UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DOMINIQUE CAVALIER, et al.,

Plaintiffs,

v.

APPLE INC.,

Defendant.

Case No. 25-cv-00713-PCP

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS

Re: Dkt. Nos. 33, 34

In this nationwide class action, plaintiffs Dominique Cavalier and other consumers accuse Apple of fraud, negligence, breach of the implied warranty of merchantability, and other state law claims arising from its sale of Apple Watch Sport Bands. Plaintiffs allege that Apple Sport Bands contain dangerous levels of perfluorohexanoic acid, a type of "forever chemical," and that Apple did not warn them of the risk. Apple moves to dismiss Cavalier's complaint for lack of subject-matter jurisdiction and failure to state a claim. For the reasons stated below, Apple's motion to dismiss is denied as to plaintiffs' fraudulent concealment/omission, negligent misrepresentation, unjust enrichment, and California Unfair Competition Law (UCL) claims, and granted with leave to amend as to plaintiffs' fraudulent misrepresentation and implied warranty of merchantability claims.[1]

[1] Apple asks the Court to take judicial notice of a set of documents discussed or mentioned in plaintiffs' complaint. Dkt. No. 34. Under the incorporation-by-reference doctrine, this Court may consider "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the … pleading." *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (cleaned up); *see also Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010) ("We have extended the doctrine of incorporation by reference to consider documents in situations where the complaint necessarily relies upon a document or the contents of the document are alleged in a complaint, the document's authenticity is not in question and there are no disputed issues as to the document's relevance."). All documents at issue relate to plaintiffs' lawsuit and are mentioned or relied upon by plaintiffs. Therefore, Apple's request for judicial notice is granted.

BACKGROUND

Defendant Apple has sold a fluoroelastomer Sport Band for its Apple Watches for roughly the last decade.[2] Plaintiffs Dominique Cavalier, Kiley Krzyzek, Katherine Wheeler, Marlo Russell, Teri Glazebrook, and Heidi Fenton bought Apple's Sport Band for their Apple Watches. Plaintiffs allege that Apple's fluoroelastamer Sport Band has "hazardous amounts" of perfluorohexanoic acid (PFHxA), which is a type of toxic perfluroalkyl and polyfluoroalkyl substance (PFAS). PFHxA has been linked to health problems including, plaintiffs allege, "kidney and liver damage, development and reproductive toxicity, disruption of lipid metabolism, thyroid function, and more." Plaintiffs contend that the Apple Watch and Sports Band combination presents a particular health risk due to the Watch's intended placement at a user's wrist, "where dermal absorption is heightened due to thin, sensitive skin and constant contact." Plaintiffs allege that they "viewed and relied on pervasive marketing and advertisements from Apple that promoted the Apple Watch'[s] various features," including that the Sport Bands were "suitable for prolonged periods of use and exercise."

The European Union and Apple have taken steps to limit the proliferation of PFHxA. Beginning October 10, 2026, the European Union will restrict clothing and accessories sold in its common market from containing 25 parts per billion (ppb) or greater of PFHxA. Apple internally classifies materials in its products as either "Reportable," meaning that suppliers must report the use of a material above a threshold, or "Restricted," meaning that suppliers may not exceed the use of a material above a threshold and must document that material's prevalence in greater detail. In 2018, Apple designated PFHxA a "Reportable" substance, setting a reportable threshold of 25 ppb in 2021. In 2023, it re-designated PFHxA as a "Restricted" material, with a limit of 25 ppb.[3]

Plaintiffs allege that two tests of the Apple Sport Band's material established that it contains "alarming and hazardous levels of PFHxA." First, plaintiffs cite the "Wicks Study," also

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[2] The Court assumes the truth of the allegations in the first amended complaint for the purposes of defendants' Rule 12(b)(6) motion.

[3] Plaintiffs also refer to the concentration of PFHxA in terms of nanograms per gram (ng/g), explaining that 1 ng/g equals 1 part per billion.

called the "Peaslee Study," which tested different fluoroelastomer smart watch bands "using particle-induced gamma-ray emission (PIGE) spectroscopy to screen for total fluorine content on the band surfaces, [and] extraction followed by liquid chromatography-tandem mass spectrometry … for targeted PFAS analysis." The Wicks Study included an Apple Watch band among other types of bands and found that "the median concentration for samples with detectable PFHxA, 773 ng/g, is very high in comparison to other recent studies …." Second, plaintiffs allege that they "confirmed" the presence of "dangerous and Elevated Levels of PFHxA" in Sport Bands with "independent lab testing" that they commissioned. Plaintiffs report that the third-party lab they hired tested a "new black Apple Watch Sport Band that was purchased directly from Apple's website on March 13, 2025." The third-party lab tested for PFAS and found that the Apple Sport Band had PFHxA at a concentration of 1020.114 ng/g, "which is 40.8 times higher than Apple and European Union's threshold detectable limit for PFHxA."

Plaintiffs seek to represent a nationwide class of people "who purchased a new [fluoroelastomer Apple Watch Sport Band] at retail in the United States from Apple, Inc. or an authorized reseller of Apple, Inc." as well as subclasses of California, Illinois, Michigan, Pennsylvania, and New York consumers. On behalf of the nationwide class, plaintiffs allege claims of common law fraud by concealment and omission, fraud by misrepresentation, negligent misrepresentation, and unjust enrichment. On behalf of the California subclass, plaintiffs Cavalier and Krzyzek allege violations of the UCL, False Advertising Law (FAL), and Consumers Legal Remedies Act (CLRA). On behalf of the Illinois subclass, plaintiff Wheeler asserts a claim under the Illinois Consumer Fraud and Deceptive Trade Practices Act. On behalf of the Michigan subclass, plaintiffs allege violations of the Michigan Consumer Protection Act. On behalf of the New York subclass, plaintiff Glazebrook alleges violations of New York General Business Law Sections 349 and 350. On behalf of the Pennsylvania subclass, plaintiff Fenton alleges violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law. For each state subclass, plaintiffs also allege breaches of the implied warranty of merchantability.

Plaintiffs request class certification, declaratory and injunctive relief, damages/restitution/disgorgement, punitive damages, fees and costs, interest, and all other "just

and proper" relief. Plaintiffs also request a jury trial. Apple moves to dismiss plaintiffs' class action complaint for lack of standing under Federal Rule of Civil Procedure 12(b)(1) and for failure to state a claim under Rule 12(b)(6).

LEGAL STANDARD

If a complaint does not establish a federal court's subject matter jurisdiction, including due to the plaintiff's lack of Article III standing, it may be dismissed under Federal Rule of Civil Procedure 12(b)(1). Plaintiffs "must allege facts, not mere legal conclusions" and, "[a]ssuming compliance with those standards, the plaintiff's factual allegations will ordinarily be accepted as true unless challenged by the defendant." *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). Here, Apple brings a "facial" challenge to plaintiffs' Article III standing, meaning that it "accepts the truth of the plaintiff's allegations but asserts that they 'are insufficient on their face to invoke federal jurisdiction.'" *Id.* (quoting *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004)); *see also Bowen v. Energizer Holdings*, 118 F.4th 1134, 1142 (9th Cir. 2024).

Federal Rule of Civil Procedure 8(a)(2) requires a complaint to include a "short and plain statement of the claim showing that the pleader is entitled to relief." If the complaint does not do so, the defendant may move to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). Dismissal is required if the plaintiff fails to allege facts allowing the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule 12(b)(6) motion, a plaintiff need only plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

In considering a Rule 12(b)(6) motion, the Court must "accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable" to the non-moving party. *Rowe v. Educ. Credit Mgmt. Corp.*, 559 F.3d 1028, 1029–30 (9th Cir. 2009). While legal conclusions "can provide the [complaint's] framework," the Court will not assume they are correct unless adequately "supported by factual allegations." *Iqbal*, 556 U.S. at 679. Courts do not "accept

as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (quoting *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)).

Materials outside the complaint can be considered on a Rule 12(b)(6) motion if they are incorporated by reference therein or otherwise judicially noticeable. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) ("A [district] court may [ ] consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment."). The Court may consider documents which are "not physically attached to the complaint" "if the [ ] 'authenticity ... is not contested' and 'the plaintiff's complaint necessarily relies' on them." *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (quoting *Parrino v. FHP, Inc.*, 146 F.3d 699, 705–06 (9th Cir.1998)). Federal Rule of Evidence 201 permits judicial notice of "a fact that is not subject to reasonable dispute" because it is "generally known."

ANALYSIS

I. Standing

To bring a lawsuit in federal court, a plaintiff must have Article III standing, which requires that the plaintiff have suffered or face a likelihood of suffering an injury in fact that is traceable to the defendant and redressable by judicial relief. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024). Apple argues that plaintiffs do not have standing because they have not shown that Apple Watch Sport Bands "contain PFHxA, let alone that the quantities alleged are harmful," thus failing to establish either injury or traceability.

Apple is incorrect. To be certain, the Wicks Study does not quite say that Apple Sport Bands have dangerous levels of PFHxA, only that Apple's was "one of the brands of watch bands tested" and that the Wicks Study found high median concentrations of PFHxA among all the watch band brands tested. But plaintiffs have nevertheless plausibly alleged that PFHxA levels are reasonably dangerous because they conducted their own "independent lab testing" and found that the Apple Sport Band specifically had PFHxA at a level of 1020.114 ng/g (ppb). As noted, Apple and the EU set 25 ng/g or ppb as the concentration significant enough to raise concerns warranting

some type of disclosure or prohibition. While Apple points to California's PFAS limits in clothing and textiles as showing that the levels plaintiffs discovered are not harmful, *see* Cal. Health & Safety Code § 108970(g)(2), that plaintiffs' test of Apple's Sport Bands may not definitively answer whether Apple's bands present significant health risks presents a factual and evidentiary question not properly addressed on a facial challenge to plaintiffs' complaint. At the pleadings stage, plaintiffs have alleged enough facts to plausibly allege that Apple Sport Bands have risky levels of PFHxA.

Plaintiffs have also alleged an injury arising from the alleged presence of PFHxA in their Sport Bands. It is well-established that a plaintiff has suffered an injury-in-fact if they paid more for a product than they would have paid due to a defendant's "false representations … or actionable non-disclosures." *See Bowen*, 118 F.4th at 1146–47; *McGee v. S-L Snacks Nat'l*, 982 F.3d 700, 706–07 (9th Cir. 2020); *Maya v. Centex Corp.*, 658 F.3d 1060, 1069 (9th Cir. 2011). Here, plaintiffs allege that Apple misled them about the risks of the Apple Watch Bands and that, if they had known about the PFHxA risk, they would not have bought the Sport Bands or would not have paid as much for them as they did. Plaintiffs also allege that Apple failed to inform them "that the Apple Watch contains elevated level of PFHxA that present a safety risk when worn for prolonged periods and during periods of perspiration." Taking all factual inferences in plaintiffs' favor on this motion to dismiss, plaintiffs adequately plead an injury in fact that is traceable to Apple by alleging that Apple failed to disclose their risk of exposure to PFHxA and that they would not have purchased their bands, or would have paid less for them, if they had known of that risk.

II. Class Claims

Apple seeks to dismiss plaintiffs' nationwide class claims alleging common law causes of action because plaintiffs do not specify the state laws under which they are pursuing those claims. Apple argues that plaintiffs must plead which state's laws govern their common law causes of action.

A federal court hearing a case in its diversity jurisdiction applies the substantive law of its forum state, including its choice-of-law rules. *See First Intercontinental Bank v. Ahn*, 798 F.3d

1149, 1153 (9th Cir. 2015). Because this Court sits in California, California's choice-of-law rules govern. *See Urban v. Tesla, Inc.*, 698 F. Supp. 3d 1124, 1132 (N.D. Cal. 2023). Nonresident plaintiffs can bring a California state law claim when California has "sufficiently significant contacts with the plaintiff's claims." *Opperman v. Path, Inc.*, 87 F. Supp. 3d 1018, 1040 (N.D. Cal. 2014). California has sufficient contacts with plaintiffs' claims because Apple is a California corporation with its principal place of business in Cupertino, California, and it conducts a significant part of its business in California. While non-California law might govern some of plaintiffs' claims, California's "three-step governmental test" to answer that question "requires a case- and fact-specific analysis that will seldom be amenable to conclusive resolution on a Rule 12(b)(6) motion." *Urban*, 698 F. Supp. 3d at 1133. Determining whether other law applies requires a factual inquiry into the case's facts which cannot be undertaken at the pleadings stage here. Further, Apple does not identify which other state law claims might apply or why they would apply over California law. Because it is possible that all of plaintiffs' common law claims will be governed by California law, the Court declines to dismiss plaintiffs' nationwide class allegations simply because they plead "common law" causes of action rather than specifying any particular state's law.

III. Fraud

Plaintiffs bring two fraud causes of action: one for fraudulent concealment/omission and one for fraudulent misrepresentation. A plaintiff alleging fraud must plead "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1126 (9th Cir. 2009) (quoting *Engalla v. Permanente Med. Grp., Inc.*, 15 Cal. 4th 951, 974 (1997)) (emphasis removed). Plaintiffs must allege with particularity "the who, what, when, where, and how" of the fraudulent conduct. *Id.* at 1124 (quoting *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003)); Fed. R. Civ. Proc. 9(b).

A. Fraudulent Concealment/Omission

Apple argues that plaintiffs fail to state a claim for fraudulent concealment or omission

because they fail to allege knowledge or concealment of the presence of elevated PFHxA levels and because Apple did not have a duty to disclose that presence either. On both arguments, Apple is incorrect.

First, plaintiffs have plausibly pleaded that Apple knew of a serious risk of dangerous levels of PFHxA in its Watch Bands. To plead failure to disclose a known defect, plaintiffs must allege "that the manufacturer knew of the defect at the time a sale was made." *See Williams v. Yamaha Motor Co. Ltd.*, 851 F.3d 1015, 1025–26 (9th Cir. 2017) (quoting *Apodaca v. Whirlpool Corp.*, 2013 WL 6477821, at *9 (C.D. Cal. Nov. 8, 2013)). Plaintiffs allege that Apple had a "Full Material Disclosure program" through which the company "documents the complete chemical composition of every homogenous material in every component of Apple products, including the Class Products and uses the program to 'understand the material composition' of its products." Apple has represented that it has "full knowledge of the chemical composition of materials used in its products and the life cycle exposures associated with those chemicals." For PFHxA specifically, Apple set an amount of PFHxA necessary to trigger reporting requirements and then eventually restricted its use. Given these allegations, plaintiffs plausibly plead that Apple knew what was in its products.

Apple reasons that because its "PFAS Phaseout Plan" "notes that Apple is *currently working* to remove PFAS from its products," plaintiffs "cannot contend that Apple had exclusive knowledge of any alleged PFAS or that it actively concealed such information." But plaintiffs allege that Apple failed to warn them of "Elevated Levels of PFHxA," not that Apple claimed that their Sports Bands had no PFHxA at all. Further, that Apple was "*currently working* to remove PFAS from its products" suggests that Apple knew of the presence of PFAS in its products. And, as noted already, plaintiffs' complaint includes more than merely conclusory or "formulaic recitation[s]" of the basis for Apple's knowledge.

Second, plaintiffs plausibly plead that Apple had a duty to disclose elevated levels of PFHxA in its Bands. In a fraudulent omission case, a defendant has a duty to disclose a material fact "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." *See Hammerling v. Google LLC*, 615 F. Supp. 3d 1069, 1084–85 (N.D. Cal. 2022) (internal quotation marks omitted). The *LiMandri* factors come from *LiMandri v. Judkins*, 52 Cal. App. 4th 326, 336 (1997), and ask whether "(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."[4]

All *LiMandri* factors support concluding that Apple had a duty to disclose elevated PFHxA levels to plaintiffs. Apple raised concerns internally about PFHxA levels above a certain threshold, indicating that the presence of PFHxA at levels *above* that threshold "relates to an unreasonable safety hazard." *Hammerling*, 615 F. Supp. 3d at 1085. Further, the alleged defect—high levels of PFHxA—was "material … [and] not known to the plaintiff[s]" given broader concerns about PFAS levels and plaintiffs' allegation that they "would not have purchased the Class Products or would have paid significantly less" if they had known about the PFHxA levels. *LiMandri*, 52 Cal. App. 4th at 336. Apple is responsible for manufacturing its Sport Bands and has more information about their physical composition than consumers. The PFHxA levels in those bands are allegedly 41 times higher than the limit set by Apple and the EU, suggesting that that concentration may present an unreasonable danger or risk that consumers would want to know about. And assuming that there are elevated levels of PFHxA in Apple's Sport Band, that presence tends to undermine the "central function" of the Sport Band because it indicates that the Sport Band, a product designed to be worn directly on the wrist, is not as useful for health as Apple had marketed. *See LiMandri*, 52 Cal. App. 4th at 336; *cf. also Hodsdon v. Mars, Inc.*, 891 F.3d 857, 864 (9th Cir. 2018) (holding that the use of slave or child labor in chocolate production does not affect chocolate's central function).

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[4] The *Hammerling* court observed that "there are (at least) two different tests to determine whether a defendant has a duty to disclose." *Hammerling v. Google LLC*, 615 F. Supp. 3d 1069, 1085 (N.D. Cal. 2022). Like the *Hammerling* court, the Court relies upon the *LiMandri* factors both because Apple relies upon this formulation of the test in its motion and because "the Ninth Circuit and a majority of district courts have applied" that formulation. *Id.* at 1085 (citing, among other cases, *Hodsdon v. Mars, Inc.*, 891 F.3d 857, 863 (9th Cir. 2018)).

Finally, the fourth *LiMandri* factor, whether "the defendant makes partial representations but also suppresses some material facts," *Hammerling*, 615 F. Supp. 3d at 1085, also favors plaintiffs. Plaintiffs allege that Apple's "persistent promotion, advertising, and marketing of the Apple Watch—particularly those equipped with the Sport Bands—is centered around wearability during exercise, all-day activity, and prolonged wear." Plaintiffs contend that such uses of a product make the presence of PFAS in that product even more worrisome. Given that plaintiffs were not informed that the PFHxA levels in a product marketed for these purposes were unreasonably or dangerously high, Apple made a "partial representation" but also "suppresse[d] some material facts." *Hammerling*, 615 F. Supp. 3d at 1085.

Because plaintiffs have plausibly alleged both knowledge and a duty to disclose, Apple's motion to dismiss their fraudulent concealment/omission cause of action is denied.

B. Fraudulent Misrepresentation

Apple argues that plaintiffs fail to plead two elements of their fraudulent misrepresentation cause of action: that Apple made any actionable misrepresentations and that plaintiffs relied on, or were even exposed to, Apple's statements. While plaintiffs have plausibly pleaded that Apple made actionable misrepresentations, Apple is correct that plaintiffs have failed to plead with requisite particularity that they relied on or were exposed to Apple's alleged misstatements. Apple's motion to dismiss plaintiffs' fraudulent misrepresentation cause of action is therefore granted with leave to amend.

Plaintiffs plausibly allege that Apple made misrepresentations about the safety of its Apple Watch Sport Bands. Plaintiffs describe "Apple's persistent promotion, advertising, and marketing of the Apple Watch—particularly those equipped with the Sport Bands—[as] centered around wearability during exercise, all-day activity, and prolonged wear." Apple's marketing has touted its products' suitability for prolonged and even overnight use, with taglines such as "Get a closer look at your shut-eye" or "Measure all the ways you move." In other words, Apple advertised its timekeeping products as fit for extensive or "prolonged" use. But plaintiffs allege that the Wicks Study and their independent third-party testing show that Apple's Sport Bands were *not* fit for prolonged use because such use exposes wearers to elevated levels of PFHxA.

Conversely, plaintiffs have not plausibly alleged that they relied on and were exposed to Apple's alleged misrepresentations. Each plaintiff alleges that they "viewed and relied on pervasive marketing and advertisements from Apple that promoted Apple Watch'[s] various features." But Rule 9(b) requires plaintiffs allege specific facts "to give [Apple] the opportunity to respond to the alleged misconduct." *Kearns*, 567 F.3d at 1126. In *Kearns*, the Ninth Circuit applied Rule 9(b)'s specificity requirement to plaintiff Kearns's California claims sounding in fraud and concluded that, because Kearns failed to allege "when he was exposed to [the alleged misrepresentations] … [,] which ones he found material," "who made this statement[,] or when [the] statement was made," Kearns had failed to plead with particularity his claims sounding in fraud. *Id.*; *see also Almeida v. Apple, Inc.*, 2022 WL 1514665, at *1 (N.D. Cal. May 13, 2022) ("The 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 about the defect, had it been disclosed.").

Similarly here, plaintiffs have alleged that they relied on "pervasive marketing and advertisements," but they discuss the advertisements generally and fail to plead required elements with particularity, such as when they saw the marketing or advertisement (beyond merely "[p]rior to purchasing the Apple Watch"), which specific advertisements were material, or when the statements were made. Though plaintiffs list specific statements that Apple made, such as "Get a closer look at your shut-eye" or "Measure all the ways you move," plaintiffs do not specifically allege which of those statements they relied on, when or where they saw them, or how they received them. *See Vess*, 317 F.3d at 1106. Therefore, plaintiffs do not plausibly allege a claim for fraudulent misrepresentation. Apple's motion to dismiss that cause of action is granted with leave to amend.

IV. Timeliness of Cavalier's CLRA, FAL, and common law claims

Apple next challenges the timeliness of plaintiff Cavalier's CLRA, FAL, and common law claims. Cavalier purchased her Apple Watch and Sport Band on December 1, 2021. The statutes of limitations for the CLRA, FAL, and common law causes of action range from two to three years. *See* Cal. Civ. Code. § 1783 (CLRA); Cal. Civ. Proc. Code. § 338(d) (fraud); *Vera v. REL-BC,*

LLC, 66 Cal. App. 5th 57, 65–67 (2021); *FDIC v. Dintino*, 167 Cal. App. 4th 333, 347 (2008) (unjust enrichment); Cal. Civ. Proc. Code § 339(1) (negligent misrepresentation). Because this lawsuit was filed more than three years after December 1, 2021, Apple argues that Cavalier's claims are untimely and that the limitations period is not tolled by the discovery rule, the fraudulent concealment doctrine, or equitable estoppel.

On a Rule 12(b)(6) motion to dismiss, timeliness under a statute of limitations "is generally an affirmative defense rather than an element of the plaintiff's claim." *A.B. ex rel. Turner v. Google LLC*, 737 F. Supp. 3d 869, 877 (N.D. Cal. 2024). Affirmative defenses do not provide a basis for dismissal unless plaintiffs have pleaded or admitted "all the ingredients of an impenetrable defense," *Durnford v. MusclePharm Corp.*, 907 F.3d 595, 604 n.8 (9th Cir. 2018), meaning that the plaintiffs' pleading demonstrate "no potential factual dispute that could affect whether the defense applies," *Rabin v. Google LLC*, 725 F. Supp. 3d 1028, 1031 (N.D. Cal. 2024). A defense of untimeliness thus will be granted "only when 'the running of the statute is apparent on the face of the complaint.'" *Von Saher v. Norton Simon Museum of Art as Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010) (quoting *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006)). "A defendant raising the statute of limitations as an affirmative defense has the burden of proving the action is time barred." *Cal. Sansome Co. v. U.S. Gypsum*, 55 F.3d 1402, 1406 (9th Cir. 1995).

Plaintiffs admit that the fraudulent concealment doctrine and equitable estoppel do not apply here. They argue, however, that Cavalier's claims are timely under the discovery rule, which provides that the statute of limitations starts to run when the plaintiff "has, or should have had, notice of facts sufficient to put a prudent person on inquiry regarding his or her claim," which for fraud means making a "reasonably prudent person suspicious of fraud." *Chastain v. Howard*, 716 F. Supp. 3d 740, 747–48 (N.D. Cal. 2024) (quoting *Lauckhart v. El Macero Homeowners Ass'n*, 92 Cal. App. 5th 889, 900 (2023)). Here, Cavalier does not affirmatively plead that she discovered Apple's alleged fraud when she purchased her Apple Watch band. To the contrary, the facts alleged suggest that she learned of the presence of elevated levels of PFHxA in her Sports Band much later. Indeed, plaintiffs' complaint supports the inference that they did not have sufficient

notice of the facts supporting their suit until the publication of the Wicks Study in December 2024 at the earliest. Because this would entitle Cavalier to tolling of the statute of limitations under the discovery rule, Apple's motion to dismiss her claims on timeliness grounds is denied.

V. Negligent Misrepresentation

Apple argues that plaintiffs' negligent misrepresentation claim is barred by the economic loss rule, which generally prohibits "recovery in tort for negligently inflicted 'purely economic losses,' meaning financial harm unaccompanied by physical or property damage." *Sheen v. Wells Fargo Bank, N.A.*, 12 Cal. 5th 905, 922 (2022). The rule is designed to "address and protect the often elusive boundary line between tort and contract law." *Rattagan v. Uber Techs., Inc.*, 17 Cal. 5th 1, 19 (2024).

In holding that the economic loss rule does not bar claims for fraudulent concealment in the performance of a contract, the California Supreme Court has distinguished harms resulting from the violation of a contractual duty or right from those caused by the violation of other duties, particularly parties' duty to refrain from fraudulent conduct. *See id.* at 20–21, 33–34 (discussing *Robinson Helicopter v. Dana Corp.*, 34 Cal. 4th 979 (2004)). Although the *Rattagan* court did not opine as to negligent misrepresentation claims, *id.* at 45, the court's reasoning suggests that the economic loss rule does not bar such claims. *Rattagan* explained that whether the economic loss rule applies to bar fraud claims between contractual parties "turn[s] on the nature of the alleged conduct, the provisions of the contract itself, and whether the conduct exposed a party to a risk of harm neither reasonably contemplated nor allocated by the parties before entering their agreement." *Id.* The court concluded that the economic loss rule does not bar fraud claims stemming from contractual relationships due to the public policy against fraud and because parties do not "reasonably contemplate[] nor allocate[]" the risk of fraud "before entering their agreement." *Id.* at 44. As the court noted, "California public policy strongly supports imposing a tort duty on contractual parties to refrain from fraudulent deceit and favors enforcement of valid fraud actions …." *Id.*

Here, plaintiffs allege that they entered into their transaction for Apple Sport Bands without fully understanding the attendant risks. Given that those alleged risks were not merely

economic but also threatened plaintiffs' health, there is no reason to conclude that the alleged misrepresentations were accounted for in "the provisions of the contract itself" or "reasonably contemplated [and] allocated by the parties before entering their agreement." *Id.*

To be certain, in concluding that the economic loss rule did not apply to the fraudulent misrepresentation claim at issue, the *Rattagan* court distinguished between "malefactors who *affirmatively misrepresent and put people at risk*"—who do not receive the protection of the economic loss rule—and actors "in commercial activities that *negligently or inadvertently* go awry"—who do receive such protection. *Id.* at 34. But the *Rattagan* court did so in distinguishing fraud from negligent breach of contract, which is a version of the common law tort of negligence. *See id.* at 31. Under California law, negligent misrepresentation is "a separate and distinct tort" from negligence; it is instead "a species of the tort of deceit." *Bily v. Arthur Young & Co.*, 3 Cal. 4th 370, 407 (1992). And as noted above, California policy favors permitting causes of action arising from such deceit.

Both because it is not reasonable to conclude that the parties allocated by contract the risks arising from the negligent misrepresentations at issue here and because plaintiffs' cause of action involves a "tort of deceit" rather than a mere negligence claim, the economic loss rule does not bar the plaintiffs' negligent misrepresentation claim.[5]

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[5] Federal district courts "in California have reached conflicting decisions on whether the economic loss doctrine applies to negligent misrepresentation," while the Ninth Circuit has issued unpublished decisions suggesting that the doctrine does not bar negligent misrepresentation claims. *See Toyo Tire Holdings of Ams., Inc. v. Ameri & Partners, Inc.*, 753 F. Supp. 3d 966, 981 (C.D. Cal. 2024) (collecting cases). Tellingly, the cases Apple cites in support of its argument were issued before the California Supreme Court's binding opinion in *Rattagan* and thus did not benefit from its guidance. *See, e.g.*, *Zeiger v. WellPet LLC*, 526 F. Supp. 3d 652, 689 (N.D. Cal. 2021); *Crowder v. Shade Store, LLC*, 2024 WL 4868313, at *8–9 (N.D. Cal. June 26, 2024); *Costa v. Reliance Vitamin Co., Inc.*, 2023 WL 2989039, at *6 (N.D. Cal. Apr. 18, 2023); *Quiroz v. Sabatino Truffles N.Y., LLC*, 2017 WL 8223648 (N.D. Cal. Sept. 18, 2017); Reply at 13-14. And the unpublished Ninth Circuit memorandum disposition Apple cites in reply, *Kalitta Air, L.L.C. v. Cent. Tex. Airborne Sys., Inc.*, 315 Fed. Appx. 603, 607 (9th Cir. Oct. 8, 2008), in fact supports plaintiffs because the Ninth Circuit understood "that California law classifies negligent misrepresentation as a species of fraud, *see Bily v. Arthur Young & Co.*, 3 Cal.4th 370 … (1992), for which economic loss is recoverable." *See also Hannibal Pictures, Inc. v. Sonja Prods. LLC*, 432 Fed. Appx. 700, 701 (9th Cir. 2011) ("The California Supreme Court has declined to apply the economic loss rule to fraud and misrepresentation claims where, as here, one party has lied to the other.").

VI. Implied Warranty of Merchantability

Apple argues that plaintiffs' implied warranty of merchantability claims fail because Apple disclaimed the implied warranty in its limited warranty, plaintiffs have not pleaded a breach of the implied warranty, and plaintiffs were not in privity with Apple. Plaintiffs "do not oppose Apple's motion to dismiss their implied warranty claims as currently pleaded …." Accordingly, Apple's motion to dismiss plaintiffs implied warranty of merchantability causes of action is granted with leave to amend.

VII. Unjust Enrichment and Unfair Competition Law's "Unfair" Prong

Apple argues that plaintiffs' Unfair Competition Law and unjust enrichment claims should be dismissed because they are "based on the same facts as their other claims." But because plaintiffs have stated CLRA, FAL, and fraudulent concealment/omission claims, they have also stated UCL and unjust enrichment claims based on the same facts. *See Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir. 2015) ("To the extent the district court concluded that the cause of action was nonsensical because it was duplicative of or superfluous to Astiana's other claims, this is not grounds for dismissal."); *Kearns*, 567 F.3d at 1127; *Rubio v. Cap. One Bank*, 613 F.3d 1195, 1203–05 (9th Cir. 2010). Apple's motion to dismiss the UCL and unjust enrichment claims is therefore denied.

VIII. Equitable Relief

Finally, Apple argues that 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."

At the pleading stage, a plaintiff in federal court must allege that they lack a remedy at law when bringing a UCL claim. *See Weizman v. Talkspace, Inc.*, 705 F. Supp. 3d 984, 989–90 (N.D. Cal. 2023) (discussing *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020)). The Ninth Circuit has held "that a previously deceived consumer may have standing to seek an injunction against false advertising or labeling" because in "some cases, the threat of future harm may be the consumer's plausible allegations that she will be unable to rely on the product's

advertising or labeling in the future, and so will not purchase the product although she would like to." *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 969–70 (9th Cir. 2018). "In other cases, the threat of future harm may be the consumer's plausible allegations that she might purchase the product in the future, despite the fact it was once marred by false advertising or labeling, as she may reasonable, but incorrectly, assume the product was improved." *Id.* at 970.

Here, plaintiffs each allege that they "continue[] to see the Sport Bands available for purchase and desire[] to purchase one again in the future … ." Plaintiffs contend, however, that they are unable to rely on Apple's representations regarding the Bands' fitness for use with respect to the levels of PFHxA therein. Plaintiffs plausibly allege that "no adequate remedy at law exists" for this injury, and that they must instead pursuant an equitable claim for injunctive relief. Apple's motion to dismiss plaintiffs' claims for equitable relief for failure to allege an inadequate remedy at law is therefore denied.

CONCLUSION

For the reasons stated above, the Court concludes that plaintiffs have adequately pleaded that they have Article III standing, that they do not need to specify the state law governing their common law causes of action, that Cavalier pleads potentially timely claims, and that plaintiffs may seek equitable relief. With respect to Apple's challenge to the sufficiency of plaintiffs' claims, Apple's motion to dismiss is denied as to plaintiffs' fraudulent concealment/omission, negligent misrepresentation, unjust enrichment, and UCL claims, and granted with leave to amend as to plaintiffs' fraudulent misrepresentation and implied warranty of merchantability claims. Any amended complaint must be filed within 28 days of this Order. If no amended complaint is filed, the claims dismissed herein will be dismissed with prejudice.

IT IS SO ORDERED.

Dated: March 16, 2026

P. Casey Pitts
United States District Judge