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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

**IN RE SAMSUNG GALAXY
SMARTPHONE MARKETING AND
SALES PRACTICES LITIGATION**

Case No. 16-cv-06391-BLF

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

[Re: ECF 112]

Plaintiffs Omar Atebar, Lizett Anguiano, Tomas Hernandez, Eric Pirverdian, Tomig Salmasian, Dior Dee, and Jesus Sanchez (collectively, “Plaintiffs”) bring this putative consumer class action against Defendants Samsung Electronics America, Inc. and Samsung Electronics Co., Ltd. (collectively, “Defendants”), alleging certain Samsung smartphone batteries pose a threat to the safety of consumers. *See* Second Am. Compl. ¶ 1 (“SAC”), ECF 108. Plaintiffs allege four causes of action: violation of California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.*; violation California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500 *et seq.*; violation of the Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750 *et seq.*; and unjust enrichment under California Law. SAC ¶¶ 92–115. Plaintiffs request economic losses, restitution, and punitive damages, in addition to costs and fees.¹ *See* SAC § VI. Defendants move to dismiss Plaintiffs’ Second Amended Complaint for failure to plead their fraud claims with particularity as required by Federal Rule of Civil Procedure 9(b) and for failure to

¹ In the complaint, Plaintiffs also requested an order enjoining Defendants from selling the subject phones and from any future violations of the law. *See* SAC § VI. However, in their Opposition brief, Plaintiffs now state “in an effort to narrow issues, and due to the fact that plaintiffs have alleged that recent Galaxy models (S8 and later) are not experiencing the same overheating and thermal runaway events as the Subject Phones, plaintiffs will not pursue injunctive relief.” Opp’n 20 n.2, ECF 117.

1 state a claim as required by Rule 12(b)(6). *See* Mot., ECF 112. Having considered the parties’
2 briefing and oral argument on September 10, 2020, the Court GRANTS Defendants’ Motion
3 without leave to amend.
4

5 **I. BACKGROUND**

6 **A. Procedural History**

7 The case began with the complaint filing on November 2, 2016, *see* ECF 1, and, after
8 several cases were consolidated into this one, fifteen named plaintiffs filed their First Amended
9 Complaint on August 3, 2017. First Am. Compl. (“FAC”), ECF 65. Plaintiffs alleged that
10 Defendants were aware of overheating problems with various models of the smartphones they
11 manufacture and sell, but they failed to fix the problems or warn customers of the dangers posed.
12 *See id.*

13 Defendants soon after filed a motion to compel arbitration, *see* Mot. to Compel
14 Arbitration, ECF 67, which the Court granted in part on March 30, 2018. Order on Mot. to
15 Compel Arbitration, ECF 87. Six of the named plaintiffs were compelled to arbitration, and
16 because the arbitration agreement included a class action waiver, the Court also granted
17 Defendants’ motion to dismiss the class action claims of these six named plaintiffs. *Id.* at 24. As
18 for the remaining named plaintiffs, the Court granted Defendants’ motion to dismiss and
19 dismissed all the claims that had not been compelled to arbitration. *See* Order Granting Mot. to
20 Dismiss, ECF 88. In particular, this Court dismissed Plaintiffs’ first amended complaint on two
21 grounds: Plaintiffs did not adequately plead that each Samsung phone model at issue suffered
22 from a defect, and Plaintiffs did not sufficiently allege that Samsung had knowledge of any such
23 defect at the time of the relevant sales. *Id.* at 5–6. The Court also dismissed Plaintiffs’ unjust
24 enrichment claim because Plaintiffs failed to identify the applicable law. *Id.* at 6. The Court
25 granted Plaintiffs leave to amend, but first stayed the entire case pending arbitration. Order on
26 Mot. to Compel Arbitration 25. Plaintiffs were to amend their complaint within 30 days of
27 termination of the stay. Order Granting Mot. to Dismiss 7.

28 Having stayed the case, the Court administratively closed the file on April 13, 2018. *See*

1 Order Adm. Closing Case, ECF 90. The parties were “directed to file a joint status report within
2 seven days of the resolution of the arbitration” in which they “shall advise the Court whether the
3 action should be reopened.” *Id.* In February 2020, six plaintiffs moved to reinstate the case as to
4 the claims that were not compelled to arbitration. *See* Mot. to Reinstate, ECF 93. Plaintiffs
5 represented that “[t]he cases that the Court compelled to arbitration are either no longer being
6 pursued or have been resolved,” *id.* at 2–3, and they thus wanted to proceed with the remaining
7 claims. *See id.* Defendants filed their own motion to dismiss the case pursuant to Federal Rule of
8 Civil Procedure 41(b) for failure to prosecute. *See* Mot. to Dismiss for Lack of Prosecution, ECF
9 96. The Court denied Defendants’ motion and granted Plaintiffs’ motion to reinstate the case on
10 May 4, 2020. *See* Order Re Pls.’ Mot. to Reinstate, ECF 107. At the hearing for that motion, the
11 Court warned Plaintiffs that the forthcoming second amended complaint would be their last since
12 the Plaintiffs were on clear notice for two years regarding the defects identified concerning their
13 complaint. Tr. of Proceedings 18:6-15, ECF 106.

14 On May 11, 2020, Plaintiffs filed a Second Amended Complaint. *See* SAC. Defendants
15 filed a motion to dismiss on June 8, 2020. *See* Mot. Defendants also requested the Court take
16 judicial notice of eight exhibits in connection with their Motion to Dismiss. *See* Req. for Judicial
17 Notice (“RJN”), ECF 113. Plaintiffs have opposed the motion to dismiss, Opp’n, ECF 117, and
18 objected to Defendants’ request for judicial notice. *See* Obj., ECF 118. Defendants have replied in
19 support of their Motion to Dismiss. *See* Reply, ECF 121.

20 **B. Factual History**

21 This case focuses on four Samsung smartphone models, known as the Galaxy S6, S6 Edge,
22 S7, and Note5, launched in the United States between April 2015 and March 2016 (collectively,
23 the “Subject Phones”). SAC ¶¶ 1, 23. Plaintiffs allege that these phones “are subject to
24 overheating, fire and explosion” due to dangers posed by the phones’ lithium-ion battery. *Id.* ¶¶ 1–
25 2. Plaintiff Atebar experienced overheating, shortened battery life, and sluggishness with his
26 Note5. *Id.* ¶ 76. Plaintiff Anguiano experienced overheating with her Galaxy S6 Edge. *Id.* ¶ 77.
27 Plaintiff Hernandez experienced overheating, problems running applications, sluggishness, and
28 reduced battery power with her Galaxy S6. *Id.* ¶ 78 Plaintiff Pirverdian experienced overheating,

1 sluggishness, problems connecting to the internet, problems running applications, dropped calls,
2 random warning signs, shortened battery life, random dimming, and random site searches with his
3 Galaxy S6 Edge. *Id.* ¶ 79. Plaintiff Salmasian experienced overheating, problems running
4 applications, dropped calls, random warning signs, and shortened battery life with his Galaxy S6.
5 *Id.* ¶ 80. Plaintiff Dee experienced overheating while charging, a discolored or pixilated screen,
6 problems connecting to the internet, problems with applications, problems sending text messages,
7 and charging issues with his Galaxy S7. *Id.* ¶ 81. And Plaintiff Sanchez experienced overheating
8 with his Galaxy S6. *Id.* ¶ 82. Plaintiffs bring four causes of action against Defendants: violation of
9 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.*; violation
10 California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500 *et seq.*; violation
11 of the Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750 *et seq.*; and unjust
12 enrichment. *Id.* ¶¶ 92–115.

13 Defendants move to dismiss Plaintiffs’ entire SAC under four theories: (1) Plaintiffs fail to
14 plausibly allege with the required particularity that their phones had a defect under Rule 9(b), (2)
15 Plaintiffs fail to plausibly allege that Samsung had knowledge of a defect in Plaintiffs’ phones at
16 the time of purchase under Rule 9(b), (3) Plaintiffs’ statutory claims fail because the False
17 Advertising Law (“FAL”) is inapplicable to omissions, none of the circumstances that make an
18 omission actionable under the other California statutes are present in Plaintiffs’ SAC, and
19 Plaintiffs fail to plead reliance with particularity, and (4) Plaintiffs’ claims for unjust enrichment
20 must be dismissed. Mot. ii.

21
22 **II. LEGAL STANDARD**

23 Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a complaint to include “a
24 short and plain statement of the claim showing that the pleader is entitled to relief.” A complaint
25 that fails to meet this standard may be dismissed pursuant to Federal Rule of Civil Procedure
26 12(b)(6). In other words, “[a] motion to dismiss under Federal Rule of Civil Procedure 12(b)(6)
27 for failure to state a claim upon which relief can be granted ‘tests the legal sufficiency of a
28 claim.’” *Conservation Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir. 2011) (quoting *Navarro*

1 v. *Block*, 250 F.3d 729, 732 (9th Cir. 2001)). To survive a Rule 12(b)(6) motion, a complaint must
2 contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v.*
3 *Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads
4 factual content that allows the court to draw the reasonable inference that the defendant is liable
5 for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “The plausibility
6 standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a
7 defendant has acted unlawfully.” *Id.* (internal quotation marks omitted).

8 In addition, because Plaintiffs’ causes of action are grounded in fraud, the SAC must also
9 satisfy “the heightened pleading requirements of Rule 9(b).” *Davidson v. Kimberly-Clark Corp.*,
10 889 F.3d 956, 964 (9th Cir. 2018) (holding that claims for false or misleading advertising under
11 the CLRA, FAL, and UCL are “grounded in fraud” and applying Rule 9(b)). To satisfy Rule 9(b),
12 a plaintiff “must set forth *more* than the neutral facts necessary to identify the transaction,” *Cooper*
13 *v. Pickett*, 137 F.3d 616, 625 (9th Cir. 1997) (emphasis in original); she must “state with
14 particularity the circumstances constituting fraud,” Fed. R. Civ. P. 9(b). That is, “a pleading must
15 identify the who, what, when, where, and how of the misconduct charged, as well as what is false
16 or misleading about the purportedly fraudulent statement.” *Cafasso, U.S. ex rel. v. Gen. Dynamics*
17 *C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011). However, other circumstances—such as
18 knowledge—“need not be pled with particularity.” *United States v. United Healthcare Ins. Co.*,
19 848 F.3d 1161, 1184 (9th Cir. 2016).

20 In evaluating the complaint, the court must “accept factual allegations in the complaint as
21 true and construe the pleadings in the light most favorable to the nonmoving party.” *Manzarek v.*
22 *St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). At the same time, a court
23 need not accept as true “allegations that contradict matters properly subject to judicial notice” or
24 “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
25 inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation
26 marks and citations omitted).

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28

1 **III. JUDICIAL NOTICE**

2 Generally, a motion to dismiss under Rule 12(b)(6) must rely solely on the contents of the
3 pleadings. *See* Fed. R. Civ. P. 12(d). There are two exceptions to this rule: the incorporation-by-
4 reference doctrine, and judicial notice under Federal Rule of Evidence 201. *Khoja v. Orexigen*
5 *Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018). Defendants have submitted eight exhibits
6 that they request the Court to review in ruling on their Motion. *See* RJN. Plaintiffs oppose the
7 Court taking notice of all eight documents. *See* Obj.; Opp’n 6, 20.

8 Courts may “take judicial notice of documents on which allegations in the complaint
9 necessarily rely, even if not expressly referenced in the complaint, provided that the authenticity of
10 those documents are not in dispute.” *Golub v. Gigamon Inc.*, 2019 WL 4168948, at *6 (N.D. Cal.
11 Sept. 3, 2019). “[A] defendant may attach to the motion to dismiss such documents in order to
12 show that they do not support the plaintiff’s claim.” *Wright v. Allstate Ins. Co. of Cal.*, 2015 WL
13 1548949, at *2 (N.D. Cal. Apr 7, 2015). The Court “may treat such a document as part of the
14 complaint, and thus may assume that its contents are true for purposes of a motion to dismiss
15 under Rule 12(b)(6).” *Wong v. Arlo Techs., Inc.*, 2019 WL 7834762, at *4 (N.D. Cal. Dec. 19,
16 2019) (internal quotation marks omitted); *see also Golub*, 2019 WL 4168948, at *6 (“[W]hen
17 reviewing a motion to dismiss for failure to state a claim, [the court] need not accept as true
18 allegations that contradict matters properly subject to judicial notice; a party may not avoid
19 dismissal by raising an unreasonable factual dispute.” (internal quotation marks and citation
20 omitted)). The incorporation by reference doctrine “applies with equal force to internet pages as it
21 does to printed material.” *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). Courts thus
22 routinely consider the “full page [of a] website” where, as here, “[a] portion of the page” is quoted
23 or relied on in the complaint. *Emeco Indus., Inc. v. Restoration Hardware, Inc.*, 2012 WL
24 6087329, at *1 n.2 (N.D. Cal. Dec. 6, 2012).

25 Defendants ask the Court to take judicial notice of the full contents of the Note7 Recall
26 website (Exhibit A), an article from the website giffgaff (Exhibit D), and a *Consumer Reports*
27 article (Exhibit E) because those materials are relied upon, cited, and hyperlinked in the SAC. *See*
28 RJN 1-3. Plaintiffs oppose this request and cite *Khoja* in support of their position. Obj. 4-5. The

1 Court reads *Khoja* as supporting taking judicial notice of Exhibits A, D, and E. The incorporation-
2 by-reference doctrine “prevents plaintiffs from selecting only portions of documents that support
3 their claims, while omitting portions of those very documents that weaken—or doom—their
4 claims.” *Khoja*, 899 F.3d at 1002. This is exactly what Plaintiffs have done here. Regarding
5 Exhibit A, *see* ECF 113-1, the Note7 recall website explicitly states that the battery defects leading
6 to the thermal runaway events were “unique to the Note7 devices.” Plaintiffs, however,
7 conveniently omit this fact when using the Note7 recall website to support its allegations of
8 defects in the subject phones. SAC ¶¶ 34, 36-47. This selective pleading is precisely why the
9 incorporation-by-reference doctrine exists. Accordingly, the Court will take judicial notice of this
10 fact in Exhibit A.

11 Exhibit D, *see* ECF 113-4, the giffgaff article, establishes that “[a]ll smartphones from
12 Samsung, Sony, Apple, Huawei, and Nokia have non-removable batteries,” but Plaintiffs cite to
13 the article in attempts to present Defendants’ choice to use a non-removable battery as something
14 other than the industry norm. SAC ¶ 24. The Court finds it appropriate to take judicial notice of
15 this fact in Exhibit D.

16 Finally, Defendants ask for judicial notice of Exhibit E, *see* ECF 113-5, the *Consumer*
17 *Reports* article. Plaintiffs include a picture of a phone that has suffered a thermal runaway event in
18 their operative complaint. SAC ¶ 47. What Plaintiffs fail to mention is that this is a picture of a
19 Note7, not one of the subject phone models, and it is taken from the Consumer Reports article
20 describing the Note7 battery failures. *See* Mot. 12 n.5. The Court will take judicial notice of
21 Exhibit E.

22 Without weighing in on the merits of Plaintiffs’ objections to the other exhibits, the Court
23 declines to take judicial notice of any additional documents. A court is not required to take judicial
24 notice of judicially noticeable information. *See Carson v. Bank of Am. NA*, 611 Fed. App’x 379,
25 380 n.1 (9th Cir. 2015) (declining to take judicial notice of the requested documents “because the
26 documents are not relevant or necessary to the determination of this case”). Here, the additional
27 material Defendants request the Court take judicial notice of is not necessary to the Court’s
28 resolution of the motion to dismiss, and the Court does not rely upon it. The Court therefore

1 DENIES the requests as to Exhibits B, C, F, G, H without prejudice.

2 **IV. DISCUSSION**

3 In the Court’s previous order dismissing Plaintiffs’ complaint, the Court found that
4 Plaintiffs failed to state facts establishing a defect in the Subject Phones and Defendants’
5 knowledge of any alleged defect. Order Granting Mot. to Dismiss 5. The Court will first address
6 the threshold issue of whether Plaintiffs have alleged facts demonstrating that the Subject Phones
7 suffer from a defect. The Court finds that Plaintiffs have not done so. Additionally, the complaint
8 suffers from other deficiencies that the Court will address separately in the context of Plaintiffs’
9 four claims.

10 **A. Existence of a Defect**

11 The prior version of Plaintiffs’ complaint was not clear as to whether each Subject Phone
12 model suffers from a defect. *See* Order Granting Mot. to Dismiss 5. The defect, as alleged in the
13 Second Amended Complaint and confirmed in the Opposition, is that the Subject Phones “all pose
14 a risk of overheating, fire and explosion as they were designed, engineered, developed,
15 manufactured, produced and/or assembled in a substantially similar manner to the Note7.” SAC
16 ¶ 1, 28; *see also* Opp’n 2. Plaintiffs do not allege that any of their phones suffered a thermal
17 runaway event, which was the primary defect of the Note7. Plaintiffs include new information
18 about the defect in the Second Amended Complaint regarding the numbers, part numbers, and
19 battery manufacturers for the Subject Phones. SAC ¶ 27; *see also* SAC ¶¶ 24–28, 30–33, 40. The
20 injuries Plaintiffs allege as a result of this defect are shortened battery life, increased phone
21 sluggishness, and dropped calls. SAC ¶¶ 76-82.

22 Defendants argue that Plaintiffs have not alleged enough information to make the defect
23 plausible in the Subject Phones under Rule 9(b). Mot. 1–2. First, Defendants argue that Plaintiffs’
24 shared-characteristics theory is conclusory because virtually all smartphones on the market today
25 have built-in batteries, including those not alleged to have defects; the batteries for the Subject
26 Phones were not all manufactured by the same company; and the batteries for the Subject Phones
27 were all manufactured at different times to different specifications. *Id.* at 1–2, 9–11.

28 Second, Defendants argue that no consumer reports were made about the Subject Phones

1 for six months or more after their respective launches and there are too few thermal runaway
2 events for the Subject Phones to establish a common defect. Mot. 1–2, 9–11. However, consumer
3 complaints can only be offered to establish knowledge on the part of the Defendants at this stage
4 in the proceedings. *See Wallace*, 2020 WL 1139649, at *6. Therefore, the date and number of
5 complaints reporting issues with the Subject Phones do not affect the plausibility of Plaintiffs’
6 allegation that the Subject Phones were defective. *See id.*

7 At the pleadings stage, Plaintiffs must provide factual allegations describing each Subject
8 Phone (not just the Note7) and the component or setup that causes alleged injuries in order to
9 survive a motion to dismiss. *See, e.g., Sciacca v. Apple, Inc.*, 362 F. Supp. 3d 787, 797 (N.D. Cal.
10 2019) (“Aside from this description of the consequences of the alleged defect, Plaintiff fails to
11 identify what is the actual defect; namely, what is the defect that causes the screens to allegedly
12 detach, crack, or shatter.”); *Punian v. Gillette Co.*, No. 14-CV-05028-LHK, 2016 WL 1029607, at
13 *13 (N.D. Cal. Mar. 15, 2016) (“[A]lthough Plaintiff alleges that leakage is a ‘defect’ in Duralock
14 Batteries, Plaintiff does not allege that leakage is the result of any systematic design, technical,
15 manufacturing, or other flaw present in all Duralock Batteries.”). The Court finds that Plaintiffs
16 have not adequately pled a defect in the subject phones.

17 The Court previously advised Plaintiffs that simply alleging in conclusory fashion that the
18 Subject Phones contained shared characteristics with the recalled Note7 would not be sufficient.
19 Hr’g Tr. 14:6-21, ECF 89. Now, the Plaintiffs allege two shared characteristics: The Subject
20 Phones, like the Note7, have self-enclosed batteries, and the Subject Phones’ batteries were
21 manufactured by the same battery manufacturer of the Note7. SAC ¶ 40; *see also* SAC ¶¶ 2, 26,
22 27, 33, 59. Regarding the self-enclosed battery argument, Plaintiffs’ own pleadings and sources
23 incorporated-by-reference undermine this argument. Self-enclosed batteries are the industry
24 standard for cellphones, *see* Ex. D, giffgaff article, and Plaintiffs do not allege that every Samsung
25 phone with a self-enclosed battery is defective. SAC ¶ 59. Plaintiffs allege that later Samsung
26 phones were subject to an “8-Point Battery Safety Check,” SAC ¶¶ 57-58, but they nonetheless
27 contain self-enclosed batteries like the Subject Phones and phones produced by Sony, Apple,
28 Huawei, and Nokia. According to Plaintiffs’ complaint, the Note7 had a battery capacity of 3500

1 milli-ampere hours (“mAh”), which is the same as the later-produced Galaxy S8+ that Plaintiffs
2 allege is not defective. SAC ¶¶ 25, 27. This plainly contradicts Plaintiffs’ allegations that
3 Defendants scaled back battery capacity after the Note7 recall. SAC ¶ 26. It is clear to everyone,
4 including Defendants, that the Note7 was defective. However, Plaintiffs’ attempt to piggyback on
5 this defect with conclusory allegations of similarities with the Note7 is not sufficient to advance
6 this case past the pleadings stage. Accordingly the Court cannot find that the self-enclosed battery
7 characteristic is sufficient to plead a defect in the Subject Phones.

8 Plaintiff’s other allegation that the Subject Phones’ batteries were manufactured by the
9 same battery manufacturer of the Note7 fares no better. First, by Plaintiffs’ own admission, the
10 Note7 had two different battery suppliers. SAC ¶¶ 27, 33. So does the Note5, the phone owned by
11 Plaintiff Atebar. SAC ¶ 27. Additionally, again by Plaintiffs’ own admission, the Subject Phones’
12 batteries manufactured by Samsung SDI and the Note7 battery manufactured by Samsung SDI all
13 have different specifications. *Id.* Therefore the Court cannot conclude that because one battery
14 model manufactured by Samsung SDI was defective, every battery manufactured by Samsung SDI
15 was defective. Plaintiffs themselves allege that two later models manufactured by Samsung SDI
16 were not defective. SAC ¶¶ 25, 27. Plaintiffs needed to allege more than a possible common
17 battery supplier with the Note7 and the same self-enclosed battery design to survive the motion to
18 dismiss stage.

19 Plaintiffs’ complaint relies heavily on Defendants’ root cause analysis of the Note7
20 thermal runaway events while failing to mention that the analysis found the manufacturing defects
21 “unique to the Note7 devices.” *See* SAC ¶¶ 34, 36-47; *see also* Mot. 5, 11. For example, Plaintiffs
22 state in conclusory fashion, “The batteries manufactured by Samsung SDI for the Subject
23 Phones contained the same defect as original batteries in the Note7,” followed by “[t]he defect, as
24 admitted by SAMSUNG, is that a short circuit within the battery may occur when there is damage
25 to the separator that allows the positive and negative electrodes to meet.” SAC ¶ 41. However,
26 Defendants said this about the Note7, not about the Subject Phones. Ex. A, Note7 Recall website;
27 Ex. E *Consumer Reports* article. Plaintiffs’ complaint does not contain any allegations, other than
28 those already discussed, that support the bare conclusory allegation that the Note7 defect is found

1 in the subject phones.

2 The absence of plausible allegations of a defect is not the only deficiency with the
3 complaint, as demonstrated by an evaluation of Plaintiffs’ specific claims.

4 **B. CLRA Claim**

5 Plaintiffs bring a claim under the California Consumer Legal Remedies Act, which
6 prohibits specified “unfair methods of competition and unfair or deceptive acts or practices
7 undertaken by any person in a transaction intended to result or which results in the sale or lease of
8 goods or services to any consumer.” Cal. Civ. Code § 1770(a). Plaintiffs argue that Defendants’
9 failure to disclose that the Subject Phones were prone to overheating, catching fire, and explosion
10 before Plaintiffs’ purchases violates the CLRA by representing the Subject Phones had
11 “characteristics” and “benefits” they do not have. SAC ¶¶ 105–106; Opp’n 17; *see also* Cal. Civ.
12 Code § 1770(a)(5).

13 Plaintiffs’ Opposition makes clear that they are alleging omission claims under the CLRA.
14 Opp’n 16. Defendants agree that omissions are covered by the CLRA. Mot. 19. An actionable
15 fraudulent omission is either an omission that is “contrary to a representation actually made by the
16 defendant, or an omission of a fact the defendant was obliged to disclose.” *Daugherty v. Am.*
17 *Honda Motor Co.*, 144 Cal. App. 4th 824, 835 (2006). Plaintiffs assert the latter—i.e., that
18 Defendants had a duty to disclose the Subject Phones were prone to overheating, catching fire, and
19 explosion. Opp’n 3–4; SAC ¶ 106.

20 “California courts have generally rejected a broad obligation to disclose.” *Wilson v.*
21 *Hewlett-Packard Co.*, 668 F.3d 1136, 1141 (9th Cir. 2012). There are four circumstances in which
22 a duty to disclose may arise under California law:

- 23
24 (1) when the defendant is the plaintiff’s fiduciary; (2) when the defendant has exclusive
25 knowledge of material facts not known or reasonably accessible to the plaintiff; (3) when
26 the defendant actively conceals a material fact from the plaintiff; and (4) when the
27 defendant makes partial representations that are misleading because some other material
28 fact has not been disclosed.

Rasmussen v. Apple Inc., 27 F. Supp. 3d 1027, 1033 (N.D. Cal. 2014) (citing *Collins v.*

1 *eMachines, Inc.*, 202 Cal. App. 4th 249, 255 (Cal. Ct. App. 2011) and *LiMandri v. Judkins*, 52
2 Cal. App. 4th 326, 336, (Cal. Ct. App. 1997)). These are referred to as the *LiMandri* factors. *Beyer*
3 *v. Symantec Corp.*, 333 F. Supp. 3d 966, 978 (N.D. Cal. 2018). Plaintiffs do not allege that
4 Defendants owe them a fiduciary duty. The Court will evaluate the remaining three *LiMandri*
5 factors.

6 **i. Knowledge**

7 “California federal courts have held that, under the CLRA, plaintiffs must sufficiently
8 allege that a defendant was aware of a defect at the time of sale to survive a motion to dismiss.”
9 *Wilson*, 668 F.3d at 1145. This complaint alleges, on information belief, that Defendants “knew
10 the Subject Phones were defectively designed or manufactured, would fail without warning, posed
11 a risk to the public, and were not suitable for their intended use.” SAC ¶ 68. Plaintiffs point to
12 numerous complaints filed with the Consumer Product Safety Commission (“CPSC”) and on
13 saferproducts.gov that described issues with the Subject Phones and earlier smartphone models.
14 *Id.* ¶¶ 49–53. Plaintiffs factually allege two separate instances of overheating and fires that
15 occurred prior to Plaintiffs’ purchases of the Subject Phones that put Defendants on notice: (1) a
16 Galaxy S7 in the United Kingdom that blew up the month before Plaintiff Dee purchased his
17 Galaxy S7, an event covered by the media and acknowledged by a Samsung spokesperson, and (2)
18 a Galaxy S7 Edge in the Philippines that caught on fire the month before Plaintiff Dee purchased
19 his Galaxy S7, which Samsung fully refunded. *Id.* ¶ 68.

20 Defendants contend that Plaintiffs haven’t plead *any* knowledge, exclusive or otherwise.²
21 Mot. 20. Further, this complaint recycles the identical list this Court previously found insufficient
22 in the First Amended Complaint, and the list is supplemented only by reports of two incidents in
23 phones outside the United States—one of which involved a phone that none of the Plaintiffs
24 owned or allege was defective. Mot. 2. Defendants also argue that the reports Plaintiffs use to

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26 _____
27 ² While the parties disagree on whether this factor requires exclusive knowledge or merely
28 superior knowledge, the Court need not make that decision since Plaintiffs fail to plead even
superior knowledge. The Court notes that the Ninth Circuit has suggested recently that the
standard is indeed exclusive knowledge. *Hodsdon v. Mars, Inc.*, 891 F.3d 857, 864 n.5 (9th Cir.
2018).

1 support their allegations post-date the individual Plaintiffs’ purchases, concern phones other than
2 those at issue here, and/or involve overheating of phone chargers. *Id.* Defendants contend that the
3 handful of complaints involving the Subject Phones do not plausibly show they had knowledge of
4 the defect. *Id.* 15. Plaintiffs maintain they have sufficiently alleged pre-sale knowledge because
5 Plaintiffs’ numerous complaints (regarding phones other than the Subject Phones) were posted to
6 government websites prior to Plaintiffs’ dates of purchase. Opp’n 11–14. Further, Plaintiffs state
7 that Defendants took multiple actions to respond to the consumer complaints at issue, including
8 establishing an “Eight-Point Battery Safety Check,” further establishing pre-sale knowledge. *Id.* at
9 3, 14–15. However, the “Eight-Point Battery Safety Check” was established five months *after* the
10 latest date one of the Plaintiffs purchased a Subject Phone, which does not help Plaintiffs establish
11 pre-sale knowledge. SAC ¶¶ 15, 57

12 As noted above, “merely conclusory” allegations are not entitled to the presumption of
13 truth on a motion to dismiss. *In re Gilead*, 536 F.3d at 1055. As Defendants correctly point out,
14 the only facts Plaintiffs include to support their allegation of knowledge are customer complaints,
15 many of which were the same as those alleged in the previously dismissed First Amended
16 Complaint (despite two years passing since the First Amended Complaint’s dismissal). Mot. 15–
17 16; *see* Order Granting Mot. to Dismiss. Although courts have allowed litigants to plead
18 knowledge based solely on customer complaints, *see, e.g., Williams*, 851 F.3d at 1028; *Kowalsky*
19 *v. Hewlett–Packard Co.*, 771 F. Supp. 2d 1138, 1145 (N.D. Cal. 2010), *vacated in part on other*
20 *grounds by* 771 F.Supp.2d 1156 (N.D. Cal. 2011), the problem here is that most of the customer
21 complaints at hand do not appear to involve thermal runaway events or overheating in the Subject
22 Phones models themselves. Further, the number of complaints regarding the Subject Phones do
23 not meet the threshold that is legally required to establish pre-sale knowledge.

24 Plaintiffs point the Court to “fifty-three (53) consumer complaints.” Opp’n 10 (citing SAC
25 ¶¶ 76–82, 50–54, 68). However, Defendants correctly point out that those 53 complaints include
26 “a sizable number of reports concerning much older phone models going back to 2012: the Galaxy
27 S2, Note2, S3, S4, S4 Active, and S5.” Mot. 7. Plaintiffs cite to *McCarthy v. Toyota Motor Corp.*,
28 No.: 8:18-cv-00201-JLS-KES, 2019 WL 3220579 (C.D. Cal. Apr. 9, 2019), to support their

1 contention that claims stating a defect in a different model can establish pre-sale knowledge for
2 the model at issue. Opp’n 13. In particular, Plaintiffs state that the *McCarthy* court distinguished
3 cases holding that claims about a defect in a different vehicle model were insufficient to establish
4 pre-sale knowledge. *Id.* However, as Defendants argue, *McCarthy* did not rely solely on consumer
5 complaints in finding pre-sale knowledge, unlike the case at hand. Reply 10; *see also McCarthy*,
6 2019 WL 3220579, at *2 (indicating Plaintiffs supported their allegations with consumer
7 complaints and field reports from engineers). Plaintiffs other cited cases are also distinguishable.
8 Opp’n 13; *see Acedo v. DMAX, Ltd.*, No. CV 15–02443 MMM (ASx), 2015 WL 12912365, at *13
9 (C.D. Cal. July 31, 2015) (concerning acknowledged defects with an “earlier version” of a motor
10 at issue that Defendants addressed in published videos for sales teams); *McVicar v. Goodman*
11 *Glob. Inc.*, No. SACV 13-1223-DOC (RNBx), 2014 WL 12573992 at *10 (C.D. Cal. Nov. 13,
12 2014) (finding knowledge when company made public announcement regarding an alleged fix to
13 premature parts failures prior to plaintiffs’ purchase). Further, this Court previously rejected
14 imputing pre-sale knowledge of defects from similar phones onto the Subject Phones at issue and
15 will not reverse course here. *See Order Granting Mot. to Dismiss* 6; *see also Wallace*, 2020 WL
16 1139649, at *9 (holding that manufacturer’s “knowledge of a defect in the BL660 [blender] that
17 [plaintiff] purchased” could not be inferred from a pre-sale consumer report about a different
18 model blender, the “Ninja Master Prep”).

19 In addition, there are no consumer complaints regarding the Note5, which would be
20 required to support the allegation of pre-sale knowledge with regard to this smartphone. The
21 handful of complaints that do concern the Subject Phones do not plausibly show Defendants had
22 pre-sale knowledge of the alleged defects. *See In re Nexus 6P Prod. Liab. Litig.*, No. 17-CV-
23 02185- BLF, 2018 WL 1156861, at *5 (N.D. Cal. Mar. 5, 2018) (“[A] handful of complaints do
24 not, by themselves, plausibly show that [the defendant] had knowledge of the defects and
25 concealed the defects from customers.”). Plaintiffs provide no consumer reports indicating issues
26 with the Galaxy S6 before Plaintiffs Sanchez and Hernandez’s purchases of the Galaxy S6 in April
27 and August 2015, respectively, as the first consumer report stating issues with the S6 is dated
28 November 13, 2015. SAC ¶¶ 12, 16, 53. The same issue exists with the S6 Edge for Plaintiffs

1 Anguiano and Pirverdian, who purchased the S6 Edge in April and July 2015, respectively,
 2 months before the first S6 Edge report dated January 18, 2016. *Id.* ¶¶ 11, 13, 53. One S6 Edge
 3 report appeared weeks before Plaintiff Salmasian purchased his S6 Edge on January 29, 2016. *Id.*
 4 ¶¶ 14, 53. Finally, Plaintiffs provide two reports concerning issues with the S7 before Plaintiff Dee
 5 purchased his phone in October 2016, including one report from the United Kingdom. *Id.* ¶¶ 15,
 6 53, 68.

7 Plaintiffs allege in conclusory fashion that Defendants “acknowledged the reports by
 8 responding on the consumer agency’s website with a boilerplate response.” SAC ¶ 54.
 9 Plaintiffs offer no specifics, such as which complaint, which website, which phone model and
 10 what response. Plaintiffs also allege that a Samsung spokesperson acknowledged the October 2016
 11 report from the United Kingdom regarding the exploding S7 model by making a statement to the
 12 media that “... This issue is currently being investigated and our customer services team is in
 13 contact with the customer regarding the matter.” SAC ¶ 68. Even assuming this response
 14 regarding the incident in the United Kingdom indicates Defendants were informed about issues
 15 with the S7, *see* Opp’n 14–15, the one consumer report before Plaintiff Salmasian’s purchase of
 16 the S6 Edge and two reports before Plaintiff Dee’s purchase of the S7 are insufficient to prove pre-
 17 sale knowledge. *See, e.g., Olmos v. Harbor Freight Tools USA, Inc.*, 2018 WL 8804820, at *7
 18 (N.D. Cal. Dec. 24, 2018) (holding that 10 pre-purchase reports were “an inadequate basis for . . .
 19 asserting pre-sale knowledge”); *Baba v. Hewlett-Packard Co.*, No. C 09-05946 RS, 2011 WL
 20 317650, at *3 (N.D. Cal. Jan. 28, 2011) (12 complaints pre-dating purchases insufficient to allege
 21 knowledge). Thus the Court finds that the knowledge *LiMandri* factor has not been satisfied.

22 **ii. Active Concealment**

23 Plaintiffs allege that Defendants actively concealed the safety defect from consumers by
 24 marketing their phones as “durable and reliable.” SAC ¶¶ 2, 61. In the cases Plaintiffs rely on,
 25 *Marsikian v. Mercedes Benz USA, LLC*, No. CV 08-04876 AHM JTLX, 2009 WL 8379784, at *5
 26 (C.D. Cal. May 4, 2009) and *Falk v. Gen. Motors Corp.*, 496 F. Supp. 2d 1088, 1099 (N.D. Cal.
 27 2007), the courts predicated their active concealment findings on the fact that those defendants had
 28 knowledge of the defects. Here, Plaintiffs have not established knowledge.

1 To state a duty to disclose arising from active concealment, a plaintiff must allege five
2 elements:

3 (1) the defendant must have concealed or suppressed a material fact, (2) the
4 defendant must have been under a duty to disclose the fact to the plaintiff, (3) the
5 defendant must have intentionally concealed or suppressed the fact with the intent
6 to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and
would not have acted as he did if he had known of the concealed or suppressed fact,
and (5) as a result of the concealment or suppression of the fact, the plaintiff must
have sustained damage.

7 Punian, 2016 WL 1029607, at *10 (quoting *Falk*, 496 F. Supp. 2d at 1097). “As a threshold
8 matter, Plaintiff must aver (1) the existence of a material fact (2) of which Defendant was aware.”
9 *Punian*, 2016 WL 1029607 at *10 (citations omitted). As the Court established above, the
10 Plaintiffs have not sufficiently pled knowledge. Moreover, claims of “reliability” and “durability”
11 have been held to be “mere sales puffery” and thus unactionable statements. *In re Gen. Motors*
12 *LLC CP4 Fuel Pump Litig.*, 393 F. Supp. 3d 871, 877 (N.D. Cal. 2019). Accordingly, the Court
13 finds that the active concealment *LiMandri* factor has not been established.

14 **iii. Misleading Partial Representations**

15 Plaintiffs’ arguments regarding misleading partial representations are also based on
16 Defendants’ statements that the Subject Phones are “durable and reliable.” Opp’n 17. “A partial
17 representation claim may arise when ‘the defendant makes representations but does not disclose
18 facts which materially qualify the facts disclosed, or which render his disclosure likely to
19 mislead.’” *Herron v. Best Buy Co. Inc.*, 924 F. Supp. 2d 1161, 1177 (E.D. Cal. 2013) (quoting
20 *Warner Constr. Corp. v. City of Los Angeles*, 2 Cal. 3d 285, 294 (1970)). “Thus a defendant may
21 not ‘suppress or conceal any facts within his knowledge which materially qualify those stated.’”
22 *Herron*, 924 F. Supp. 2d at 1177. Again, though, since Plaintiffs have failed to establish any pre-
23 sale knowledge on the part of Defendants and such statements have been held to be unactionable
24 sales puffery, Plaintiffs cannot allege facts necessary to support the misleading partial
25 representations *LiMandri* factor.

26 **iv. Conclusion**

27 Because Plaintiffs cannot establish pre-sale knowledge, the Court GRANTS Defendants’
28 motion to dismiss the CLRA claim. And because Plaintiffs were on notice that this would be their

1 last chance at the pleading stage, due to letting two years pass before filing an amended complaint,
2 the dismissal is WITH PREJUDICE.

3 **C. FAL Claim**

4 Plaintiffs’ claim under the California False Advertising Law also fails due to a lack of
5 knowledge on the part of Defendants.

6 The FAL, in part, provides:

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8 It is unlawful for any . . . corporation . . . with intent directly or indirectly . . . to make or
9 disseminate or cause to be made or disseminated . . . from this state before the public in
10 any state, in any newspaper or other publication, or any advertising device, . . . or in any
11 other manner or means whatever, including over the Internet, any statement, . . . which is
12 untrue or misleading, and which is known, or which by the exercise of reasonable care
13 should be known, to be untrue or misleading.

14 Cal. Bus. & Prof. Code §17500. A statement is “misleading” under the FAL only if a
15 “reasonable consumer” is “likely be deceived” by it. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d
16 1152, 1162 (9th Cir. 2012). “[A] failure to disclose a fact one has no affirmative duty to disclose is
17 [not] ‘likely to deceive’ anyone.” *Daugherty*, 144 Cal. App. 4th at 838; *see Hodsdon*, 891 F.3d at
18 867–68 (applying that principle to FAL claims). In other words, a plaintiff bringing a claim under
19 the FAL must allege sufficient facts to show that a defendant knew that any allegedly false or
20 misleading statements were false or misleading when made. *Punian*, 2015 WL 4967535, at *9
21 (internal citations omitted). As discussed above, Plaintiffs have failed to plead any pre-sale
22 knowledge on the part of Defendants, and, because this is dispositive of the claim, the Court need
23 not address other arguments the parties raise. As such, this claim is DISMISSED WITH
24 PREJUDICE.

25 **D. UCL Claim**

26 Plaintiffs also bring a claim under California Unfair Competition Law, which prohibits any
27 “unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading
28 advertising.” Cal. Bus. & Prof. Code § 17200. This statute prohibits three separate types of unfair
29 competition: (1) unlawful acts or practices, (2) unfair acts or practices, and (3) fraudulent acts or
30 practices. *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999).

1 Plaintiffs assert a UCL claim under all three prongs. SAC ¶¶ 92–98. As set forth below, Plaintiffs
2 have failed to plead knowledge, and thus, the UCL claim is dismissed in its entirety.

3 **i. Unlawful**

4 The “unlawful” prong of the UCL “borrows violations of other laws and treats them as
5 unlawful practices that the unfair competition law makes independently actionable.” *Cel-Tech*, 20
6 Cal. 4th at 180 (internal quotation marks omitted). That is, a defendant violates the UCL’s
7 prohibition on “unlawful” business practices if it engages in a business practice that is forbidden
8 by some other statute or the common law. *Zhang v. Superior Court*, 57 Cal. 4th 364, 380 (2013).
9 Here, Plaintiff predicates her claim under the “unlawful” prong on: (a) violations of the CLRA and
10 (b) violations of the FAL. SAC ¶ 97.

11 First, because the Court has found that Plaintiff’s claim for violation of the CLRA was
12 insufficiently pled, Plaintiff cannot state a claim for violation of the UCL based on that violation
13 of the CLRA. *See Daugherty*, 144 Cal. App. 4th at 837. As discussed above, Plaintiffs’ attempt to
14 predicate their UCL claim on a violation of the FAL also fails as well. Therefore, Plaintiffs fail to
15 establish a violation of the UCL under the unlawful prong.

16 **ii. Fraudulent**

17 Plaintiff also asserts a UCL claim under the “fraudulent” prong of the UCL, alleging that
18 Defendants’ “omissions regarding risks associated with the Subject Phones were likely to deceive
19 a reasonable person.” SAC ¶¶ 94, 96. This, too, fails. A “fraudulent” business act or practice
20 within the meaning of the UCL is one that is likely to deceive members of the public. *Davis*, 691
21 F.3d at 1169; *Weinstat v. Dentsply Intern., Inc.*, 180 Cal. App. 4th 1213, 1223 n.8 (2010). As with
22 claims under the FAL, “a failure to disclose a fact one has no affirmative duty to disclose is [not]
23 ‘likely to deceive’ anyone within the meaning of the UCL.” *Daugherty*, 144 Cal. App. 4th at 838.
24 Hence, “absent a duty to disclose, the failure to do so does not support a claim under the
25 fraudulent prong of the UCL.” *Hodsdon*, 162 F. Supp. 3d at 1026 (quoting *Berryman v. Merit*
26 *Prop. Mgmt., Inc.*, 152 Cal. App. 4th 1544, 1557 (2007)). As a result, the Court must dismiss
27 Plaintiffs’ “fraudulent” theory under the UCL for the same reasons the Court dismissed Plaintiffs’
28 FAL and CLRA claims: Plaintiffs have failed to allege Defendants’ knowledge of the defect and

1 thus a duty to disclose.

2 **iii. Unfair**

3 Finally, the Court comes to Plaintiffs’ allegation that Defendants have engaged in an
4 “unfair” act or practice within the meaning of the UCL. SAC ¶¶ 94–95. Plaintiffs allege that
5 Defendants’ “business practices, including the manufacture and sale of phones with a risk of
6 overheating, explosion and fire that [Defendants] failed to adequately investigate, disclose and
7 remedy, offend established public policy and cause harm to consumers that greatly outweighs any
8 benefits associated with those practices, violating the unfair prong of the UCL.” *Id.* ¶ 95. But
9 again, “the failure to disclose a fact that a manufacturer does not have a duty to disclose, i.e., a
10 defect of which it is not aware, does not constitute an unfair . . . practice.” *Wilson*, 668 F.3d at
11 1146 n.5 (citing *Daugherty*, 144 Cal. App. 4th at 838–39); *see also Hodsdon*, 891 F.3d at 867
12 (holding that a defendant’s “failure to disclose information it had no duty to disclose in the first
13 place is not substantially injurious, immoral, or unethical” and thus was not “unfair”).
14 Consequently, Plaintiffs’ failure to adequately plead Defendants’ knowledge of the defect is fatal
15 to their claim of “unfairness” as well.

16 **iv. Conclusion**

17 In sum, the Court holds that Plaintiffs’ have failed to adequately plead their UCL claim
18 and DISMISSES this cause of action WITH PREJUDICE.

19 **E. Unjust Enrichment**

20 The Court turns next Plaintiffs’ claim for unjust enrichment. *See* SAC ¶¶ 113–114.
21 Plaintiffs allege that as a result of Defendants’ wrongful and fraudulent acts and omissions,
22 Defendants “charged a higher price for the Subject Phones than the Subject Phones’ true value”
23 and “enjoyed the benefit of increased financial gains” to the detriment of Plaintiffs, “who paid a
24 higher price for Subject Phones which actually had lower values.” *Id.* Defendants move to dismiss
25 Count 4 on the grounds that (1) it is subject to Rule 9(b) and was not properly pled under this
26 heightened pleading standard, (2) Plaintiffs have not plausibly pled that their phones had any
27 defect, (3) California law does not permit unjust enrichment where an express and limited
28 warranty exist, and, in a footnote, (4) California does not recognize unjust enrichment as a cause

1 of action at all. Mot. 22–23; *see also* Reply 14–15. Plaintiffs maintain that unjust enrichment is an
 2 actionable claim under California law and that their unjust enrichment claim has been properly
 3 pled as a “valid theory of recovery.” *See* Opp’n 19–20. Plaintiffs also argue that the Court cannot
 4 address the limited and express warranty provisions because the Court cannot take judicial notice
 5 of materials “not within the confines of the SAC.” *Id.* at 20.

6 There has been significant confusion over whether California law provides for a standalone
 7 cause of action for “unjust enrichment. *See, e.g., Falk v. Gen. Motors Corp.*, 496 F. Supp. 2d
 8 1088, 1099 (N.D. Cal. 2007). In 2015, the Ninth Circuit indicated that, “in California, there is not
 9 a standalone cause of action for ‘unjust enrichment,’ which is synonymous with ‘restitution.’”
 10 *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir. 2015). But in 2017, the Ninth
 11 Circuit recognized that the California Supreme Court later “clarified California law, allowing an
 12 independent claim for unjust enrichment proceed.” *Bruton v. Gerber Prod. Co.*, 703 Fed. App’x
 13 468, 470 (9th Cir. 2017) (citing *Hartford Casualty Ins. Co. v. J.R. Mktg., LLC*, 61 Cal. 4th 988,
 14 1000 (2015)); *see also In re Burke*, No. 1:09-BK-12469, 2019 WL 6332370, at *3 (B.A.P. 9th Cir.
 15 Nov. 25, 2019).

16 California courts have described unjust enrichment as follows: “[U]njust enrichment is a
 17 common law obligation implied by law based on the equities of a particular case and not on any
 18 contractual obligation.” *Fed. Deposit Ins. Corp. v. Dintino*, 167 Cal. App. 4th 333, 346 (2008).
 19 “Where the doctrine applies, the law implies a restitutionary obligation, even if no contract
 20 between the parties itself expresses or implies such a duty.” *Hartford*, 61 Cal. 4th at 998. As
 21 relevant here, “traditional equitable principles” apply to claims for unjust enrichment. *Ghirardo v.*
 22 *Antonioli*, 14 Cal. 4th 39, 50 (1996). This includes “the general principle of equity that equitable
 23 relief will not be afforded when the plaintiff’s remedies at law are adequate to redress his or her
 24 injury.” *Ramona Manor Convalescent Hosp. v. Care Enterprises*, 177 Cal. App. 3d 1120, 1140
 25 (1986). Thus, an action for unjust enrichment is unavailable if plaintiff is entitled to compensatory
 26 damages. *Id.* (“[A]n action for unjust enrichment is inappropriate in the circumstances of the case
 27 at bench because Ramona can obtain full redress for its loss of profits under its action for
 28 [intentional interference with contractual relations]”).

1 Defendants’ argument regarding the express warranty is not determinative at this stage.
2 Defendants are correct to state that unjust enrichment claims cannot move forward when a contract
3 defining the rights of the parties exists. *See Paracor Fin., Inc. v. Gen. Elec. Capital Corp.*, 96 F.3d
4 1151, 1167 (9th Cir. 1996). However, even if the Court were to take judicial notice of the express
5 limited warranty submitted by Defendants, the Court would not be able to conclude at this stage of
6 the proceedings that the warranty is a “valid or binding contract[.]” *In re Google Assistant Privacy*
7 *Litig.*, 457 F. Supp. 3d 797, 814 (N.D. Cal. 2020) (quoting *Datel Holdings Ltd. v. Microsoft Corp.*,
8 712 F. Supp. 2d 974, 983-84 (N.D. Cal. 2010)).

9 However, Defendants are correct that plaintiffs have not satisfied the Rule 9(b) pleading
10 requirements for a fraud claim since Plaintiffs have not factually established that Defendants had
11 pre-sale knowledge of the defects that would have required disclosure. *See Wilson*, 668 F.3d at
12 1141. To be sure, “knowledge” need not be plead particularly, even in the fraud context, see
13 *United Healthcare Ins. Co.*, 848 F.3d at 1184, but Plaintiffs have not sufficiently plead any
14 knowledge. Plaintiffs argue that the Court should not “dismiss [Plaintiffs’] claim for restitution
15 based solely on its label” and instead should review the SAC to determine whether Plaintiffs have
16 alleged “a valid theory of recovery.” Opp’n 19 (citing *City of Los Angeles v. Wells Fargo & Co.*,
17 22 F. Supp. 3d 1047, 1061 (C.D. Cal. 2014)). The Court has found that Plaintiffs have failed to
18 allege a valid theory of recovery due to the failure to plead sufficient facts. Thus, the Court will
19 dismiss Plaintiffs’ unjust enrichment claim because Plaintiffs have failed to establish that
20 Defendants had any knowledge of any defect and any corresponding obligation to disclose the
21 defect.

22 Accordingly, Defendants’ motion is GRANTED as to the unjust enrichment claim, and it is
23 DISMISSED WITH PREJUDICE.

24
25 **V. ORDER**

26 For the foregoing reasons, IT IS HEREBY ORDERED that Defendants’ Motion to
27 Dismiss is GRANTED as to Plaintiffs’ claims under California’s Unfair Competition Law, False
28 Advertising Law, Consumer Legal Remedies Act, and unjust enrichment. These claims are

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DISMISSED WITH PREJUDICE.

Dated: December 24, 2020



BETH LABSON FREEMAN
United States District Judge