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3 RODNEY CARVALHO, et al.,
4 Plaintiffs,
5 v.
6 HP, INC.,
7 Defendant.
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9 Case No. 21-cv-08015-BLF
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**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS SECOND AMENDED
COMPLAINT**

[Re: ECF No. 46]

12
13 In this case, Plaintiffs Rodney Carvalho and Mark Maher challenge the manner in which
14 Defendant HP Inc. advertises products on its website. Plaintiffs allege that HP displays false and
15 inflated “strikethrough” prices for its products that it then offers to consumers at a purported
16 “discount price.” HP allegedly markets its products this way to create the impression that
17 consumers are saving money when in fact HP never sells its products at the higher strikethrough
18 prices. Plaintiffs seek to represent classes of individuals who purchased purportedly discounted
19 products on HP’s website in the last five years.

20 Now before the Court is HP’s motion to dismiss the Second Amended Complaint under
21 Federal Rules of Civil Procedure 9(b) and 12(b)(6). *See* ECF No. 46 (“MTD”); *see also* ECF No.
22 54 (“Reply”). Plaintiffs oppose the motion. ECF No. 51 (“Opp.”). The Court held a hearing on
23 the motion on December 15, 2022. *See* ECF No. 56. For the following reasons, HP’s motion to
24 dismiss the Second Amended Complaint is GRANTED IN PART AND DENIED IN PART.

25 **I. BACKGROUND**

26 As alleged in the Second Amended Complaint and accepted as true for the purposes of this
27 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”)¹, 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

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
28 “YOU SAVED \$105.00 ON YOUR ORDER.” *Id.* ¶ 63. Carvalho availed himself of the coupon code and

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
28 Cal. Civ. Code § 1761(d) and under the laws of the Northern District of California. October 12, 2018 11

II. LEGAL STANDARD

“A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’” *Conservation Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts as true all well-pled factual allegations and construes them in the light most favorable to the plaintiff. *Reese v. BP Expl. (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the Court need not “accept as true allegations that contradict matters properly subject to judicial notice” or “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) (citation 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).

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