cv-08015-BLF

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS**

[Re: ECF No. 19]

In this case, Plaintiffs Rodney Carvalho and Mark Maher challenge the manner in which Defendant HP Inc. advertises products on its website. Plaintiffs allege that HP displays false and inflated reference or “strikethrough” prices for its products that it then offers to consumers at a purported “discount price.” HP allegedly markets its products this way to create the impression that consumers are saving money when in fact HP never sells its products at the higher strikethrough prices. Plaintiffs seek to represent classes of individuals who purchased purportedly discounted products on HP’s website in the last five years.

Now before the Court is HP’s motion to dismiss the First Amended Complaint under Federal Rules of Civil Procedure 9(b) and 12(b)(6). *See* ECF No. 19 (“MTD”); *see also* ECF No. 29 (“Reply”). Plaintiffs oppose the motion. ECF No. 22 (“Opp.”). The Court held a hearing on the motion on May 26, 2022. ECF No. 39. For the following reasons, HP’s motion to dismiss is **GRANTED IN PART AND DENIED IN PART**.

**I. BACKGROUND**

As alleged in the First Amended Complaint and accepted as true for the purposes of this motion, Defendant HP Inc. is a technology company that sells computers and related peripheral

No. 18 (“FAC”) ¶¶ 1, 15, 20.

Plaintiffs allege that HP creates an illusion of savings on its website by advertising false reference prices and discounts based on those prices. FAC ¶ 23. For any given product, HP’s website displays a price in strikethrough typeface (i.e., ~~\$999.99~~) that Plaintiffs characterize as a “reference price” but the Court will call a “strikethrough price” in this Order. *Id.* ¶ 24. At the bottom of each page, HP includes a section entitled “Disclaimer +”). ECF No. 19-1, Ex. A (“HP RJN”)<sup>1</sup>, ECF No. 22-1 (“Rozenblatt Decl.”) Ex. 2. Clicking on the “+” expands the Disclaimer section. Rozenblatt Decl. Exs. 2–3. One of the disclaimers makes clear that the strikethrough price is a Manufacturer’s Suggested Retail Price (“MSRP”). It states:

HP’s MSRP is subject to discount. HP’s MSRP price is shown as either a stand-alone price or as a strikethrough price with a discounted or promotional price also listed. Discounted or promotional pricing is indicated by the presence of an additional higher MSRP strikethrough price.

*See* HP RJN. No asterisk or other indication of a disclaimer appears next to the strikethrough prices. Rozenblatt Decl. Ex. 1.

Near the strikethrough price and typically in a larger and bolder font, HP advertises a “sale price,” the price at which the product is currently offered for sale. *Id.* ¶ 25. Throughout its website, HP also advertises discounts of savings using words such as “Save,” “You’ll Save,” and “You Saved.” *Id.* ¶ 26. As a customer goes through the purchasing process and after their order, HP displays many of these same representations that the customer has saved money. *Id.* ¶¶ 28–31. Plaintiffs allege that approximately 35% of the products HP sells on its website are sold in this manner. *Id.* ¶ 32.

In general, however, the savings HP advertises on its website do not represent the actual savings that customers receive because the strikethrough prices do not represent the actual prices at which computers were sold or offered for sale for a reasonably substantial period of time. FAC ¶ 32. For example, on March 27, 2021, HP advertised its HP ENVY laptop for sale at \$799.99

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<sup>1</sup> HP’s request for judicial notice is GRANTED because the exhibit—a screenshot of a product page on HP’s website—contains “information posted on certain . . . web pages that Plaintiffs referenced in the [First Amended Complaint].” *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992.

1 and represented to customers that they were saving \$150 from the strikethrough price of \$949.99.  
 2 *Id.* ¶ 34. But Plaintiffs allege that in the months that followed, HP rarely, if ever, sold the ENVY  
 3 laptop at a price of \$949.99. *Id.* ¶ 35. HP engages in similar pricing practices for other products,  
 4 including products other than computers. *Id.* ¶¶ 36–37 (charts showing prices of other products  
 5 over multiple months). Plaintiffs allege that they have no way of determining if the prices HP  
 6 advertises as strikethrough prices are in fact prices at which HP ever sells its products. *Id.* ¶ 50.

7 Additionally, according to Plaintiffs, HP falsely advertises that the discounts are available  
 8 only for a limited time when in fact those discounts continue beyond their advertised expiration  
 9 date. FAC ¶ 38. For example, HP advertises “Weekly Deals,” but those deals in fact last longer  
 10 than one week and in some cases don’t end for months. *Id.* ¶¶ 40–42. HP also advertises similar  
 11 sales, such as a “Memorial Day Special” and “Flash Sales”. *Id.* ¶¶ 43–47. This practice induces  
 12 consumers to make purchases they otherwise may not have made due to a false sense of urgency  
 13 in obtaining a lower price. *Id.* ¶ 38.

14 On September 7, 2021, Plaintiff Rodney Carvalho purchased from HP’s website an HP  
 15 All-in-One 24-dp1056qe PC and HP X3000 G2 Wireless Mouse. FAC ¶ 52. The All-in-One PC  
 16 was advertised as being on sale for \$899.99 from a strikethrough price of \$999.99, which HP  
 17 represented was a savings of \$100. *Id.* ¶ 53. HP also advertised an additional 5% savings with a  
 18 coupon code for a Labor Day sale. *Id.* Carvalho added the All-in-One PC to his cart and was then  
 19 told that he could purchase the G2 Mouse for \$11.99, \$5.00 off the strikethrough price of \$16.99.  
 20 *Id.* ¶¶ 54–55. He added the G2 Mouse to his cart. *Id.* In his shopping cart, HP stated that “YOU  
 21 SAVED **\$105.00** ON YOUR ORDER.” *Id.* ¶ 57. Carvalho typed in the coupon code and received  
 22 an additional 5% for the Labor Day sale. *Id.* ¶ 58. Two further checkout pages, the order  
 23 confirmation page, and an order confirmation email told Carvalho that he saved \$168.60 on his  
 24 order. *Id.* ¶¶ 59–62. Carvalho alleges that HP did not sell the All-in-One PC at \$999.99 or the G2  
 25 Mouse at \$16.99 for any reasonably substantial period of time in the three months prior to his  
 26 purchase or in the one month following his purchase. *Id.* ¶ 64.

27 On June 14, 2021, Plaintiff Mark Maher purchased from HP’s website an HP Laptop 17t-

28 hp100. FAC ¶ 67. The 17t Laptop was advertised as being on sale for \$599.99, \$120 off the

1 strikethrough price of \$729.99. *Id.* ¶ 68. Maher added the product to his cart and purchased an  
 2 additional Wi-Fi adapter to bring his total purchase to \$699.99. *Id.* ¶ 70. In his shopping cart, HP  
 3 stated that “YOU SAVED **\$130.00** ON YOUR ORDER.” *Id.* ¶ 71. Two further checkout pages  
 4 and the order confirmation page indicated that Maher saved \$130. *Id.* ¶¶ 72–73, 75. Maher  
 5 alleges that HP did not sell the 17t Laptop at \$729.99 for any reasonably substantial period of  
 6 time. *Id.* ¶ 77.

7 Plaintiffs filed this lawsuit on October 13, 2021, *see* ECF No. 1, and by stipulation filed  
 8 the operative First Amended Complaint on December 30, 2021, *see* FAC. The First Amended  
 9 Complaint asserts nine causes of action: (1) breach of contract, FAC ¶¶ 87–96; (2) breach of  
 10 express warranty, *id.* ¶¶ 97–109; (3) negligent misrepresentation, *id.* ¶¶ 110–122; (4) intentional  
 11 misrepresentation, *id.* ¶¶ 123–136; (5) violation of California’s Consumer Legal Remedies Act  
 12 (“CLRA”), Cal. Civ. Code § 1750, FAC ¶¶ 137–144; (6) unjust enrichment, FAC ¶¶ 145–156; (7)  
 13 violation of California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500, FAC  
 14 ¶¶ 157–170; (8) violation of the FAL’s provision regarding former prices, Cal. Bus. & Prof. Code  
 15 § 17501, FAC ¶¶ 171–184; and (9) violation of California’s Unfair Competition Law (“UCL”),  
 16 FAC ¶¶ 185–191. Plaintiffs seek to represent a class of all individuals and entities that, on or after  
 17 October 13, 2017, purchased one or more HP products on HP’s website that were advertised as  
 18 discounted from a strikethrough price. FAC ¶ 79. Plaintiffs also seek to represent one subclass of  
 19 class members who are “consumers” within the meaning of Cal. Civ. Code § 1761(d) and made  
 20 their purchases on or after October 13, 2018. *Id.*

## 21 II. LEGAL STANDARD

22 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a  
 23 claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’” *Conservation*  
 24 *Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d  
 25 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts  
 26 as true all well-pled factual allegations and construes them in the light most favorable to the  
 27 plaintiff. *Reese v. BP Expl. (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the Court

28 need not “accept as true allegations that control dispositive matters generally subject to judicial discretion.”

“allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation marks and citations omitted). While a complaint need not contain detailed factual allegations, it “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* On a motion to dismiss, the Court’s review is limited to the face of the complaint and matters judicially noticeable. *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986); *N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 1983).

“In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). “Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.” *Id.* Rule 9(b) demands that the circumstances constituting any alleged fraud be plead “specific[ally] enough to give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong.” *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009) (internal citation omitted). Claims of fraud must be accompanied by the “who, what, when, where, and how” of the misconduct alleged. *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997), *superseded by statute on other grounds* (internal citation omitted).

### III. DISCUSSION

HP makes multiple arguments that, taken together, seek dismissal of Plaintiffs’ entire First Amended Complaint. The Court evaluates each argument in turn and concludes that some but not all claims will be dismissed.

#### A. Contract and Warranty Claims

As an initial matter, Plaintiffs do not oppose HP’s motion to dismiss their first and second claims for breach of contract and breach of express warranty. *See* MTD at 14–17 (moving to dismiss those claims); Opp. at 3 n.2 (conceding dismissal). Accordingly, HP’s motion to dismiss

the breach of contract and breach of express warranty claims is GRANTED WITHOUT LEAVE

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