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**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 SECOND AMENDED COMPLAINT**

[Re: ECF No. 46]

United States District Court  
Northern District of California

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 “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 Second Amended Complaint under Federal Rules of Civil Procedure 9(b) and 12(b)(6). *See* ECF No. 46 (“MTD”); *see also* ECF No. 54 (“Reply”). Plaintiffs oppose the motion. ECF No. 51 (“Opp.”). The Court held a hearing on the motion on December 15, 2022. *See* ECF No. 56. For the following reasons, HP’s motion to dismiss the Second Amended Complaint is GRANTED IN PART AND DENIED IN PART.

**I. BACKGROUND**

As alleged in the Second 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

1 No. 43 (“SAC”) ¶¶ 1, 15, 20.

2 Plaintiffs allege that HP creates an illusion of savings on its website by advertising false  
3 strikethrough prices and discounts based on those prices. SAC ¶ 23. For any given product, HP’s  
4 website displays a price in strikethrough typeface (i.e., ~~\$999.99~~). *Id.* ¶ 24. At the bottom of each  
5 page, HP includes a section entitled “Disclaimer +”. ECF No. 19-1, Ex. A (“HP RJN”)<sup>1</sup>, ECF No.  
6 22-1 (“Rozenblatt Decl.”) Ex. 2. Clicking on the “+” expands the Disclaimer section. Rozenblatt  
7 Decl. Exs. 2–3. One of the disclaimers makes clear that the strikethrough price is a  
8 Manufacturer’s Suggested Retail Price (“MSRP”). It states:

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

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

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

21 In general, however, the savings HP advertises on its website do not represent the actual  
22 savings that customers receive because the strikethrough prices do not represent the actual prices  
23 at which computers were sold or offered for sale for a reasonably substantial period of time. SAC  
24 ¶ 32. For example, on March 27, 2021, HP advertised its HP ENVY laptop for sale at \$799.99  
25 and represented to customers that they were saving \$150 from the strikethrough price of \$949.99.  
26 *Id.* ¶ 34. But Plaintiffs allege that in the months that followed, HP rarely, if ever, sold the ENVY  
27

1 laptop at a price of \$949.99. *Id.* ¶ 35. HP engages in similar pricing practices for other products,  
2 including products other than computers. *Id.* ¶¶ 36–37 (charts showing prices of other products  
3 over multiple months). Plaintiffs allege that they have no way of determining if the prices HP  
4 advertises as strikethrough prices are in fact prices at which HP ever sells its products. *Id.* ¶ 50.

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

12 Further, according to Plaintiffs, the “vast majority” of computers sold on HP’s website are  
13 sold exclusively on HP’s website and not from traditional big box retailers. SAC ¶ 52. Plaintiffs  
14 allege that, as of June 29, 2022, HP advertised 155 desktop computers at a discount on its website  
15 and of those, only three were available for purchase directly from a Big Box Retailer. *Id.* ¶ 53, Ex.  
16 A. Similarly, Plaintiffs allege that, as of June 29, 2022, HP advertised 121 laptop and notebook  
17 computers at a discount on its website and of those, only two were available for purchase directly  
18 from a Big Box Retailer. *Id.* ¶ 54, Ex. B. Plaintiffs further allege that the precise number and  
19 identity of products sold exclusively on HP’s website as opposed to non-exclusively is information  
20 that is “peculiarly within HP’s knowledge.” *Id.* ¶¶ 56-57.

21 On September 7, 2021, Plaintiff Rodney Carvalho purchased from HP’s website an HP  
22 All-in-One 24-dp1056qe PC and HP X3000 G2 Wireless Mouse. SAC ¶ 58. The All-in-One PC  
23 was advertised as being on sale for \$899.99 from a strikethrough price of \$999.99, which HP  
24 represented was a savings of \$100. *Id.* ¶ 59. HP also advertised an additional 5% savings with a  
25 coupon code for a Labor Day sale. *Id.* Carvalho added the All-in-One PC to his cart and was then  
26 told that he could purchase the G2 Mouse for \$11.99, \$5.00 off the strikethrough price of \$16.99.  
27 *Id.* ¶¶ 60–61. He added the G2 Mouse to his cart. *Id.* ¶ 62. In his shopping cart, HP stated that

1 received an additional 5% for the Labor Day sale. *Id.* ¶ 64. Two further checkout pages, the order  
2 confirmation page, and an order confirmation email told Carvalho that he saved \$168.60 on his  
3 order. *Id.* ¶¶ 65–68. Carvalho alleges that HP did not sell the All-in-One PC at \$999.99 or the G2  
4 Mouse at \$16.99 for any reasonably substantial period of time in the three months prior to his  
5 purchase or in the one month following his purchase. *Id.* ¶ 70-71. Carvalho alleges that neither  
6 item was available for purchase directly from a big box retailer. *Id.* ¶¶ 73-74.

7 On June 14, 2021, Plaintiff Mark Maher purchased from HP’s website an HP Laptop 17t-  
8 by400. SAC ¶ 75. The 17t Laptop was advertised as being on sale for \$599.99, \$130 off the  
9 strikethrough price of \$729.99. *Id.* ¶ 76. Maher added the product to his cart and purchased an  
10 additional Wi-Fi adapter to bring his total purchase to \$699.99. *Id.* ¶ 78. In his shopping cart, HP  
11 stated that “YOU SAVED \$130.00 ON YOUR ORDER.” *Id.* ¶ 79. Two further checkout pages  
12 and the order confirmation page indicated that Maher saved \$130. *Id.* ¶¶ 80–81, 83. Maher  
13 alleges that HP did not sell the 17t Laptop at \$729.99 for any reasonably substantial period of  
14 time. *Id.* ¶ 85. Maher alleges that this item was not available for purchase directly from a big box  
15 retailer. *Id.* ¶ 87.

16 Plaintiffs filed this lawsuit on October 13, 2021, *see* ECF No. 1, and filed the First  
17 Amended Complaint on December 30, 2021, *see* ECF No. 18 (“FAC”). The FAC was dismissed  
18 with leave to amend. *Carvalho v. HP, Inc.*, No. 21-cv-08015-BLF, 2022 WL 2290595 (N.D. Cal.  
19 June 24, 2022) (“First MTD Order”). Plaintiffs filed the operative Second Amended Complaint  
20 on July 15, 2022. *See* SAC. The Second Amended Complaint asserts four causes of action: (1)  
21 violation of California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, SAC  
22 ¶¶ 96–103; (2) unjust enrichment, SAC ¶¶ 104–115; (3) violation of California’s False Advertising  
23 Law (“FAL”), Cal. Bus. & Prof. Code § 17500, SAC ¶¶ 116–129; and (4) violation of California’s  
24 Unfair Competition Law (“UCL”), SAC ¶¶ 130–136. Plaintiffs seek to represent a class of all  
25 individuals and entities that, on or after October 13, 2017, purchased one or more HP products on  
26 HP’s website that were advertised as discounted from a strikethrough price. SAC ¶ 88. Plaintiffs  
27 also seek to represent one subclass of class members who are “consumers” within the meaning of

## II. LEGAL STANDARD

1 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a  
2 claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’” *Conservation*  
3 *Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d  
4 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts  
5 as true all well-pled factual allegations and construes them in the light most favorable to the  
6 plaintiff. *Reese v. BP Expl. (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the Court  
7 need not “accept as true allegations that contradict matters properly subject to judicial notice” or  
8 “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable  
9 inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (citation omitted).  
10 While a complaint need not contain detailed factual allegations, it “must contain sufficient factual  
11 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*,  
12 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A  
13 claim is facially plausible when it “allows the court to draw the reasonable inference that the  
14 defendant is liable for the misconduct alleged.” *Id.* On a motion to dismiss, the Court’s review is  
15 limited to the face of the complaint and matters judicially noticeable. *MGIC Indem. Corp. v.*  
16 *Weisman*, 803 F.2d 500, 504 (9th Cir. 1986); *N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578,  
17 581 (9th Cir. 1983).

18 “In alleging fraud or mistake, a party must state with particularity the circumstances  
19 constituting fraud or mistake.” Fed. R. Civ. P. 9(b). “Malice, intent, knowledge, and other  
20 conditions of a person’s mind may be alleged generally.” *Id.* Rule 9(b) demands that the  
21 circumstances constituting any alleged fraud be plead “specific[ally] enough to give defendants  
22 notice of the particular misconduct . . . so that they can defend against the charge and not just deny  
23 that they have done anything wrong.” *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir.  
24 2009) (internal citation omitted). Claims of fraud must be accompanied by the “who, what, when,  
25 where, and how” of the misconduct alleged. *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997),  
26 *superseded by statute on other grounds* (internal citation omitted).  
27

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