UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JACQUELINE MONGALO, et al.,

Plaintiffs,

v.

CROCS, INC.,

Defendant.

Case No. 24-cv-09037-TLT

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS**

Re: Dkt. Nos. 68

Before the Court is Defendant's motion to dismiss Courts 2–7 of Plaintiffs' Second Amended Complaint. ECF 68. This Court intends to move forward with what Plaintiffs' claims are really about, which is an assertion that Crocs shoes fall below the level of quality for ordinary use that consumers should reasonably expect. This is not a case about fraud.

Having considered the parties' briefs, the relevant legal authority, and for the reasons below, the Court **GRANTS** Plaintiff's motions.

## I. BACKGROUND

This case commenced when Plaintiffs filed a motion to intervene in the related case *Valentine v. Crocs* on August 5, 2024. *See Valentine v. Crocs*, No. 22-cv-07463, ECF 107 ("Valentine Action"). Plaintiffs had attempted to intervene in the case after they read Defendant's opposition to the *Valentine* plaintiffs' motion to certify class and felt that the Court may deny *Valentine* plaintiffs' motion to certify class. *Id.*, ECF 126 at 5. The Court denied the *Valentine* plaintiffs' motion to intervene with prejudice. *Id.*, ECF 126 at 8. The Court also denied the *Valentine* plaintiffs' motion for class certification on October 16, 2024. *Id.*, ECF 150. The plaintiffs in *Valentine* filed a Rule 23(f) petition to the Ninth Circuit, which the Ninth Circuit denied on January 23, 2025. *Id.*, ECF 170.

Plaintiffs filed the instant complaint on December 13, 2024, alleging (1) breach of express

warranty; (2) breach of implied warranty of merchantability, Cal. Com. Code § 2314; (3) fraudulent concealment; (4) fraud, deceit, and/or misrepresentation; (5) violation of the Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750; (6) violation of the False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500, et. seq.; (7) negligent misrepresentation; (8) Unfair, Unlawful, and Deceptive Trade Practices, Cal. Bus. & Prof. Code § 17200, et. seq. ECF 1 (Compl."). Because the Court had denied *Valentine* plaintiffs' motion for class certification, the Court ordered the *Mongalo* plaintiffs to "proceed . . . on an individual basis." ECF 14 at 2.

Defendant filed a motion to dismiss and, in the alternative, to strike class allegations on February 12, 2025. ECF 15. Plaintiffs filed a timely opposition, and Defendant filed a timely reply. ECF 23, 24. The Court held oral arguments on Defendants' motion to dismiss and/or strike the complaint on April 15, 2025. ECF 26. On June 20, 2025, the Court issued an order granting in part and denying in part Defendant's motion to dismiss and/or strike the complaint. ECF 30.

Plaintiffs claim of (1) breach of express warranty based on Defendant's advertisements, (2) implied warranty claim that Defendant's products fell below a basic degree of fitness and minimum quality, and (3) fraud claim based on Defendant's duty to disclose were permitted to proceed. *Id.* at 16. The Court permitted Plaintiffs to file an amended complaint to cure deficiencies in Plaintiffs' complaint claims. *Id.*

Plaintiffs timely filed their First Amended Class Action Complaint ("FAC") on July 9, 2025. ECF 33. The Court granted-in-part and denied-in-part Defendant's motion to dismiss the FAC. ECF 60. The Court permitted Plaintiffs' implied warranty claim (Claim 1 of the SAC) to proceed and granted Plaintiffs leave to amend their fraud-based claims (Claims 2–7 of the SAC). Each of those claims appear in the SAC filed on February 24, 2026. ECF 65.

Plaintiffs' SAC adds new details to their complaint to allege that specific amounts of prolonged exposure to specific temperatures can result in shrinkage of the product. [1]

Although this allegation does not appear in the SAC, Plaintiffs ask the Court to consider Croc's admission that its shoes will shrink at elevated temperatures which is published as a

[1] Those details are filed under seal at ECF 66-2.

warning to that effect on its website. ECF 70 at 5. See, e.g., Crocs FAQ re shoe care (accessed March 24, 2026) ("When you are not wearing your Crocs™ shoes, do not leave them in extreme heat or hot cars. Exposure to extreme heat can cause the shoes to shrink or warp.") (emphasis in original); *see also* https://www.crocs.co.nz/faqs#:~:text=After%20cleaning%2C%20all%20styles%20should,shoes%20to%20shrink%20or%20warp ("Crocs can shrink or warp when exposed to heat and direct sunlight. To keep your Crocs in good condition, avoid leaving them where they will be exposed to heat or sun, such as a dishwasher, washing machine (hot cycle), or a hot car.").

## II. LEGAL STANDARD

### A. Motion to Dismiss

#### i. Rule 12(b)(6)

Pursuant to Rule 12(b)(6), a party may move to dismiss for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To overcome a motion to dismiss, a Plaintiffs' "factual allegations [in the complaint] 'must . . . suggest that the claim has at least a plausible chance of success.'" *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)). The Court "accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the nonmoving party." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). However, "conclusory allegations of law and unwarranted inferences are insufficient to avoid a Rule 12(b)(6) dismissal." *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009).

#### ii. Rule 9(b)

Claims sounding in fraud are subject to the heightened pleading requirements of Rule 9(b) of the Federal Rules of Civil Procedure, which requires that a plaintiff alleging fraud "state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b). To satisfy the heightened pleading standard, the allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." *Semegen v. Weidner*,

780 F.2d 727, 731 (9th Cir. 1985).

"[W]here a complaint includes allegations of fraud, Federal Rule of Civil Procedure 9(b) requires more specificity including an account of the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations." *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007) (internal quotations and citation omitted). However, the Ninth Circuit has explained that a complaint need not allege "a precise time frame," "describe in detail a single specific transaction" or identify the "precise method" by which the fraud was carried out. *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997). The complaint must allege "the who, what, when, where, and how of the misconduct charged." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal quotations omitted). Additionally, the "plaintiff must set forth what is false or misleading about a statement, and why it is false." *Id*. (citation omitted).

## III. DISCUSSION

### A. The Second Amended Complaint Fails to Sufficiently Allege Show Size Misrepresentation Under Rule 9(b)

Defendant argues that Plaintiffs still fail to satisfy the Rule 9(b) pleading standard because Plaintiffs SAC does not explain "how" Crocs' size representation is fraudulent at the time of purchase. ECF 72 at 3. Plaintiffs argue that, even if the size representations were literally true at the time they were made, the unqualified size representation is misleading because a reasonable consumer would assume Crocs maintain their size even after prolonged exposure to temperatures above 110°F. ECF 70 at 9. Plaintiffs claim that while reasonable consumers maintain this assumption, Crocs do not retain such durability. *Id.*

The Court cannot equate Defendant's contemporaneous representation of a product's size with a promise of that product's continued size stability in the future under extreme heat conditions and sunlight. *See Baird v. Samsung Elecs. Am., Inc.*, 522 F. Supp. 3d 679, 689 (N.D. Cal. 2021) (dismissing fraud-based consumer protection claims where "[n]one of Plaintiffs' cases involve a packaging that represents a future quality of the product"); *Yastrab v. Apple Inc.*, 173 F. Supp. 3d 972, 979 (N.D. Cal. 2016) (dismissing fraud-based claims for failure to plead with

heightened particularity where "Plaintiffs have only referenced . . . material describing the capabilities of the iPhone at the time of purchase. This material does not say or imply anything about what the iPhone will or will not do if the software is changed in the future."). In *Becerra*, the Ninth Circuit affirmed the district court's dismissal of plaintiffs' claim that Diet Dr. Pepper's use of the word "diet" was misleading. *Becerra v. Dr Pepper/Seven Up*, Inc., 945 F.3d 1225, 1229–30 (9th Cir. 2019). According to the *Becerra* court, consumers understood the word "diet" to be a relative claim about the calorie count, and not a claim that a soda would help consumers lose weight. *Id.* at 1229. Thus, "[j]ust because some consumers may unreasonably interpret the term differently does not render the use of 'diet' in a soda's brand name false or deceptive." *Id*. at 1230.

Defendant's representation about the size of Crocs at the time of purchase says nothing about the products' ability to maintain that size under different conditions. Again, the Court finds that Plaintiffs have not demonstrated how the shoe size representation is misleading. *See* ECF 60 at 11; *see also Valentine v. Crocs, Inc.*, No. 22-cv-07463, 2025 WL 1675669, at *6 (N.D. Cal. May 19, 2025) (dismissing similar claim because "Plaintiff provides no evidence that the size description was incorrect at the time of purchase or that it constitutes a promise of size stability in summer temperatures and environments").

Accordingly, the Court finds that Plaintiffs have failed to allege affirmative fraud.

**B. Plaintiffs' Fail to Sufficiently Plead Fraud by Omission**

Defendant argues that Plaintiffs fail to state a cause of action for fraud by omission because Plaintiffs' shoe size misrepresentation argument is not actionable. ECF 68 at 13. Plaintiffs argue that the SAC sufficiently alleges facts to support an inference that Defendants knew that Crocs shrink at specific elevated temperatures and withheld this material information from consumers. ECF 70 at 9.

To plead an actionable omission claim, Plaintiffs "must describe the content of the omission and where the omitted information should or could have been revealed, as well as provide representative samples of advertisements, offers, or other representations that plaintiff relied on to make her purchase and that failed to include the allegedly omitted information."

*Garcia v. Gen. Motors LLC*, No. 18-CV-01313, 2019 WL 1209632, at *8 (E.D. Cal. Mar. 14, 2019).

Plaintiffs allege that Crocs' shoe sizes are misleading because "Defendant failed to disclose that the Products would not retain their represented size in hot environments, including direct sunlight." SAC ¶ 147. As discussed above, Plaintiffs size misrepresentation claim lacks support in law and fact. Plaintiffs have not demonstrated that the size itself constitutes a misrepresentation or omission, nor have Plaintiffs demonstrated what statement or information Defendant would need to disclose to consumers with respect to the Crocs size to present all material facts of consumers. During oral argument, in response to the Court's questions, Plaintiffs argued that their omission claim is supported by the fact that Defendant's exclaims on its web page a warning similar to that which Plaintiffs allege is missing from their shoe box or shoe tags. ECF 99. Plaintiffs argued that this fine-print disclaimer, which consumers only see after purchase or if they specifically search for it, shows that Defendant knew about and are capable of crafting a warning sufficient to notify consumers of the risk of shrinkage at certain temperatures. *Id.* However, nothing prevents consumers from reviewing the website disclaimer before purchasing the product, thus the timing argument does not support an omission claim. Further, Defendant's website disclosure, that "Crocs can shrink or warp when exposed to heat and direct sunlight," would be insufficient to notify of the alleged defect, that is, exposure to specific temperatures for specific prolonged periods of time. The Court is not clear how those details, which are in dispute, would be presented to consumers, nor have Plaintiffs adequately plead reliance on the lack of information regarding heat-caused-shrinkage in making their purchases. *Arroyo v. Chattem, Inc.*, 926 F. Supp. 2d 1070, 1078 (N.D. Cal. 2012) ("Both materiality and reliance are required for fraud claims based on affirmative misrepresentation and omission.")

Accordingly, the Court finds that Plaintiffs have not alleged fraud by omission.

## IV. CONCLUSION

For the reasons stated above, the Court **GRANTS** Defendant's motion to dismiss. This matter is before the Court on a third motion to dismiss. Plaintiffs do not provide any supplemental arguments or information not already present in the *Valentine/Avino* action which is currently on

appeal at the Ninth Circuit. *See Avino, et al. v. Crocs, Inc.*, Case No. 25-3718. Thus, the Court finds that leave to amend would be futile in this matter.

Only Plaintiffs' implied warranty claim regarding design defect survives.

The parties' further case management conference is set for July 23, 2026. A joint case management statement is due on July 16, 2026.

This Order resolves ECF 68.

IT IS SO ORDERED.

Dated: July 8, 2026

TRINA L. THOMPSON
United States District Judge