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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5

6 **JEFF YOUNG,**

7 Plaintiff,

8 vs.

9 **CREE, INC.,**

10 Defendant.

CASE NO. 17-cv-06252-YGR

ORDER DENYING MOTION TO DISMISS

Re: Dkt. No. 49

11
12 Plaintiff Jeff Young brings this putative class action lawsuit against defendant Cree, Inc.
13 (“Cree”) alleging that defendant engaged in an “unfair and deceptive practice of . . . promising
14 consumers” that Cree’s light-emitting-diode bulbs (the “LED Bulbs”) “will last for particularly
15 long periods of time up to 35,000 hours” with a “100% Satisfaction Guarantee” and “yearly energy
16 cost savings ranging from around \$0.60 to \$2 per blub per year” in violation of California’s Unfair
17 Competition Law (“UCL”), Cal. Bus. Prof. Code §§ 17200, *et seq.* (Count I); California’s False
18 Advertising Law (“FAL”), Cal. Bus. Prof. Code §§ 17500, *et seq.* (Count II); Consumers Legal
19 Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.* (Count III); fraudulent
20 misrepresentation and concealment (Count IV); unjust enrichment (Count V); and breach of
21 express and implied warranties (Count VI). (Dkt. No. 48, Amended Class Action Compliant
22 (“ACAC”).)

23 On April 9, 2018, the Court granted in part and denied in part Cree’s motion to dismiss
24 Young’s initial class action complaint, with leave to amend. (Dkt. No. 42 (“MTD Order”).) On
25 April 30, 2018, Young filed an ACAC. (Dkt. No. 48.) Now before the Court is Cree’s motion to
26 dismiss Young’s ACAC.¹ (Dkt. No. 49 (“Motion”).) Having carefully considered the pleadings
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28 ¹ The Court has reviewed the papers submitted by the parties in connection with Cree’s motion to dismiss Young’s amended class action complaint. The Court has determined that the

1 and the papers and evidence submitted, and for the reasons set forth more fully below, the Court
2 **DENIES** Cree’s motion to dismiss.²

3 **I. BACKGROUND**

4 As in Young’s initial complaint, the ACAC alleges as follows:

5 Defendant Cree “advertise[s], market[s], distribute[s], or s[ells]” LED Bulbs “to consumers
6 throughout the United States.” (ACAC ¶ 14.) “[O]n or around April of 2015” Young purchased
7 three of defendant’s LED Bulbs at Walmart and paid “approximately \$15-20 for each bulb.” (*Id.* ¶
8 36.) “Within months, all three [LED Bulbs] burned out even though [plaintiff] used them
9 according to the instructions.” (*Id.* ¶ 37.)

10 “Cree’s packaging offers a ‘100% Satisfaction Guarantee’ for LED Bulbs and an estimated
11 lifetime of between 15–32 years depending on the product. The packages further offer an
12 estimated yearly energy cost savings ranging from \$0.60 to \$2 per bulb per year. Cree packaging
13 also offers a ‘10 Year Warranty.’” (*Id.* ¶¶ 4, 30.) Moreover, Cree’s website “boast[s] . . . a 10
14 year 100% satisfaction guarantee.” (*Id.* ¶ 5.) New to his amended complaint, Young now alleges
15 he relied on a number of allegedly false representations found on the packaging for Cree’s LED
16 Bulb as well as in several television and internet advertisements. (*Id.* ¶¶ 30-33.)

17 Plaintiff alleges that these “marketing efforts are made in order to—and do in fact—induce
18 its customers to purchase the LED Bulbs at a premium because consumers believe the Lightbulbs

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20 motion is appropriate for decision without oral argument, as permitted by Civil Local Rule 7-1(b)
21 and Federal Rule of Civil Procedure 78. *See also Lake at Las Vegas Investors Group, Inc. v.*
Pacific Malibu Dev. Corp., 933 F.2d 724, 729 (9th Cir. 1991). Accordingly, the hearing set for
22 August 7, 2018 is **VACATED**.

23 ² In connection with its motion to dismiss, Cree requests that the Court take judicial notice
24 of the front and back packaging for three types of Cree LED Bulbs. (Dkt. Nos. 49-1.) The Court
25 **DENIES** Cree’s request for judicial notice. Judicial notice is appropriate only when the proffering
26 party has established that the fact “(1) is generally known within the trial court’s territorial
27 jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot
28 reasonably be questions.” Fed. R. Evid. 201(b). Here, the plaintiff strongly disputes the factual
authenticity of the packaging submitted. Additionally, the document, which appears to contain an
internal specification for the packaging rather than a replica of the packaging as it appeared on
shelves, contains text so small it is almost impossible to read. *See Tsan v. Seventh Generation,*
Inc., No. 15-cv-00205-JST, 2015 WL 6694104, at *2 (N.D. Cal. Nov. 3, 2015) (denying
defendant’s request for judicial notice of food labels, finding “there is sufficient justification for
Plaintiffs to dispute their authenticity”).

1 will last for far longer than their actual life.” (*Id.* ¶ 6.) Based thereon, plaintiff asserts “Cree’s
2 claims regarding the longevity of the LED Lightbulbs are false.” (*Id.* ¶ 7.)

3 **II. LEGAL FRAMEWORK**

4 Pursuant to Rule 12(b)(6), a complaint may be dismissed for failure to state a claim upon
5 which relief may be granted. Dismissal for failure to state a claim under Federal Rule of Civil
6 Procedure 12(b)(6) is proper if there is a “lack of a cognizable legal theory or the absence of
7 sufficient facts alleged under a cognizable legal theory.” *Conservation Force v. Salazar*, 646 F.3d
8 1240, 1242 (9th Cir. 2011) (citing *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.
9 1988)). The complaint must plead “enough facts to state a claim [for] relief that is plausible on its
10 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face
11 “when the plaintiff pleads factual content that allows the court to draw the reasonable inference
12 that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
13 (2009). If the facts alleged do not support a reasonable inference of liability, stronger than a mere
14 possibility, the claim must be dismissed. *Id.* at 678–79. Mere “conclusory allegations of law and
15 unwarranted inferences are insufficient to defeat a motion to dismiss.” *Adams v. Johnson*, 355
16 F.3d 1179, 1183 (9th Cir. 2004). In ruling on a motion to dismiss, “the court must presume all
17 factual allegations of the complaint to be true and draw all reasonable inferences in favor of the
18 nonmoving party.” *Knevelbaard Dairies v. Kraft Foods, Inc.*, 232 F.3d 979, 984 (9th Cir. 2000).

19 **III. PLAINTIFF’S MISREPRESENTATION-BASED CLAIMS**

20 Cree argues that Young’s misrepresentation-based claims, Counts I-V, fail because
21 plaintiff has not alleged, and cannot allege, any actionable misrepresentations in any of the
22 materials which he claims to have reviewed. These materials include: (i) the products’ labels; and
23 (ii) internet and television advertisements. (*See* ACAC ¶¶ 30-32.) As to Young’s claims
24 regarding the products’ labels, Cree argues that “[n]one of the product label representations
25 Plaintiff claims to have relied upon in purchasing his bulbs is actionable, because none is false or
26 likely to deceive or confuse the public.” (Motion at 7.) As to Young’s claims regarding the
27 internet and television advertisements, Cree argues that the alleged statements are either true or
28 amount to puffery. (*Id.* at 13.)

1 Claims under California consumer protection statutes, like those at issue here, do not
2 require that statements by merchants are actually false. Instead, these statutes prohibit merchants
3 from utilizing any statement which, “although true, is either actually misleading or which has a
4 capacity, likelihood or tendency to deceive or confuse the public.” *Chapman v. Skype, Inc.*, 220
5 Cal. App. 4th 217, 226 (2013); *see also McKell v. Washington Mut., Inc.*, 142 Cal. App. 4th 1457,
6 1471 (2006) (confirming that “[a] fraudulent business practice is one which is likely to deceive the
7 public.”) Whether a business practice results in deception “is based on the likely effect such
8 practice would have on a reasonable consumer,” *McKell*, 142 Cal. App. 4th at 1471, and is
9 “usually . . . a question of fact not appropriate for decision on demurrer.” *Rubenstein v. Neiman*
10 *Marcus Grp LLC.*, 687 F. App’x 564, 566 (9th Cir. 2017) (citing *Williams v. Gerber Prods. Co.*,
11 552 F.3d 934, 938-39 (9th Cir. 2008)). Additionally, “[w]here, as here, the reasonable consumer
12 test applies to a plaintiff’s underlying claim, it is a ‘rare situation in which granting a motion to
13 dismiss is appropriate.’” *Rubenstein*, 687 F. App’x at 566 (quoting *Williams*, 552 F.3d at 939).

14 **A. Product Label Representations**

15 Cree argues that none of the five label statements to which Young points is false or likely
16 to deceive or confuse the public. As a preliminary matter, Cree’s arguments rely substantially on
17 the packaging that is the subject of defendant’s request for judicial notice, which the Court has
18 denied. Specifically, Cree argues that these statements cannot be false because (1) the statement
19 regarding energy savings, as shown on the relevant packaging, contains an asterisk, which calls
20 attention to disclosure of assumptions, which plaintiff does not challenge; (2) the statements
21 regarding performance as compared to other-less-expensive LED Bulbs and non-LED Bulbs
22 cannot be found on the relevant packaging; (3) likewise, the statement as to a “100% Satisfaction
23 Guarantee” cannot be found on the relevant packaging; and (4) to the extent that Young relies on
24 statements regarding Cree’s 10-year limited warranty, those statements represent a promise to
25 repair, replace, or refund not a guarantee that the product will last ten years. (Motion at 7-12.)

26 Whether the statements upon which Young allegedly relied, or close approximations
27 thereof, actually existed on the packaging of the LED Bulbs Young purchased in 2015 and
28 whether those statements would have deceived a reasonable customer are both questions of fact

1 that are not appropriate for resolution at the motion-to-dismiss stage. *See Rubenstein*, 687 F.
2 App’x at 566 (quoting *Williams*, 552 F.3d at 939). Similarly, with respect to Cree’s argument
3 regarding its 10-year limited warranty, whether a reasonable customers would have interpreted the
4 warranty to represent a promise to repair, replace, or refund, as opposed to a guarantee that the
5 product would last ten years, is a question of fact not suitable for resolution at this time. *See id.*
6 Each of these arguments is more aptly addressed at summary judgment.

7 **B. Internet and Television Advertisement Representations**

8 Young claims to have relied upon two statements from Cree’s internet and television
9 advertisements: (i) that the LED Bulb would last “up to 25 times longer” than an incandescent
10 bulb; and (ii) that the LED Bulb would use “a fraction of the energy of incandescent bulbs.”
11 (ACAC ¶ 37.) Cree argues that the inclusion of the phrase “up to” renders the first statement
12 puffery, especially where, as here, Cree has disclosed elsewhere on the product packaging exactly
13 how long the LED Bulb is expected to last. (Motion at 13.) As to the second statement, Cree
14 asserts that Young has not alleged how the statement that the LED Bulb would use “a fraction of
15 the energy of incandescent bulbs” could be false or misleading because Cree was selling an 18-
16 watt bulb designed to replace a 100-watt bulb. (*Id.* at 15.)

17 The phrase “up to” does not automatically render a statement “puffery.” *See In re Nexus*
18 *6P Prod. Liab. Litig.*, 293 F.Supp.3d 888, 936-37 (N.D. Cal. 2018) (holding that “to the extent that
19 Plaintiffs’ express warranty claims are premised on Google’s ‘up to seven hours’ statement, they
20 are not properly dismissed as inactionable puffery.”) As in *In re Nexus*, the statement at issue
21 here, that a Cree LED bulb can last “up to 25 times longer” than a standard 100-watt incandescent
22 bulb, “relies on numerical figures with a set meaning and defines the relationship between them
23” *Id.* at 936.

24 With respect to the second statement, whether the statement could have deceived a
25 reasonable customer in light of the alleged fact that the 18-watt Cree LED Bulb was designed to
26 replace an 18-watt standard bulb is a question of fact not appropriate for determination through a
27 motion to dismiss. *See Rubenstein*, 687 F. App’x at 566 (quoting *Williams*, 552 F.3d at 939).
28 Additionally, Cree does not provide any factual support for its assertion that the 18-watt Cree LED

1 Bulb was so designed. (*See* Motion at 15.)

2 **C. Plaintiff’s Unjust Enrichment Claims**

3 Cree’s argument in support of its motion to dismiss Young’s unjust enrichment claims
4 rests entirely on its assertion that “none of the statements Plaintiff claims to have relied upon in
5 purchasing his Cree bulbs are misrepresentations or likely to mislead a reasonable consumer.”
6 (Motion at 15.) For the reasons discussed above, the Court is not persuaded that the statements
7 upon which Young allegedly relied are not misrepresentations or not likely to mislead a reasonable
8 consumer as a matter of law.

9 **IV. PLAINTIFF’S WARRANTY CLAIMS**

10 Cree argues that Young’s warranty claims fail because plaintiff’s “general allegations,
11 encompassing at least nineteen separate products (all of which have different packaging designs
12 and therefore, representations), ‘fail[] to allege the exact terms of the warranty for each product at
13 issue.’” (Motion at 16 (quoting *Hadley v. Kellogg Sales Co.*, 243 F.Supp.3d 1074, 1105 (N.D.
14 Cal. 2017).) Additionally, Cree asserts that it “never promised—and Plaintiff does not allege that
15 Cree promised—that each of its LED Bulbs is free of defects at the time of sale.” (*Id.* at 17.)

16 As a preliminary matter, and as previously noted by the Court, Young “does not allege that
17 defendant breached the express warranties included on Cree’s product packaging. Rather, he
18 alleges that Cree made representations concerning product life and energy savings which
19 themselves give rise to express warranties regarding the same.” (MTD Order at 14-15 (citing Dkt.
20 No. 1 ¶ 115).) Moreover, unlike the complaint at issue in *Hadley*, plaintiff’s ACAC sets out with
21 specificity those warranties that arise from product packaging that apply to all products at issue
22 (ACAC ¶ 17) and to specific categories of LED Bulbs (*Id.* ¶ 20-27.) *See Hadley*, 243 F.Supp.3d at
23 1105 (holding that plaintiff has inadequately plead a cause of action for breach of implied
24 warranty where plaintiff “alleges a litany of statements, undifferentiated by product variant . . .”).
25 Finally, and for the same reasons stated above, whether Cree’s warrantee constituted a
26 representation as to the quality of the LED Bulbs at the time of sale is a question of fact not
27 appropriate for decision at this stage in the litigation. *See Rubenstein*, 687 F. App’x at 566
28 (quoting *Williams*, 552 F.3d at 939).


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V. CONCLUSION

For the reasons set forth above, the Court hereby **DENIES** defendant's motion to dismiss.
This terminates Docket No. 49.

IT IS SO ORDERED.

Dated: August 2, 2018


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE