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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

DOMINIQUE CAVALIER, AND KILEY KRZYZEK, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

APPLE INC., a California corporation,

Defendant.

Case No. 5:25-cv-713-PCP

APPLE INC.'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS' CLASS ACTION COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: July 10, 2025
Time: 10:00 a.m.
Dept.: Courtroom 8 – 4th Floor
Judge: Honorable P. Casey Pitts

Compl. Filed: January 21, 2025

NOTICE OF MOTION AND MOTION TO DISMISS

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 10, 2025, at 10:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable P. Casey Pitts in Courtroom 8, in the United States District Court, Northern District of California, San Jose Division, 280 South First Street, San Jose, CA 95113, Defendant Apple Inc. ("Apple") will and hereby does move to dismiss Plaintiffs Dominique Cavalier and Kiley Krzyzek's (collectively, "Plaintiffs") claims pursuant to Federal Rules of Civil Procedure 8(a), 9(b), 12(b)(1) and 12(b)(6).

This motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities in support thereof, the Request for Judicial Notice in Support of the Motion to Dismiss filed concurrently herewith, the Declaration of William F. Tarantino in Support of the Motion to Dismiss filed concurrently herewith, all other pleadings and papers on file herewith, and such other argument and evidence as may be presented to the Court.

Dated: April 14, 2025

MORRISON & FOERSTER LLP

By: */s/ William F. Tarantino*
WILLIAM F. TARANTINO

Attorneys for Defendant
APPLE INC.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs claim that certain Apple Watch bands are somehow toxic based on a publication purportedly detecting trace levels of PFHxA—a chemical within the category of per- and polyfluoroalkyl substances ("PFAS," pronounced PEA-fass)—in unidentified smartwatch bands. Authored by Dr. Richard Peaslee, the paper does not suggest that PFHxA is present in any Apple Watch bands at quantities that could render the bands unsafe in any way. In fact, the Peaslee paper admits that that there is *no data* to establish that PFHxA in contact with skin poses any harm at all. Faced with these hard truths, Plaintiffs are left to make sweeping statements, unsupported by facts, in an effort to blur the distinctions among PFAS chemicals and create a toxic scare where none exists. Their efforts to state of viable claim fail. The Complaint should be dismissed for multiple reasons.

As a threshold matter, Plaintiffs do not allege an injury in fact under Article III and therefore lack standing. They fail to sufficiently allege that the Apple Watch bands they purchased contain PFAS, much less at any level that could cause harm. For similar reasons, Plaintiffs fail to allege facts sufficient to state a claim under 12(b)(6). Plaintiffs rely solely on the Peaslee Paper to support their theory of the case. But that Paper purports to provide test results for just 22 smartwatch bands from several different brands without linking any test results to specific brands or models. The Paper does not show that Apple Watch bands contain PFAS generally, nor that the particular Watch bands purchased by Plaintiffs contain PFAS. Setting aside the reliability of the Peaslee Paper, Plaintiffs provide no evidence that the specific PFAS evaluated in the Peaslee Paper, PFHxA, is associated with any adverse health effects. Indeed, Plaintiffs' Complaint features numerous citations about entirely different PFAS chemicals that are *not* addressed in the Peaslee Paper. Here, Plaintiffs received exactly what they paid for—Apple Watch bands that are safe to use and compatible with the Apple Watch.

Additionally, not only do Plaintiffs' claims flunk the pleading standard of Rule 8, but Plaintiffs' fraud-based claims must be dismissed because the allegations lack the particularity that Rule 9(b) requires. Plaintiffs cannot support their affirmative misrepresentation claims because

they fail to allege *any* false or misleading statements related to the Watch bands, instead only pointing to vague, non-actionable statements purporting to address "health" and "sustainability." Further, neither of the named Plaintiffs pleads having seen or relied on any specific statement by Apple. Plaintiffs' omissions-based claims fare no better. Plaintiffs make conclusory allegations regarding Watch bands posing an "unreasonable safety hazard," but Plaintiffs offer no facts to render such claims plausible. Moreover Plaintiffs do not plead that the alleged presence of PFHxA is central to the Watch band's function and have not alleged facts to establish Apple's knowledge of the alleged presence of PFHxA, dooming their omissions claims.

Plaintiffs' negligent misrepresentation claim is barred by the economic loss doctrine; and their claim for unjust enrichment is duplicative of the foregoing causes of action and is likewise deficient. Finally, Plaintiffs cannot state a claim for equitable relief because Plaintiffs have an adequate remedy at law. For these reasons and additional reasons detailed below, all of Plaintiffs' claims should be dismissed.

II. FACTUAL BACKGROUND

A. Apple Watch

The first generation Apple Watch was launched in early 2015, featuring revolutionary new technologies and a pioneering user interface. Apple sells Watch bands that are designed to be both durable and comfortable. Customers can customize their Watch to fit their lifestyle and intended use by choosing their finish, Watch size, and band. Some of these bands are produced from fluoroelastomers, a type of synthetic rubber that offers superior resistance to heat and oils while maintaining a soft feel. The product page for each Watch band clearly identifies the material of the band in the Product Information section, including for bands made from fluoroelastomer. (*See* ECF No. 1 ("Compl.") ¶ 21.)

Apple provides consumers with a wide variety of information about the technical specifications and testing of its products, as well as the Company's progress towards meeting certain environmental and sustainability goals. (*See* Declaration of William F. Tarantino in Support of Apple's Motion to Dismiss ("Tarantino Decl.") Ex. B.) As part of that progress, Apple made a public commitment to thoughtfully phasing out PFAS and is transparent about its

efforts to identify PFAS in its products, assess related safety risks, if any, and find suitable alternatives "in a way that does not result in regrettable substitutions." (*Id.* at 2.) The report expressly notes that "[i]t will take time for Apple to completely phase out PFAS from [its] products and processes" given "the challenges related to compiling a comprehensive catalog of PFAS use, identifying and developing non-PFAS alternatives that can meet the performance needs for certain critical applications, and taking into account the time needed for material qualification." (*Id.*)

B. PFAS Substances and The Peaslee Paper

PFAS are defined as a "class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom." *See* Cal. Health & Safety Code §§ 108945, 108970. PFAS have unique performance properties. For example, they are thermally stable and resist degradation. For this reason, PFAS have been used for decades in a variety of industrial and consumer applications. (*See* Tarantino Decl. Ex. B.) Plaintiffs' Complaint devotes multiple pages to chronicling the speculative harms associated with exposure to PFAS broadly. Yet, the only basis for the claim that some Apple Watch bands "contain excessive levels" of PFAS is a four-page article published in Environmental Science & Technology Letters on December 18, 2024 (the "Peaslee Paper"). That study purported to extract a specific PFAS, PFHxA, from certain smartwatch bands. (Compl. ¶ 20 n.28.) The Peaslee Paper tested a sample of 22 smartwatch bands from different manufacturers. (*See* Tarantino Decl. Ex. A.) The Paper used fluorine analysis as an indicator of the potential presence of PFAS and further tested a subset of smartwatch bands using strong chemical solvent extraction to identify the presence of 20 PFAS.

The Paper does not identify the specific smartwatch bands tested and instead categorized the samples by price point only when describing the results. Of the two smartwatch bands made of fluoroelastomers within the price point of the Apple Watch bands, one had no PFHxA present at all, and the other had a reported concentration of 659 nanograms/gram. The authors of the Peaslee Paper recognized that there is currently "limited knowledge on the dermal absorption of PFHxA" and that the "toxicology of PFHxA after human exposure is also understudied." (*Id.* at Abstract, D.) Despite the admitted limitations of the study and the disconnect between the tested

watches and the Apple Watch bands purchased by Plaintiffs, Plaintiffs base their claims entirely on the two anonymized data points from the Peaslee Paper.

C. Plaintiffs' Allegations

Plaintiffs claim that the Apple Watch Sport Band, Ocean Band, and Nike Sport Band "contain excessive levels of per- and polyfluoroalkyl substances ('PFAS'), which are toxic to human health and the environment." (Compl. ¶ 2.) According to Plaintiffs, this renders Apple's advertising about the Apple Watch generally, which is "focused on health, wellness, and environmental stewardship," misleading. (*Id.* ¶ 4.) Plaintiffs each claim to have purchased Apple Watches with fluoroelastomer Sport Bands. (Compl. ¶¶ 31-32.) Plaintiffs assert claims for violations of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* ("CLRA"); Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* ("UCL"); and False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*; and California common law claims for fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, and unjust enrichment. Plaintiffs purport to assert claims on behalf of themselves and a putative nationwide class and a California subclass consisting of "all similarly situated consumers ("Class Members") who purchased the Apple Watch Sport Band, Ocean Band, and Nike Sport Band."[1] (Compl. ¶ 2.)

III. LEGAL STANDARD

Rule 12(b)(1) of the Federal Rules of Civil Procedure requires a plaintiff to allege facts sufficient to show injury, causation, and redressability. *Pirozzi v. Apple Inc.*, 913 F. Supp. 2d 840, 846 (N.D. Cal. 2012). "[A]ctual reliance is required to demonstrate causation for purposes of Article III standing when the plaintiffs assert that their injury is the result of deceptive misrepresentations or omissions." *Phillips v. Apple Inc.*, No. 15-CV-04879-LHK, 2016 WL 1579693, at *6 (N.D. Cal. Apr. 19, 2016).

[1] Specifically, Plaintiffs' UCL claim is brought on behalf of both putative classes, while the claims under the FAL, CLRA, are brought on behalf of the putative California subclass. The claims for fraud, fraudulent inducement, fraudulent concealment or omission, fraudulent misrepresentation, negligent misrepresentation, and unjust enrichment are brought on behalf of the putative nationwide class.

To survive a motion to dismiss, a complaint must allege facts to support a claim for relief that is "plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). A pleading that offers only "labels and conclusions" or "a formulaic recitation of the elements of a cause of action" will not suffice. *Id.* Claims grounded in fraud are subject to heightened pleading requirements under Rule 9(b). *See* Fed. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.").

IV. ARGUMENT

A. Plaintiffs Lack Article III Standing

The Court should dismiss Plaintiffs' Complaint because Plaintiffs fail to plead an actual injury and causation, and they therefore lack standing for any of their claims. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (Article III standing requires that [t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that [the injury must be] likely to be redressed by a favorable decision"). A facial challenge to standing under Rule 12(b)(1) "accepts the truth of the plaintiff's allegations but asserts that they 'are insufficient on their face to invoke federal jurisdiction'"; such challenges are adjudicated under the 12(b)(6) standard. *Bowen v. Energizer Holdings, Inc.*, 118 F.4th 1134, 1142 n.6, 7 (9th Cir. 2024).

1. Plaintiffs Fail to Allege Injury in Fact

Plaintiffs' allegations of injury in fact are insufficient on their face, because their alleged injury is neither "concrete" nor "particularized." *Spokeo*, 578 U.S. 338, 339-40. Plaintiffs base their claims on an overpayment theory of injury, alleging that they "would not have purchased the Products or would not have paid as much for the Products" if they had known that the products contained "toxic" PFAS. (Compl. ¶ 34(d).) Even presuming the facts alleged in Plaintiffs' Complaint are true, Plaintiffs fail to adequately plead that Apple Watch bands contain any PFAS, let alone harmful quantities of "toxic" PFAS. The only basis for Plaintiffs' conclusory allegation that the Apple Watch bands may contain PFHxA is the Peaslee Paper, which anonymizes its results. At most, the Paper could report testing of two Apple Watch bands, but the Paper does *not*

specify which Apple Watch bands were tested *or* affirmatively link the testing results to any Apple Watch bands. Courts in other jurisdictions routinely dismiss similar allegations for lack of standing.[2]

Nor do Plaintiffs allege anywhere in their Complaint that *their* Apple Watch bands contained any PFAS, much less the concentration of those PFAS, the amount of PFAS a user may be exposed to during normal use, and potential of that exposure to affect human health. Plaintiffs' theory that they overpaid for Watch bands because they contained "toxic" PFAS is therefore unsupported by their own allegations. *See, e.g.*, *Pels v. Keurig Dr. Pepper, Inc.*, No. 19-CV-03052-SI, 2019 WL 5813422, at *5 (N.D. Cal. Nov. 7, 2019) (dismissing claims because plaintiff "failed to plead a particularized injury by failing to plead the water he purchased contained violative arsenic levels").

Further, Plaintiffs' allegations that they paid a price premium for Apple Watch bands must be dismissed because Plaintiffs fail to allege any facts to support that the Watch bands were marketed as PFAS-free. As discussed below in Section C, Plaintiffs point only to vague, nonactionable marketing statements related to the Apple Watch product as a whole, such as: "The ultimate device for a healthy life," "Apple Watch can do what your other devices can't because it's on your wrist," "When you wear it, you get meaningful health insights." (Compl. ¶¶ 12-13.) But these statements do not speak to the presence or absence of PFAS at all, nor are they specific to PFHxA or the Watch bands, dooming Plaintiffs' allegations of price premium injury.

Krakauer v. Recreational Equip., Inc. is instructive. There, a consumer challenged the defendant's marketing statements and alleged that a jacket he purchased contained short-chain

[2] *See, e.g.*, *Kell v. Lily's Sweets, LLC*, No. 23-CV.-0147-VM, 2024 WL 1116651, at *2 (S.D.N.Y. Mar. 13, 2024) (dismissing claims of economic injury where third party tested just two or three samples of defendant's chocolate bars for lead); *Saedi v. Coterie Baby, Inc.*, No. 24-CV--3893-DLC, 2024 WL 4388401, at *14 (S.D.N.Y. Oct. 3, 2024) (single test was insufficient to establish standing where plaintiff failed to link the test to the products plaintiff purchased); *Esquibel v. Colgate-Palmolive Co.,* No. 23-CV-00742-LTS, 2023 WL 7412169, at *3 (S.D.N.Y. Nov. 9, 2023) (plaintiffs did not allege that the products they purchased were tested nor indicate how many units of the product were tested, leaving the presence of PFAS in the purchased product nothing more than a "sheer possibility"); *Onaka v. Shiseido Americas Corp.*, No. 21-CV-10665-PAC, 2023 WL 2663877, at *5 (S.D.N.Y. Mar. 28, 2023) (plaintiffs "provide[d] no facts from which the Court could extrapolate that their isolated testing should apply broadly to [d]efendant's [p]roducts").

PFAS. The court held that Krakauer had failed to establish injury where, as here, he pointed to only "nonspecific assertions" from the defendant "regarding sustainability and safety" and the defendant's assertion that it eliminated long-chain PFAS (but had said nothing about short chain PFAS). No. C22-5830-BHS, 2024 WL 1494489, at *8 (W.D. Wash. Mar. 29, 2024). The same is true here: Plaintiffs fail to plausibly allege a misrepresentation, and therefore cannot adequately plead that they suffered an injury-in-fact. *See also In re: Beech-Nut Nutrition Co. Baby Food Litig.*, No. 21-CV-00133, 2025 WL 862382, at 7 (N.D.N.Y. Mar. 19, 2025) (rejecting price premium argument where no misrepresentation existed with respect to the existence of heavy metals); *Gyani v. Lululemon Athletica Inc.*, No. 24-CV-22651, 2025 WL 548405, at *13 (S.D. Fla. Feb. 18, 2025) (plaintiffs lacked standing where they failed to allege a factual connection between the value of the products and the representations). Because Plaintiffs fail to allege an injury in fact, each of their claims must be dismissed for lack of standing.

2. Plaintiffs Fail to Plausibly Allege Causation

Furthermore, and as discussed further in Section C, that Plaintiffs do not adequately allege reliance upon any alleged misrepresentations or omissions claims also dooms their ability to establish Article III standing. "Courts have held that actual reliance is required to demonstrate causation for purposes of Article III standing when the plaintiffs assert that their injury is the result of deceptive misrepresentations or omissions." *Phillips v. Apple Inc.*, No. 15-CV-04879-LHK, 2016 WL 1579693, at *6 (N.D. Cal. Apr. 19, 2016) (citing cases). Here, Plaintiffs base their claims on Apple's alleged misrepresentations or omissions, but they cannot and do not allege actual reliance because they do not explain which representations they allegedly saw or which Apple statements they read and relied upon. Instead, Plaintiffs make conclusory allegations stating that they "relied upon the Material Omissions and Challenged Representations" on Apple's website and "other Apple advertising and marketing." (Compl. ¶¶ 34, 154, 163.) Such vague, blanket statements of reliance are insufficient to establish standing.

3. Plaintiffs Lack Standing for Claims Premised on Unpurchased Products

Plaintiffs cannot pursue claims for Apple Watch bands that they did not purchase. *See*

Johns v. Bayer Corp., No. 09-CV-1935-DMS-JMA, 2010 WL 476688, at *5 (S.D. Cal. Feb. 9, 2010) (plaintiff "cannot expand the scope of his claims to include a product he did not purchase"). Plaintiffs' putative class definition includes purchasers of the Apple Watch Sport Band, Ocean Band, and Nike Sport Band (Compl. ¶ 2), but Plaintiffs allege that they only purchased Apple Watches with Sport Bands (*id.* ¶¶ 31-32). Accordingly, claims relating to the Ocean Band and Nike Sport Band should be dismissed. *See Leonhart v. Nature's Path Foods, Inc.*, No. 13-CV-492-EJD, 2014 WL 1338161, at *4 (N.D. Cal. Mar. 31, 2014) ("[C]laims regarding unpurchased products . . . do not survive a motion to dismiss."); *Granfield v. NVIDIA Corp.*, No. 11-5403-JW, 2012 WL 2847575, at *6 (N.D. Cal. July 11, 2012) ("[W]hen a plaintiff asserts claims based both on products that she purchased and products that she did not purchase, claims relating to products not purchased must be dismissed for lack of standing.").

4. Plaintiffs Lack Standing to Bring Claims Under Laws for States in Which They Do Not Reside

Plaintiffs are California residents, but seek to bring claims on behalf of California and nationwide putative class members under the "relevant consumer protection statute[s] for the state in which they reside." (Compl. ¶¶ 70, 97 (listing statutes of 49 states).) This is improper. "[P]laintiffs do not have standing to bring claims under the laws of states where they have alleged no injury, residence, or other pertinent connection." *Jones v. Micron Tech. Inc.*, 400 F. Supp. 3d 897, 909 (N.D. Cal. 2019); *see also Humphrey v. J.M. Smucker Co.*, No. 22-CV-06913-WHO, 2023 WL 3592093, at *7 (N.D. Cal. May 22, 2023) (dismissing claims brought by California plaintiff on behalf of class members in other states); *Zeiger v. WellPet LLC*, 304 F. Supp. 3d 837, 847 (N.D. Cal. 2018) (dismissing claims in part because "[p]laintiffs [we]re all residents of California, but purport[ed] to represent a nationwide class, creating the significant burden of nationwide discovery"). The Court should dismiss these claims for lack of standing.

5. Plaintiffs Lack Standing to Bring Claims on Behalf of a Nationwide Class Under California Law

Plaintiffs also seek to bring common law claims for fraud, fraudulent inducement, fraudulent concealment or omission, fraudulent misrepresentation, negligent misrepresentation, and unjust enrichment on behalf of a nationwide class under California law. (Compl. ¶¶ 151-

206.) This, again, is improper. The choice-of-law analysis articulated in *Mazza v. American Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012) "is not only relevant but controlling, even at the pleading stage." *Miller v. Ford Motor Co.*, 620 F. Supp. 3d 1045, 1076-77 (E.D. Cal. 2022) (quoting *Cover v. Windsor Surry Co.*, No. 14-CV-05262-WHO, 2016 WL 520991, at *5 (N.D. Cal. Feb. 10, 2016)). Courts have discretion to determine choice of law issues upon a motion to dismiss. *Id.* at 1077. Here, applying California law to the nationwide common law class claims would be improper because doing so would impair the interest of each class member's jurisdiction to apply their own laws.

"A federal court sitting in diversity must look to the forum state's choice of law rules to determine the controlling substantive law." *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1187 (9th Cir. 2001). Under California's choice of law rules, the class action proponent bears the initial burden to show that California has "significant contact or significant aggregation of contacts" to the claims of each class member. *Wash. Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 921 (2001). California law may only be used on a classwide basis if "the interests of other states are not found to outweigh California's interest in having its law applied." *Id.* To make this determination, courts apply a three-step governmental interest test: First, the court determines whether the relevant law of each of the potentially affected jurisdictions is the same or different. Second, if there is a difference, the court examines each jurisdiction's interest in the application of its own law under the circumstances. Third, if the court finds that there is a true conflict between the states' interests, it evaluates and compares the nature and strength of the interest of each jurisdiction and ultimately applies the law of the state whose interest would be more impaired if its law were not applied. *McCann v. Foster Wheeler LLC*, 48 Cal. 4th 68, 81-82 (2010). Applying this analysis here, nationwide application of California law is improper.

First, the laws of unjust enrichment, fraud, and negligent misrepresentation vary materially from state to state, and therefore the first step of the governmental interest test is satisfied. *See Mazza*, 666 F.3d at 591 ("[E]lements necessary to establish a claim for unjust enrichment . . . vary materially from state to state."); *Larsen v. Vizio, Inc.*, No. 14-CV-01865-CJC, 2015 WL 13655757, at *3 (C.D. Cal. April 21, 2015) (finding "material variations among

the states' negligent and intentional misrepresentation claims"); *Gianino v. Alacer Corp.*, 846 F. Supp. 2d 1096, 1101-02 (C.D. Cal. 2012) (finding material differences in state laws for fraud, intentional misrepresentation, and negligent misrepresentation, including differences in injury, scienter, standards of proof, methods for calculating damages, and statutes of limitations).[3]

Second, the states where consumers reside have an interest in the application of their laws under the circumstances. While Apple is headquartered in California (*see* Compl. ¶ 37), Plaintiffs allege that the putative nationwide class consists of purchasers "dispersed throughout the United States" (*id.* ¶ 74), most of whom likely purchased Apple's products while located in their home states. Thus, a true conflict exists under the second prong of the test. *See McKinney v. Corsair Gaming, Inc.*, 646 F. Supp. 3d 1133, 1144-45 (N.D. Cal. 2022) (finding true conflict under second prong where defendant was headquartered in California and advertised its products to consumers nationwide, who purchased them in their home states).

Finally, California recognizes that "with respect to regulating or affecting conduct within its borders, the place of the wrong has the predominant interest." *See Hernandez v. Burger*, 102 Cal. App. 3d 795, 802, (1980), *cited with approval by Abogados v. AT & T, Inc.*, 223 F.3d 932, 935 (9th Cir. 2000). In the context of consumer fraud and misrepresentation cases, the place of the wrong is the place of the transaction where an omission should have been disclosed or a misrepresentation was communicated. *See McCann v. Foster Wheeler LLC*, 48 Cal. 4th 68, 94 n.12 (2010) (noting that the geographic location of an omission is the place of the transaction where it should have been disclosed); *In re: First Am. Home Buyers Prot. Corp. Class Action Litig.*, 313 F.R.D. 578, 603 (S.D. Cal. 2016), *aff'd sub nom. Carrera v. First Am. Home Buyers Prot. Co.*, 702 F. App'x 614 (9th Cir. 2017) ("[T]he place of the wrong was the state where the

[3] *See also Young v. Neurobrands, LLC*, No. 18-cv-05907, 2020 WL 11762212, at *9 (N.D. Cal. Oct. 15, 2020) (noting that "material differences exist between the laws of different states with regard to Plaintiffs' common law claims for fraud by omission and negligent misrepresentation"); *Ortiz v. McNeil-PPC, Inc.,* No. 07-CV-678-MMA-CAB, 2009 WL 10725751, at *4 (S.D. Cal. Mar. 6, 2009) (finding material conflicts between California's law of unjust enrichment and those of other states, including whether such a claim is an independent cause of action and whether a showing of fault or unconscionable conduct by the defendant is required); *Rivera v. Bio Engineered Supplements & Nutrition, Inc.*, No. SACV-07-1306JVSRNBX, 2008 WL 4906433, at *2 (C.D. Cal. Nov. 13, 2008) (finding material conflicts between the California fraud and unjust enrichment laws and the laws of the other states).

misrepresentations were communicated to the plaintiffs[.]" (citation omitted)). Here, the transactions in which putative class members purchased their Apple Watch bands and relied on the alleged omissions or misrepresentations took place all across the country. "These foreign states have a strong interest in the application of their laws to transactions between their citizens and corporations doing business within their state." *Mazza*, 666 F.3d at 594. "Conversely, California's interest in applying its law to residents of foreign states is attenuated." *Id.*

Because the interests of each class member's jurisdiction would be more impaired if its law was not applied, it is improper for Plaintiffs to bring unjust enrichment and common law fraud and negligent misrepresentation claims under California law for non-California residents. These claims should be dismissed as to the putative nationwide class. *See In re Toyota RAV4 Hybrid Fuel Tank Litig.*, 534 F. Supp. 3d 1067, 1122 (N.D. Cal. 2021) ("In light of *Mazza*, the Court finds that Plaintiffs cannot assert a nationwide claim for unjust enrichment under California law."); *Larsen*, 2015 WL 13655757, at *2 (finding negligent misrepresentation and common law fraud claims could not be brought on behalf of a nationwide class).

B. Plaintiffs Fail to Allege Facts Supporting Their Theory That Apple Watch Bands Contain Harmful PFAS

Plaintiffs' entire Complaint is based on allegations that three different Apple Watch bands contain "toxic" PFAS. This speculative conclusion is devoid of factual support and is insufficient to state a claim under Rule 12(b)(6). *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"). Plaintiffs have failed to "allege sufficient facts that, if proven, would show the product at issue contains ingredients of a type and in such quantities to make her various theories of relief viable." *Bullard v. Costco Wholesale Corp.*, No. 24-CV-03714-RS, 2025 WL 506271, at *2 (N.D. Cal. Feb. 14, 2025). Indeed, "'PFAS' is not a magic word that can be invoked to open automatically the doors to federal litigation." *Id.* Plaintiffs' allegations are deficient because they fail to credibly allege that PFAS was found in Apple Watch bands (let alone which models of Apple Watch bands); fail to allege that the specific PFAS allegedly found in Apple Watch bands (PFHxA) is dangerous or toxic; and fail to allege that the amount of the

PFHxA allegedly found in Apple Watch bands is harmful.

Plaintiffs base their claims solely on the barebones Peaslee Paper, but those test results do not support Plaintiffs' theory. As noted above, the results reported in the Peaslee Paper are categorized only by price point and whether the bands are advertised as containing fluoroelastomers. The test results are not linked to any specific product brands or models. Reviewing the price point categorizations, it appears that the Paper may have tested three smartwatch bands in the price point range of Apple Watch bands, and two of those smartwatch bands were categorized as having been advertised as containing fluoroelastomers. As Plaintiffs allege, the three Watch bands at issue in the Complaint are advertised as containing fluoroelastomers. (Compl. ¶¶ 31-32.) Therefore, it is possible that—*at most*—two unspecified Apple Watch bands were included in the Peaslee Paper. This speculation is unconfirmed by the Paper itself or by any allegation in Plaintiffs' Complaint.

Regardless, the Peaslee Paper does not state (and Plaintiffs do not purport to allege) which model(s) of Apple Watch bands were the subject of the testing results. According to the Peaslee Paper, one of the two smartwatch bands advertised as containing fluoroelastomers at this price point purportedly showed the presence of PFHxA, whereas one of the two smartwatch bands at this price point did *not* detect *any* PFHxA at all. This attenuated chain of assumptions is entirely insufficient to tie the PFHxA test results to any Apple Watch bands, much less the three bands that Plaintiffs put at issue in this lawsuit. And aside from the Pealsee Paper, Plaintiffs do not allege any factual support for its theory that three models of Apple Watch bands contain PFHxA or any other PFAS. Tellingly, Plaintiffs devote significant swaths of the Complaint to discussing PFAS other than PFHxA—PFOA and PFOS—but they do not allege that Watch bands contain those PFAS.[4] (*See* Compl. ¶¶ 43, 45, 52, 53.)

Even if Plaintiffs could plausibly allege that the Apple Watch bands at issue contain

[4] The Court should strike Plaintiffs' impertinent discussions of PFOS and PFOA because they have no bearing on the case and, even if true, would not further Plaintiffs' arguments about alleged PFHxA in the Watch bands. *See, e.g.*, *Tidwell v. Cnty. of Kern*, No. 16-CV-01697-JLT, 2017 WL 68146, at *2 (E.D. Cal. Jan. 5, 2017) (striking recitations of statistics where they did not bear on issues raised in the case and their veracity would not advance plaintiff's arguments).

PFHxA, they have failed to allege that this specific PFAS is itself harmful, and have "failed to plausibly allege PFAS are present in the Products at a harmful level," which is itself a fatal pleading deficiency. *Bounthon v. Procter & Gamble Co.*, No. 23-CV-00765-AMO, 2024 WL 4495501, at *8-10 (N.D. Cal. Oct. 15, 2024); s*ee also Krakauer v. Recreational Equip., Inc.,* No. C22-5830-BHS, 2024 WL 1494489 , at *10 (W.D. Wash. Mar. 29, 2024) (plaintiff's omission claims failed "largely because he ha[d] not plausibly alleged that his raincoat contained dangerous PFAS in quantities sufficient to pose health risks"). The testing conducted in the Peaslee Paper (conducted by submersing smartwatch bands into a harsh organic solvent to actively degrade the smartwatch material, in no way simulating real life conditions) purports to have found levels of PFHxA between 0 and 659 ng/g (or .66 parts per million) in smartwatch bands at Apple's price point. And the *one* smartwatch band at Apple's price point that is reported to have contained PFHxA at .66 ppm is orders of magnitude less than California's PFAS limitations for clothing and textiles. *See, e.g.*, Cal. Health & Safety Code § 108970. Nor do Plaintiffs attempt to connect the type of PFAS allegedly detected in certain smartwatch bands (PFHxA) to *their* purchases or to an alleged risk of harm to *them*. Nor could they. The Peaslee Paper itself admits that there is "limited knowledge on the dermal absorption of PFHxA." (*See* Tarantino Decl. Ex. B at Abstract; Compl. ¶ 20 n.28.) Plaintiffs' theory and claims are wholly unsupported by their factual allegations, and their claims should be dismissed. *See, e.g.*, *Davidson v. Sprout Foods, Inc.*, 106 F.4th 842, 852 (9th Cir. 2024) (affirming dismissal of claim where plaintiff did not explain at what levels the sugars at issue become harmful).

C. Plaintiffs' Fraud Claims Fail to Satisfy Rule 9(b)'s Heightened Pleading Requirement

Plaintiffs' claims unequivocally sound in fraud. They are premised on the allegation that Apple either misrepresented or concealed facts regarding the alleged presence of "toxic" PFAS in Watch bands. *See Hamman v. Cava Grp., Inc.*, No. 22-CV-593-MMA (MSB), 2023 WL 3450654, at *7 (S.D. Cal. Feb. 8, 2023) (claims alleging that defendant's products are unfit for consumption due to PFAS "either allege fraud or sound in fraud because . . . their allegations are premised on 'a unified course of fraudulent conduct"). Plaintiffs must therefore meet the

heightened pleading requirements of Rule 9(b), which requires that they plead the "who, what, when, where, and how" of the alleged misrepresentation or omission, as well as "what is false or misleading about [the purportedly fraudulent] statement, and why it is false." *Yastrab v. Apple*, 173 F. Supp. 3d 972, 978 (N.D. Cal. 2016). Plaintiffs cannot meet the pleading standard of Rule 8, let alone the heightened standard of Rule 9(b).

1. Plaintiffs' Affirmative Misrepresentation Claims Fail

a. Plaintiffs Fail to Allege Any Actionable Misrepresentation

Plaintiffs have not identified any false or misleading statements related to the Watch bands. Plaintiffs point to generalized statements made by Apple, but such statements are not sufficient to support a claim of affirmative misrepresentation related to Watch bands. Under California law, "[g]eneralized, vague, and unspecified assertions" are not actionable. *Anunziato v. eMachines, Inc.*, 402 F. Supp. 2d 1133, 1139 (C.D. Cal. 2005). Here, statements that the Apple Watch is "the ultimate device for a healthy life," provides "peace of mind on your wrist," and does "what other devices can't" are classic examples of non-actionable advertising because they are not "specific and measurable." *See, e.g.*, *Ariix, LLC v. NutriSearch Corp.*, 985 F.3d 1107, 1121 (9th Cir. 2021); *Maketa v. Target Corp.,* No. 24-CV-02576-RFL, 2024 WL 4311702, at *7 (N.D. Cal. Sept. 26, 2024) (statements such as "care for your everyday in every way" were too general to be actionable); *Taleshpour v. Apple Inc.*, 549 F. Supp. 3d 1033, 1040 (N.D. Cal. 2021) (statements that products are "revolutionary," "groundbreaking," or offer "breakthrough performance" are nonactionable). These statements are vague and say nothing about specific, measurable characteristics of Apple Watch, let alone Apple Watch bands. *See Favell v. Univ. of S. Cal.*, No. CV-23-3389-GW-MARX, 2024 WL 751006, at *7 (C.D. Cal. Jan. 23, 2024) (claim that a school is "top-ranked" is not actionable because it is "vague [and] highly subjective," as it fails to specify by whom the school has been ranked or according to what criteria).

Plaintiffs' challenge to statements regarding Apple's environmental initiatives fare no better. (*See* Compl. ¶ 12 (quoting statement that Apple is "using smarter chemistry" in creating products).) Courts have consistently held that similar statements regarding a company's "values and commitment to health, safety, and the environment" are aspirational generalizations and

therefore inactionable. *In re Vale S.A. Sec. Litig.*, No. 15-CV-9539, 2017 WL 1102666, at *21 (S.D.N.Y. Mar. 23, 2017). For example, the court in *Taleshpour* rejected misrepresentation claims based on statements found on Apple's environmental questions webpage, because those statements could not be "fairly described as an advertisement or marketing material, and it sa[id] nothing at all" about the Apple product at issue in that case. 549 F. Supp. 3d at 1042. The same is true here, where Plaintiffs point to Apple's aspirational environmental statements, which are general, forward-looking and say nothing at all regarding PFAS or Watch bands. *See also Solis v. Coty, Inc.*, No. 22-CV-0400-BAS-NLS, 2023 WL 2394640, at *8 (S.D. Cal. Mar. 7, 2023) (dismissing claim that company's sustainability reports are actionable product-based marketing claims related to PFAS); *Endres v. Newell Brands, Inc.*, No. CV-24-00952-MWF-DFMX, 2024 WL 3915055, at *6 (C.D. Cal. May 14, 2024) (dismissing claims based on sustainability statement regarding a commitment "to delivering distinctive products and experiences in a sustainable and socially responsible way for our customers").

Moreover, Plaintiffs fail to specify which, if any, Watch bands the alleged misrepresentations relate to. All the representations identified in Plaintiffs' Complaint relate to advertisements for the Apple Watch and its general functionality (*see* Compl. ¶¶ 12-16), but none specify which Watches the advertisements relate to or refer to the Watch *bands* that Plaintiffs claim contain harmful PFAS. Therefore, Plaintiffs' misrepresentation claims fail for the additional reason that they fail to link the alleged misrepresentations to the specific accessory about which they now complain. *See Ang v. Bimbo Bakeries USA, Inc.*, No. 13-CV-01196-WHO, 2013 WL 5407039, at *3 (N.D. Cal. Sept. 25, 2013) (requiring plaintiffs to identify "with specificity the *precise* representations alleged to be illegal, fraudulent and misleading, as well as the *specific* products on which that language is found" under Rule 9(b)).

b. Plaintiffs' Challenged Statements Could Not Mislead a Reasonable Consumer

Plaintiffs point to a host of statements made by Apple regarding the Watch generally, but those statements say nothing about PFAS in Watch bands. Plaintiffs' allegations that these generalized statements could mislead a reasonable consumer into believing that the Watch bands

were PFAS-free are implausible. Consumer deception claims are subject to the "reasonable consumer" test, which requires plaintiffs to "show that 'members of the public are likely to be deceived.'" *Ebner v. Fresh, Inc.*, 838 F.3d 958, 965 (9th Cir. 2016) (citing *Williams v. Gerber Prod. Co.*, 552 F.3d 934, 938 (9th Cir. 2008). "[I]f common sense would not lead anyone to be misled, then the claim may be disposed of at a motion to dismiss stage." *Moore v. Mars Petcare US, Inc.*, 966 F.3d 1007, 1018 (9th Cir. 2020).

In particular, Plaintiffs challenge Apple's statements that the Apple Watch provides "meaningful health insights," is a "carbon neutral milestone on your wrist," and allows consumers to "better understand [their] daily health status," but these statements say nothing about the alleged presence or absence of PFAS. Numerous courts have found that similar generalized statements could not have misled a reasonable consumer about the alleged presence of PFAS in the products, because "nonspecific assertions [] regarding sustainability and safety" are not actionable. *Krakauer*, 2024 WL 1494489, at *8. Moreover, courts have repeatedly rejected attempts by Plaintiffs to bring misrepresentation claims related to PFAS, where, as here, the representations at issue do not reference or relate to PFAS at all. *See, e.g.*, *Castillo v. Prime Hydration LLC,* 748 F. Supp. 3d 757, 771 (N.D. Cal. 2024) (health-related statements on beverage such as "refresh, replenish, and refuel" and "perfect boost for every endeavor" could not have misled a reasonable consumer as to the presence of PFAS); *Solis v. Coty, Inc.*, No. 22-CV-0400-BAS-NLS, 2023 WL 2394640 at *7-8 (S.D. Cal. Mar. 7, 2023) (finding no misrepresentation about any purported lack of PFAS in cosmetic product packaging identifying it as "safe," "sustainable," "suitable for sensitive skin," and "dermatologically tested"); *Richburg v. Conagra Brands, Inc.*, No. 22-CV-2420, 2023 WL 1818561, at *7 (N.D. Ill. Feb. 8, 2023) (rejecting claim that reasonable consumers would believe that "only real ingredients" means that a microwaveable popcorn product is PFAS-free).

Nor could Apple's statement regarding "smarter chemistry" have misled a reasonable consumer about the presence or absence of PFAS in Watch bands when read in context. *See Freeman v. Time, Inc.*, 68 F.3d 285, 287 (9th Cir. 1995) (allegedly deceptive representations must be viewed reasonably and in context). That statement appears on the same webpage as Apple's

public report on its commitment to phasing out PFAS, which Plaintiffs cite in their Complaint. (Compl. ¶ 9.) The report explains that Apple is engaging in an ongoing process to address the potential presence of PFAS in its products, noting that "it will take time for Apple to completely phase out PFAS from our products and processes." (Tarantino Decl. Ex. B at 2.) Therefore, viewed reasonably and in context, no consumer could construe the general statement about Apple's commitment to "smarter chemistry" to mean that the Watch bands are PFAS-free.

c. Plaintiffs Do Not Plead Exposure to or Reliance on Any Statements by Apple

As discussed above with regard to Article III causation, Plaintiffs fail to identify the specific statements on which they claim to have relied, and which allegedly caused them harm. Though the Complaint identifies several statements made by Apple regarding the Watches as a whole, it alleges only generally that the named Plaintiffs "relied upon the Material Omissions and Challenged Representations" on Apple's website and "other Apple advertising and marketing." (Compl. ¶¶ 34, 154, 163.) Such blanket allegations of reliance, without details on when, where, or how Plaintiffs saw any Apple advertisement, are insufficient to meet Rule 9(b)'s standards. "Plaintiffs alleging claims under the FAL and UCL are required to plead and prove actual reliance on the misrepresentations or omissions at issue." *Great Pac. Sec. v. Barclays Capital, Inc.*, 743 F. App'x 780, 783 (9th Cir. 2018) (citing *Kwikset Corp. v. Super. Ct.*, 51 Cal.4th 310, 326-27(2011)). Courts dismiss claims where, as here, "[t]he complaint alleges a litany of misrepresentations and omissions, but it does not allege with particularity which marketing materials each plaintiff relied upon and when or whether the plaintiffs would have seen the information … had it been disclosed." *Almeida v. Apple, Inc.*, No. 21-CV-07109-VC, 2022 WL 1514665, at *1 (N.D. Cal. May 13, 2022); *see also Yastrab v. Apple*, 173 F. Supp. 3d 972, 978 (N.D. Cal. 2016) (dismissing plaintiffs' consumer protection claims for failure to meet Rule 9(b)'s specificity requirement where plaintiffs referenced only vague statements on Apple's website and its advertisements).

2. Plaintiffs' Omissions Claims Fail

Plaintiffs' omissions claims are barred because Plaintiffs have failed to allege the requisite

knowledge or any basis for a duty to disclose.

a. Plaintiffs Do Not Adequately Allege Exclusive Presale Knowledge

Plaintiffs' omissions claims fail because they do not make any non-conclusory allegation that Apple had exclusive knowledge—or any knowledge—of the alleged presence of PFHxA in Watch bands. To state a claim for common-law fraudulent concealment or for a violation consumer fraud statutes based on an omission, a defendant "must have known of the defect at the time of sale for a plaintiff to state a claim." *Hauck v. Advanced Micro Devices, Inc.*, No. 18-CV-00447-LHK, 2019 WL 1493356 at *11 (N.D. Cal. Apr. 4, 2019), *aff'd,* 816 F. App'x 39 (9th Cir. 2020). Constructive knowledge is insufficient to state a claim based on omissions. *Id.*; *see also Wilson v. Hewlett-Packard Co.,* 668 F.3d 1136, 1145 (9th Cir. 2012) ("Plaintiffs must allege [defendant's] knowledge of a defect to succeed on their claims of deceptive practices and fraud."). "To show 'actual knowledge,' a plaintiff must allege 'how the defendant obtained knowledge of the specific defect.'" *Castillo v. Prime Hydration LLC*, 748 F. Supp. 3d 757, 773 (N.D. Cal. 2024) (citations omitted). Generalized assertions that a manufacturer had "access to the aggregate information and data regarding the [alleged] risk" are "speculative and do[ ] not suggest how any tests or information could have alerted [the manufacturer] to the defect." *Id.* (citations omitted).

Here, the Complaint makes a formulaic recitation that Apple had "exclusive knowledge" regarding the Watch bands, but fails to identify what information Apple allegedly had knowledge of, let alone explain how this information was material or how Apple came to possess the exclusive knowledge. (Compl. ¶ 179.) Their allegations are plainly insufficient to support an omissions theory, because Plaintiffs make no "factual allegations to support the contention that [defendant] knew about the existence of PFAS." *Castillo*, 748 F. Supp. 3d at 773. Courts have dismissed omissions claims for failure to allege exclusive knowledge even in cases where plaintiffs have pled *far* more than Plaintiffs here, and pointed to consumer complaints to the company, internal monitoring initiatives, and/or prior recall efforts. *See, e.g.*, *Deras v. Volkswagen Grp. of Am., Inc.,* No. 17-CV-05452-JST, 2018 WL 2267448 at *4-6 (N.D. Cal. May

17, 2018); *Punian v. Gillette Co.*, No. 14-CV-05028-LHK, 2015 WL 4967535 (N.D. Cal. Aug. 20, 2015). Accordingly, Plaintiffs' omissions claims must be dismissed.

b. Plaintiffs Do Not Adequately Allege a Duty to Disclose

Plaintiffs' omissions claims also fail because Plaintiffs cannot allege that Apple had a duty to disclose the alleged presence of PFHxA in Watch bands. "Not every omission or nondisclosure of fact is actionable." *Gutierrez v. Carmax Auto Superstores Cal.*, 19 Cal. App. 5th 1234, 1258 (2018), *as modified on denial of reh'g* (Feb. 22, 2018). To allege fraud by omission, the alleged omission must either be "contrary to a representation actually made by the defendant, or an omission of a fact the defendant was obliged to disclose." *Daugherty v. Am. Honda Motor Co.*, 144 Cal. App. 4th 824, 835 (2006). A duty to disclose arises only "when either (1) the defect at issue relates to an unreasonable safety hazard or (2) the defect is material, 'central to the product's function,' and the plaintiff alleges one of the four *LiMandri* factors." *Hammerling v. Google LLC*, 615 F. Supp. 3d 1069, 1085 (N.D. Cal. 2022).[5] Critically, Plaintiffs have neither adequately alleged an unreasonable safety hazard, nor that the alleged issue is central to the product's function.

Plaintiffs fail to plausibly allege an unreasonable safety hazard. As discussed above, the Complaint does not allege that the specific PFAS at issue in the Peaslee Paper, PFHxA, is harmful at all, let at alone at what level it could be harmful, or at what levels a Watch user might be exposed. (*See* Compl. ¶ 67.) To state a claim, Plaintiffs needed to allege that the particular chemical at issue is "unreasonably hazardous *at the particular levels* in the *specific Products* at issue in this case." *See In re Trader Joe's Co. Dark Chocolate Litig.*, 726 F. Supp. 3d 1150, 1170 (S.D. Cal. 2024) (emphasis added); *Arroyo v. Chattem, Inc.*, 926 F. Supp. 2d 1070, 1079 (N.D. Cal. 2012) (dismissing claim where plaintiff made general allegations that contaminant in supplement was unsafe but did not plead at what level it was unsafe). They have failed to do so.

[5] "The *LiMandri* factors are: (1) the defendant is in a fiduciary relationship with the plaintiff; (2) the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) the defendant actively conceals a material fact from the plaintiff; or (4) the defendant makes partial representations but also suppresses some material facts." *Id.* (quoting *LiMandri v. Judkins*, 52 Cal. App. 4th 326, 336, (1997)); *see also Hodsdon v. Mars*, 891 F.3d 857, 861, 863 (9th Cir. 2018).

Plaintiffs do not allege the levels of PFHxA in the Watch bands at issue, let alone sufficiently allege that the purported levels of PFHxA in the Watch bands at issue are harmful.

Plaintiffs' Complaint conflates two PFAS chemicals that may have health effects at high, unsafe levels of exposure—PFOS and PFOA—with the broader class of thousands of PFAS substances. Despite extensive discussion in the Complaint about the hazards of "PFAS" generally and two specific PFAS substances (PFOS and PFOA) that are never alleged to be detected in the Watch bands, the PFAS at issue in the Peaslee Paper (PFHxA) is only mentioned in the Complaint *four* times. Plaintiffs offer no citation for the claim that PFHxA is "a dangerous form of PFAS" or at what levels. (Compl. ¶ 17.) While the Peaslee Paper only reports its results by price point (not by brand), PFHxA was not detected *at all* in one of the two watch bands above a $30 price point that were advertised as containing fluorelastomer. Therefore, Plaintiffs cannot establish that Watch bands in fact tested positive for *any* PFAS. And the Complaint also makes no claim as to what concentration of PFHxA might pose a safety hazard. *See Grausz v. Hershey Co.*, 712 F. Supp. 3d 818 (S.D. Cal. 2024) (granting motion to dismiss because it was insufficient to "merely assert[] that lead and cadmium are carcinogens, that '[t]here may be no safe level of exposure to a carcinogen,' and that [] products contain some amount of these substances.").

Given the low levels of PFHxA detected in certain smartwatches (which are not confirmed to be Apple products) and the unrepresentative conditions in which they were detected, Plaintiffs cannot plausibly allege that the tested watch bands pose an unreasonably safety hazard to consumers generally, let alone that the specific Apple Watch bands the named Plaintiffs purchased pose any safety hazard. Courts have dismissed similar claims where Plaintiffs allege an unreasonable safety hazard but plead no facts to show that the presence of the substance is, in fact, hazardous. *See In re Trader Joe's Co. Dark Chocolate Litig.*, 726 F. Supp. 3d at 1170 (dismissing omissions claims due to disconnect between plaintiffs' allegations about potential harms posed by heavy metals and whether those heavy metals were unreasonably hazardous *at the particular levels in the specific products at issue*) (emphasis added); *Bounthon v. Procter & Gamble Co.,* No. 23-CV-00765-AMO, 2024 WL 4495501, at *9 (N.D. Cal. Oct. 15, 2024) (plaintiffs implausibly alleged that *any* concentration of PFAS was harmful, but the concentration

detected in the products was less than the maximum permissible under CA law).

Further, the Complaint makes no allegation that the Watch bands contain a defect central to the Watch's function. Plaintiffs cannot plausibly allege that the presence of PFAS would prevent the Watches from performing their intended function. *See Hammerling v. Google LLC*, 615 F. Supp. 3d 1069, 1086 (N.D. Cal. 2022) ("The question is not whether a defect "affects" the product, rather the question is: does the alleged defect prevent the product from "performing a critical or integral function," or render the product "incapable of use" for all users?"). Indeed, Plaintiffs acknowledge that they used and enjoyed their Watches for years, dooming any potential claim of a defect central to the Watch's functionality. (*See* Compl. ¶ 34(a).) Plaintiffs have therefore not alleged a duty to disclose the purported omissions, and their omissions-based claims should be dismissed for this independent reason.

3. Cavalier's CLRA, FAL and Common Law Claims are Untimely

Plaintiff Cavalier's claims are independently deficient because they are untimely. Plaintiff Cavalier's claims are, at most, subject to a three-year limitations period.[6] Those claims accrued on December 1, 2021, when Plaintiff Cavalier claims that she bought her Apple Watch (Compl. ¶ 31(b)), but this suit was brought on January 21, 2025, more than three years later. The Court can and should dismiss these claims at the motion to dismiss stage because "the running of the limitations period is apparent on the face of the complaint." *See Wei v. San Jose Sharks*, No. 18-CV-05483-VKD, 2018 WL 5923840, at *2 (N.D. Cal. Nov. 13, 2018) (citing *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980)).

Plaintiff Cavalier does not assert that her claims should be subject to the delayed accrual rule or otherwise tolled. *See, e.g.*, *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal.4th 797, 807 (2005) (to rely on the discovery rule for delayed accrual, a plaintiff must establish the time and manner of discovery and the inability to have made earlier discovery despite reasonable diligence). In

[6] The CLRA, FAL and common law claims of fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation and unjust enrichment have three-year statutes of limitations. *See* Cal. Civ. Code § 1783; Cal. Civ. Proc. Code § 338(d); *Vera v. REL-BC, LLC*, 66 Cal. App. 5th 57, 65-67 (2021) (fraud claims); *FDIC v. Dintino*, 167 Cal. App. 4th 333, 347 (2008) (unjust enrichment claims). Plaintiff Cavalier's negligent misrepresentation claim has a two-year statute of limitations under California law. *See* Cal. Civ. Proc. Code § 339(1).

fact, Plaintiffs concede that Plaintiff Cavalier's claims are time-barred, noting that putative "California Subclass members who purchased the Products more than 3 years prior to the filing of the complaint will be barred from recovery" under causes of action with more than a three-year limitations period. (*See* Compl. ¶ 69.) Accordingly, Plaintiff Cavalier's CLRA, FAL and common law claims are barred by the applicable statutes of limitation and should be dismissed.

4. Plaintiffs' Conclusory Claims Under the Consumer Protection Statutes of Forty-Nine States Fail as a Matter of Law

Plaintiffs purport to bring claims under the "relevant consumer protection statute[s]" of 49 states for putative class members "outside of the California Subclass." (Compl. ¶ 97.) Plaintiffs summarily list these statutes under the heading of their UCL claim and do not allege the elements required to establish a violation of these statutes, much less facts to establish that those elements have been satisfied. "Merely naming" 49 states' consumer protection statutes is insufficient to state a claim under Rule 8, let alone the heightened requirements of Rule 9(b). *See Marcus v. Apple Inc*., No. C-14–03824-WHA, 2015 WL 151489, at *4 (N.D. Cal. Jan. 8, 2015) (dismissing state consumer protection claims where plaintiffs failed to plead claims with specificity and "provide[d] no other specific facts as to Apple's alleged violations of the remaining statutes"); *Meyers et al. v. McDonalds USA LLC*, No. EDCV-23-2589-JGB-SPx, 2024 WL 5182203, at *7 (C.D. Cal. Apr. 18, 2024) (finding that plaintiffs "inappropriately" included a "laundry-list[ ]" of statutes thereby failing to properly plead violations of all the statutes). Plaintiffs' claims under consumer protection statutes of other states should therefore be dismissed.

D. Plaintiffs' Claim for Negligent Misrepresentation Is Barred by the Economic Loss Doctrine

The economic loss doctrine bars Plaintiffs' claim seeking damages for negligent misrepresentation. "The economic loss doctrine provides that a plaintiff's tort recovery of economic damages is barred unless such damages are accompanied by some form of harm to person or property, or the action falls under an exception." *Strumlauf v. Starbucks Corp.*, 192 F. Supp. 3d 1025, 1035 (N.D. Cal. 2016) (citing *N. Am. Chem. Co. v. Super. Ct.*, 59 Cal. App. 4th 764, 777 (1997). Plaintiffs have incurred no physical harm to person or property as a result of Apple's alleged misrepresentations. And Plaintiffs do not allege that their claim falls under any

exception to the economic loss doctrine and, thus, must be dismissed. *See In re Trader Joe's Tuna Litig.*, 289 F. Supp. 3d 1074 (C.D. Cal. 2017) (barring a negligent misrepresentation claim pursuant to the economic loss doctrine because plaintiff had incurred no injury to person or property as a result of the alleged misrepresentation on tuna can labels); *Quiroz v. Sabatino Truffles N.Y., LLC*, No.-SACV-170783-DOC-KES, 2017 WL 8223648, at *6 (C.D. Cal. Sept. 18, 2017) ("[I]n the context of class action lawsuits involving fraudulent or misleading representations on products, district courts regularly invoke the economic loss doctrine to bar negligent misrepresentation claims where some form of physical harm is not alleged.").

E. Plaintiffs Fail to State a Claim for Unjust Enrichment and Under the UCL "Unfair" Prong

Plaintiffs seek remedies under unjust enrichment and the UCL's "unfair" and "unlawful" prong based on the same facts as their other claims. Because Plaintiffs do not "allege any theories of unfair practices that are independent of [their] other claims," their unjust enrichment and UCL unfair and unlawful claims must fail too. *Maketa v. Target Corp.*, No. 24-CV-02576-RFL, 2024 WL 4311702, at *11 (N.D. Cal. Sept. 26, 2024). This is because "[g]enerally, where conduct that comprises the UCL fraudulent or unlawful prongs is the same conduct as the unfair prong, the unfair prong of the UCL cannot survive if the claims under the other two prongs of the UCL do not survive." *In re Plum Baby Food Litig.*, No. 21-CV-00913-YGR, 2024 WL 1354447 (N.D. Cal. Mar. 28, 2024). And because Plaintiffs' UCL unlawful prong claim hinges on their deficient CLRA, FAL, and common law fraud claims, the UCL unlawful prong claim must also be dismissed. *See Hadley v. Kellogg Sales Co.*, 243 F. Supp. 3d 1074, 1094-96 (N.D. Cal. 2017) (dismissing UCL claim where plaintiff alleged the same fraudulent conduct for the unlawful prong as under his deficient FAL and CLRA claims). Unjust enrichment claims premised on the same factual allegations and pleading the same damages as other claims under California law must similarly be dismissed. *See Hawkins v. Shimano N. Am. Bicycle Inc.*, 729 F. Supp. 3d 989, 1029 (C.D. Cal. 2024).

F. Plaintiffs' Claims for Equitable Relief Must Be Dismissed Because Plaintiffs Have an Adequate Remedy at Law

Plaintiffs' UCL, FAL, and unjust enrichment claims must be dismissed in their entirety,

and their claims under other state consumer protection statutes must be dismissed to the extent they seek equitable relief, because Plaintiffs have an adequate remedy at law. Plaintiffs seek an injunction, damages, restitution, and disgorgement of profits under the UCL. (Compl. ¶¶ 95, 124.) This is improper, as "[a] UCL action is equitable in nature; damages cannot be recovered," and neither can non-restitutionary disgorgement of profits. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1144 (2003); *SkinMedica, Inc. v. Histogen Inc.*, 869 F. Supp. 2d 1176, 1184-85 (S.D. Cal. 2012). Similarly, Plaintiffs seek damages, restitution, and disgorgement for their FAL claim. (Compl. ¶¶ 131-32.) This is equally impermissible because the "recovery of damages is not authorized" under the FAL. *Buckland v. Threshold Enters, Ltd.*, 155 Cal. App. 4th 798, 819 (2007).

Even if Plaintiffs amend their complaint to seek only equitable relief under the UCL and FAL, a federal court only has jurisdiction over a request for equitable relief if plaintiffs have no adequate legal remedy. *Guzman v. Polaris Indus. Inc.*, 49 F.4th 1308, 1313 (9th Cir. 2022). Plaintiffs here cannot bring an equitable UCL or FAL claim because Plaintiffs have not alleged facts suggesting that damages are insufficient as a remedy. *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020). In fact, Plaintiffs have viable damages claims under the CLRA and seek damages under Plaintiffs' common law claims for fraud (Compl. ¶ 159), fraudulent inducement (*id.* ¶ 170), fraudulent concealment (*id.* ¶ 183), fraudulent misrepresentation (*id.* ¶ 192), negligent misrepresentation (*id.* ¶ 198), and unjust enrichment (*id.* ¶ 206). This is true even if Plaintiffs' damages claims are time barred or Plaintiffs have elected not to pursue damages claims where they otherwise could. *See Guzman*, 49 F.4th at 1312 (lapse of a statute of limitations does not render a claim inadequate simply because the plaintiff can no longer pursue that claim); *Sonner*, 971 F.3d at 837-38 (plaintiffs may not create an inadequacy of a legal remedy by choosing not to pursue a claim for damages). Plaintiffs have failed to allege a limitation inherent to the available legal remedy itself that would make it inadequate and therefore their equitable UCL or FAL claims are barred. *See Roffman v. Rebbl, Inc.*, 653 F. Supp. 3d 723 (N.D. Cal. 2023) (plaintiff could not seek equitable relief based on the inability to obtain damages when statutory and common law damages were available and plaintiff did not allege any

inherent limitation in that legal remedy).[7]

For their CLRA claim specifically, Plaintiffs seek only injunctive relief, arguing that injunctive relief is necessary to remedy future harm from future purchasers being misled and that a dollar amount of future damages is not reasonably ascertainable at this time, therefore a damages remedy is inadequate. (Compl. ¶ 147.) Plaintiffs do not seek damages for past harms under the CLRA in their Complaint (nor could they at the time of filing their Complaint, as Plaintiffs failed to provide 30-day pre-suit notice to Apple as required to seek damages under Cal. Civ. Code § 1782(a)), though they acknowledge that "monetary damages may be awarded to remedy past harm" under the CLRA. (Compl. ¶ 150.) Since Plaintiffs acknowledge that an adequate legal remedy for past harms exists, their claims seeking equitable relief for the exact same conduct should be dismissed. *See Price v. Apple Inc.,* No. 21-CV-02846-HSG, 2022 WL 1032472, at *7 (N.D. Cal. Apr. 6, 2022) (dismissing equitable relief claims where plaintiff sought "compensation under the UCL and CLRA for the exact same conduct that form[ed] the basis of his equitable relief claims," and therefore had an adequate remedy at law).

V. CONCLUSION

For the foregoing reasons, Apple respectfully requests that the Court grant Apple's motion to dismiss Plaintiffs' Complaint in its entirety.

Dated: April 14, 2025

MORRISON & FOERSTER LLP

By: */s/ William F. Tarantino*
WILLIAM F. TARANTINO

Attorneys for Defendant
APPLE INC.

[7] Plaintiffs allege that no adequate remedy at law exists because of differing statutes of limitations and differing scopes of conduct under various causes of action. (Compl. ¶ 69.) This argument fails because lapse of a statute of limitations does not render a claim inadequate simply because the plaintiff can no longer pursue that claim. *See Guzman*, 49 F.4th at 1312.