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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEVEN BENANAV, *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

HEALTHY PAWS PET INSURANCE, LLC,

Defendant.

CASE NO. C20-421-RSM

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT
HEALTHY PAWS’ MOTION TO DISMISS
AND DENYING DEFENDANT’S MOTION
TO STRIKE

I. INTRODUCTION

This matter comes before the Court on Defendant Healthy Paws Pet Insurance, LLC (“Healthy Paws”)’s Motion to Dismiss Plaintiffs’ Second Amended Class Action Complaint. Dkt. #49. Healthy Paws has separately moved to strike Plaintiffs’ nationwide class allegations. Dkt. #52. Plaintiffs oppose both motions. Dkts. #55, 56. Parties have requested oral argument on both motions, but the Court finds oral argument unnecessary to resolve the relevant issues. Having reviewed Defendant’s Motions, Plaintiff’s Responses, Defendant’s Replies, and the remainder of the record, the Court ORDERS that Defendant Healthy Paws’ Motion to Dismiss is GRANTED IN PART AND DENIED IN PART, and its Motion to Strike is DENIED.

ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT HEALTHY PAWS’ MOTION TO DISMISS AND
DENYING DEFENDANT’S MOTION TO STRIKE - 1

1 **II. BACKGROUND**

2 **A. Factual Background**

3 A full background of this case is not necessary given the Court’s previous orders in this
4 matter. *See* Dkt. #42. Plaintiffs Steven Benanav, Bryan Gage, Monica Kowalski, Lindsay Purvey,
5 Stephanie Caughlin and Katherine Thomas bring this class action complaint against Defendant
6 Healthy Paws, a company that markets and administers pet insurance policies to consumers on
7 behalf of insurance companies. Dkt. #45 at ¶¶ 1-2. The insurance companies underwriting the
8 policies advertised and administered by Healthy Paws are Markel American Insurance Company
9 (“Markel”), ACE American Insurance Company (“ACE”), Indemnity Insurance Company of
10 North America (“Indemnity”), and Westchester Fire Insurance Company (“Westchester”), which
11 are subsidiaries of parent company CHUBB Ltd. (“CHUBB”). *Id.* at ¶¶ 3-5. Pursuant to a General
12 Agency Agreement dated October 1, 2012 between Healthy Paws and the insurance companies,
13 Healthy Paws is responsible for selling and administering the policies through advertising, website
14 development, policy quoting, issuance, servicing, and claims adjudication.

15 Between 2011 and 2017, Plaintiffs purchased pet insurance policies through Healthy Paws.
16 *Id.* at ¶¶ 15-20. At the time Plaintiffs purchased their policies, they were not made aware that
17 Healthy Paws increased the policy premiums each year due to their pets’ age. Mr. Benanav claims
18 that his premiums for his pet Mali increased by over 200% between 2013 and 2020, starting with
19 a \$33.85 monthly premium in January 2013 to his current payment of \$104.50 in 2020. *Id.* at ¶¶
20 89-93. Ms. Thomas purchased insurance in July 2014, and her monthly premiums increased from
21 \$40.61 in 2014 to \$54.53 in 2020. *Id.* at ¶¶ 111-112. Ms. Kowalski purchased her policy in 2011
22 for her dogs Lola, Olive and Jenks. *Id.* at ¶¶ 121. Jenks passed away in 2015, but Ms. Kowalski’s
23 premiums for Lola and Olive increased from \$25.41 and \$31.44 per month in 2011 to \$69.18 and

1 \$86.36 in 2020. *Id.* at ¶ 129. Mr. Gage purchased a policy in 2017 for his dog, Woodhouse, and
2 the monthly premium increased by over 97% from 42.56 per month in 2017 to \$84.13 in 2020. *Id.*
3 at ¶¶ 140-141. Similarly, Ms. Purvey’s monthly premiums for her dog, Toby, increased from
4 \$46.32 in 2013 to \$143.11 in 2021, while Ms. Caughlin’s premiums for her dog, Penny, increased
5 from \$40.56 in 2015 to \$91 in 2020, at which point she cancelled her policy. *Id.* at ¶¶ 152-158;
6 165-167. Plaintiffs claim that had they known the monthly premiums would drastically increase
7 as their pets aged, they never would have signed up for the policies.

8 Plaintiffs allege that Healthy Paws misrepresented the basis for changes to a policyowner’s
9 monthly premiums. This alleged misrepresentation is contained in (1) the insurance policy, (2) a
10 sample policy document posted on Healthy Paws’ website (“the Sample Policy”); and (3) a
11 “Frequently Asked Questions” page on Healthy Paws’ website (“the FAQ page”). *Id.* at ¶¶ 44-54.
12 Each of Plaintiffs’ policies contains the same language under paragraph I(5):

13 MONTHLY PREMIUM: Your monthly premium is set forth on
14 your declarations page. *Monthly premiums may change for all*
15 *policyholders to reflect changes in the costs of veterinary medicine.*
We will notify you at least sixty (60) days in advance of such
change.

16 *Id.* at ¶ 52 (emphasis added). Plaintiffs contend that these statements misled them to believe that
17 their premium would only increase as the costs of veterinary medicine increased. *Id.* at ¶ 6. The
18 Sample Policy repeats the same language stating that policy premiums may change “to reflect
19 changes in the costs of veterinary medicine.” *Id.* at ¶ 50.

20 Furthermore, when Plaintiff Kowalski signed up for her policy in 2011, Healthy Paws
21 stated the following on its FAQ Page:

22 Will my premiums increase over the life of my pet?
23 *Due to the increasing cost of new technology and advances in*
veterinary care, your rates will increase slightly each year. These

1 slight increases provide you the opportunity to offer your pet the
2 best medical and diagnostic options available today. Keep in mind
3 your rates will never go up to due to making claims. And all pet
4 insurance companies, no matter how they try to market their
5 benefits, *will raise rates to keep up with the rapidly rising cost of*
6 *veterinary care.*

7 *Id.* at ¶ 45 (emphases added). Healthy Paws posted a similar statement on its FAQ Page when
8 Plaintiffs Benanav and Thomas purchased their policies in 2012 and 2014, respectively:

9 Will my premiums increase over the life of my pet?

10 *Due to the increasing cost of new technology and advances in*
11 *veterinary care, your rates will increase slightly each year. Our plan*
12 *has factored the expected increase in the cost of veterinary care into*
13 *your rates so that the annual premium increases are manageable.*
14 These manageable annual increases provide you the opportunity to
15 offer your pet the best medical and diagnostic options available
16 today.

17 Rest assured, we will never penalize you with higher rates for
18 making claims. It's not your fault your pet is unlucky! *All pet*
19 *insurance companies, no matter how they market their benefits, will*
20 *raise rates periodically to keep up with the rapidly rising cost of*
21 *veterinary care.*

22 *Id.* at ¶ 46 (emphases added). As of the date Plaintiffs filed this Second Amended Complaint, the
23 FAQ Page stated the following:

24 Will my premiums increase over the life of my pet?

Due to the increasing cost of new technology and advances in
 veterinary care, your rates will likely increase to align with the
 claim payouts of each state. These annual increases provide you the
 opportunity to offer your pet the best medical and diagnostic options
 available today. Premium increases are not based on claim
 submissions.

 Additional Actions Affecting Premiums

- Change of address
- Adding or removing pet(s)
- Changing coverage options (reimbursement or deductible levels)
- Transfer of account ownership (if applied to new address)

1 For additional information please [click here](#) to see policy specific
2 provisions related to this FAQ.

3 *Id.* at ¶ 48 (emphases added).

4 Plaintiffs contend that notwithstanding Healthy Paws' representations to the contrary, their
5 monthly pet insurance premiums have increased based on factors besides changes in the cost of
6 veterinary medicine, such as the pet's age. *Id.* at ¶ 55. As evidence of Healthy Paws'
7 misrepresentation, Plaintiffs cite to a correction at the bottom of a 2019 New York Times article
8 which stated, "An earlier version of this article, using information supplied by Healthy Paws Pet
9 Insurance, misstated how a pet's age affects premiums for the company's policies. *The pet's age*
10 *affects the premium at the time of enrollment and as the pet gets older, not just at enrollment.*" *Id.*
11 at ¶ 60 (emphasis added). Plaintiffs also cite to a statement from Healthy Paws' customer service
12 team responding to a complaint posted on the Better Business Bureau website. In this statement,
13 Healthy Paws confirmed that several factors besides the general rising cost of veterinary medicine
14 affect the premium:

15 In accordance with the terms of the Pet Health Insurance Policy and
16 the associated rating rules, monthly premiums may change for all
17 policyholders. Premiums are determined based on the rates and
18 rating rules filed and approved within each state's Department of
19 Insurance, *which reflect the cost of treatment advances in veterinary*
20 *medicine, your individual pet's breed, gender, age, and other*
21 *factors, in addition to the overall claims experience for the program*
22 *within the region your pet resides.*

23 *Id.* at ¶ 62 (emphasis added). Furthermore, Plaintiffs reference a report from the Nationwide
24 Purdue Index stating that the costs of veterinary medicine only rose by 21.1% from the end of 2014
through the end of 2018. *Id.* at ¶¶ 94-95. In contrast, Plaintiff Benanav's premiums rose by 53%
during this four-year period.

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1 **B. Procedural Background**

2 Plaintiffs filed their first amended complaint on June 8, 2020 alleging violations of the
3 Washington Consumer Protection Act, RCW § 19.86, *et seq.*, the California Unfair Competition
4 Law, Cal. Bus & Prof. Code § 17200, *et seq.* (“UCL”), the Illinois Consumer Fraud and Deceptive
5 Business Practices Act, 815 ILCS 505/1, *et seq.* (“ICFA”), and the New Jersey Consumer Fraud
6 Act, N.J.S.A. 56:8-1, *et seq.* (“CFA”). Dkt. #25. On October 15, 2020, this Court granted Healthy
7 Paws’ motion to dismiss. Dkt. #42. The Court concluded that Plaintiffs’ claims failed to
8 sufficiently plead fraud under Fed. R. Civ. P. 9(b) and were barred by the Washington, California
9 and New Jersey filed rate doctrines. The Court dismissed Plaintiffs’ claims without prejudice on
10 the basis that it could not conclude Plaintiffs would be unable to cure the identified deficiencies.
11 *Id.* at 22.

12 On November 23, 2020, Plaintiffs filed a Second Amended Complaint (“SAC”) against
13 Healthy Paws on behalf of themselves and those similarly situated. Dkt. #45. Plaintiffs allege
14 WCPA violations on behalf of all Plaintiffs and the National Class, UCL violations on behalf of
15 Plaintiffs Benanav, Gage, Purvey, Caughlin and the California class, ICFA violations on behalf of
16 Plaintiff Kowalski and the Illinois class, and CFA claims on behalf of Plaintiff Thomas and the
17 New Jersey class. Dkt. #45 at ¶¶ 180-233. Plaintiffs seek compensatory, consequential, statutory
18 and punitive damages, as well as declaratory and injunctive relief to prevent Healthy Paws’
19 ongoing deceptive conduct. *Id.* at 37. On December 23, 2020, Healthy Paws moved to dismiss
20 Plaintiff’s SAC under the filed rate doctrine and statute of limitations, and for lack of standing,
21 failure to state a claim, and failure to adequately plead fraud. Dkt. #49. Healthy Paws
22 simultaneously moved to strike Plaintiffs’ nationwide class allegations. Dkt. #52.

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1 **III. DISCUSSION**

2 **A. Request for Judicial Notice**

3 “Generally, on a 12(b)(6) motion, the District Court should consider only the pleadings.”
4 *Shaver v. Operating Engineers Local 428 Pension Trust Fund*, 332 F.3d 1198, 1201 (9th Cir.
5 2003). However, the Court may consider “materials incorporated into the complaint by reference,
6 and matters of judicial notice.” *New Mexico State Inv. Council v. Ernst & Young LLP*, 641 F.3d
7 1089, 1094 (9th Cir. 2011).

8 Healthy Paws requests that the Court take judicial notice of (1) Plaintiffs’ policy
9 documents for purposes of establishing the date their policies were issued; and (2) the California
10 rate filed by Markel in 2010, which discloses the pet-age factor. Dkt. #49 at 9. Plaintiffs request
11 that the Court take judicial notice of (1) sanctions issued in January 2020 by the Washington
12 Office of Insurance Commissioner (“OIC”) against ACE and Indemnity for concealing the pet
13 age factor in premium increases for the years 2013-2018; and (2) Healthy Paws’ public correction
14 to the New York Times article, clarifying that premiums were calculated based on pet age. Dkt.
15 #55 at 13. Neither party opposes the other’s request for judicial notice. For the reasons set forth
16 below, the Court GRANTS both parties’ requests.

17 Plaintiffs’ policy documents are judicially noticeable under the “incorporation by
18 reference” doctrine, which allows courts to consider documents “whose contents are alleged in a
19 complaint and whose authenticity no party questions, but which are not physically attached to the
20 [plaintiff’s] pleading.” *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (internal quotations
21 omitted). The incorporation by reference doctrine also applies to “situations in which the
22 plaintiff’s claim depends on the contents of a document, the defendant attaches the document to
23 its motion to dismiss, and the parties do not dispute the authenticity of the document, even though

1 the plaintiff does not explicitly allege the contents of that document in the complaint.” *Id.* Here,
2 Plaintiffs do not dispute the authenticity of the attached documents or otherwise oppose the
3 Court’s consideration of these omitted pages. Furthermore, the contents of most of these
4 documents are expressly referenced in the complaint.

5 The California rate filed by Markel, the Washington Insurance Commissioner’s order
6 sanctioning Healthy Paws’ insurers, and the New York Times correction are also judicially
7 noticeable pursuant to Federal Rule of Evidence 201. FRE 201 provides that courts may
8 “judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known
9 within the court’s territorial jurisdiction; or (2) can be accurately and readily determined from
10 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Consistent
11 with that rule, courts may take judicial notice of undisputed matters of public record, such as
12 documents on file with administrative agencies. *Palmason v. Weyerhaeuser Co.*, 2013 WL
13 1788002, at *1 (W.D. Wash. Apr. 26, 2013). Markel filed its rate with the California Department
14 of Insurance, and the rate filing documents are publicly available on the agency’s website. *See*
15 Dkt. #50-1. Likewise, the 2020 sanctions issued by the Washington Insurance Commissioner
16 against ACE and Indemnity related to Healthy Paws insurance policies are available on OIC’s
17 website.¹ *See* Dkt. #50-3. Finally, Healthy Paws’ correction to the New York Times article is
18 publicly available on the New York Times website.² None of the parties dispute the authenticity
19 of these documents. Judicial notice of these documents is therefore appropriate.

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21 _____
22 ¹ *See* Final Order of Dismissal on Settlement, No. 19-0231, *available at*
<https://www.insurance.wa.gov/sites/default/files/2020-01/12-19-0231-final-order-dismissal-consent-order-ace-01-22-20.pdf> (hereafter “Consent Decree”).

23 ² *See* NEW YORK TIMES, *More Pet Insurance Policies Are Being Sold. But Are They Worth the Cost?* Jan.
24 4, 2019, *available at* <https://www.nytimes.com/2019/01/04/your-money/pet-insurance-policies.html>.

1 **B. Motion to Dismiss under Federal Rule of Civil Procedure 12(b)**

2 1. Lack of Jurisdiction under Rule 12(b)(1)

3 Federal courts are tribunals of limited jurisdiction and may only hear cases authorized by
4 the Constitution or a statutory grant. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S.
5 375, 377 (1994). The burden of establishing subject matter jurisdiction rests upon the party
6 seeking to invoke federal jurisdiction. *Id.* Once it is determined that a federal court lacks subject
7 matter jurisdiction, the court has no choice but to dismiss the suit. *Arbaugh v. Y & H Corp.*, 546
8 U.S. 500, 514 (2006); Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks
9 subject-matter jurisdiction, the court must dismiss the action.”).

10 2. Failure to State a Claim under Rule 12(b)(6)

11 In making a 12(b)(6) assessment, the court accepts all facts alleged in the complaint as
12 true and makes all inferences in the light most favorable to the non-moving party. *Baker v.*
13 *Riverside County Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009) (internal citations omitted).
14 However, the court is not required to accept as true a “legal conclusion couched as a factual
15 allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550
16 U.S. 544, 555 (2007)). The complaint “must contain sufficient factual matter, accepted as true,
17 to state a claim to relief that is plausible on its face.” *Id.* at 678. This requirement is met when
18 the plaintiff “pleads factual content that allows the court to draw the reasonable inference that the
19 defendant is liable for the misconduct alleged.” *Id.* The complaint need not include detailed
20 allegations, but it must have “more than labels and conclusions, and a formulaic recitation of the
21 elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. Absent facial plausibility,
22 a plaintiff’s claims must be dismissed. *Id.* at 570.

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1 **C. Motion to Dismiss under Federal Rule of Civil Procedure 9(b)**

2 Claims sounding in fraud are subject to heightened pleading standards under Fed. R. Civ.
3 P. 9(b). To satisfy Rule 9(b), a claim of fraud must “state with particularity the circumstances
4 constituting fraud.” Fed. R. Civ. P. 9(b). Particularity under Rule 9(b) requires the plaintiff to
5 plead the “who, what, when, where, and how” of the misconduct alleged. *Kearns v. Ford Motor*
6 *Co.*, 567 F.3d 1120 (9th Cir. 2009). When applying the heightened pleading standards for fraud,
7 courts must “not be drawn into assessing the credibility of potential witnesses or answering
8 questions of fact.” *Patel v. Seattle Genetics, Inc.*, No. C17-41RSM, 2017 WL 4681380, at *3
9 (W.D. Wash. Oct. 18, 2017).

10 **D. Analysis**

11 Healthy Paws argues that dismissal of Plaintiffs’ SAC is warranted because (1) Plaintiffs’
12 Washington, California, and New Jersey state law claims are barred by the filed rate doctrine; (2)
13 Plaintiffs Thomas and Kowalski’s claims lack standing; (3) all claims fail to plead fraud with
14 particularity under Rule 9(b); and (4) Plaintiff Benanav’s claims are time-barred. Having
15 considered Plaintiffs’ Amended Complaint and attached exhibits, the relevant briefing, and the
16 judicially noticeable materials, the Court GRANTS IN PART and DENIES IN PART Healthy
17 Paws’ Motion for the reasons set forth below.

18 *i. Filed Rate Doctrine*

19 Healthy Paws moves to dismiss Plaintiffs’ Washington, California, and New Jersey claims
20 under each state’s filed rate doctrine.³ In Washington, the filed rate doctrine bars lawsuits that
21 challenge the reasonableness of insurance rates filed and approved by a regulating agency. *Tenore*

22
23 ³ Parties agree that Illinois has not adopted the filed rate doctrine. *See* Dkt. #55 at 8, n.1. The doctrine is
24 therefore inapplicable to Plaintiffs’ ICFA claims.

1 v. *AT&T Wireless*, 136 Wash. 2d 322, 332, 962 P.2d 104, 108 (1998). The doctrine serves a two-
2 fold purpose: “(1) to preserve the agency’s primary jurisdiction to determine the reasonableness
3 of rates, and (2) to insure that regulated entities charge only those rates approved by the agency.”
4 *McCarthy Fin., Inc. v. Premera*, 182 Wash. 2d 936, 942, 347 P.3d 872, 875 (2015) (quoting
5 *Tenore*, 136 Wash. 2d at 331-32, 962 P.2d at 108)). Similarly, California and New Jersey courts
6 apply the filed rate doctrine to bar lawsuits that challenge the reasonableness of approved rates.
7 See *MacKay v. Super. Ct.*, 188 Cal. App. 4th 1427, 1431–32 (Cal. App. 2d Dist. 2010), as
8 modified (Oct. 22, 2010) (Holding that “the statutory provisions for an administrative process
9 (and judicial review thereof) are the exclusive means of challenging an approved rate.”); see also
10 *Clark v. Prudential Ins.*, 736 F. Supp. 2d 902, 912 (D.N.J. 2010) (holding that the “filed rate
11 doctrine provides that a rate filed with and approved by a governing regulatory agency is
12 unassailable in judicial proceedings brought by ratepayers.”).

13 In its order dismissing Plaintiffs’ first amended complaint, the Court found that Plaintiffs’
14 claims did not survive the filed rate doctrine where they made “no mention of whether the
15 premiums that Plaintiffs paid in their respective states . . . exceeded the filed rates in those states.”
16 Dkt. #42 at 16. The Court concluded that Plaintiffs’ claims attacked “Healthy Paws’
17 misrepresentations that directly implicate the reasonableness of the premiums they paid, as
18 determined by the portion of the rate improperly charged as a result of their pets’ increasing ages.”
19 *Id.* at 21. Consequently, “[t]o award damages, the Court would be required to determine the
20 amount Plaintiffs *should have been paying* under the policy terms. . . . Plaintiffs’ claims, as
21 currently pleaded, therefore ‘would require the court to set damages by assuming a hypothetical
22 rate’ of the premium Plaintiffs should have been charged that excluded age as a factor.” *Id.* at 22
23 (emphasis in original) (quoting *Pub. Util. Dist. No. 1 of Grays Harbor County Wash. v. IDACORP*

1 *Inc.*, 379 F.3d 641, 651 (9th Cir. 2004)). Such a determination would directly implicate the filed
2 rate doctrine, which aims to preserve the agency’s primary jurisdiction to determine the
3 reasonableness of filed and approved rates.

4 The SAC remedies this deficiency by claiming that Healthy Paws charged premiums “in
5 excess of rates that were filed with” the Washington, California, and New Jersey state insurance
6 agencies. *See* Dkt. #45 at ¶¶ 184, 196, 229. Specifically, Plaintiffs allege that insurers increased
7 the pet age factor in Healthy Paws policies over the life of each pet, such that the agency-approved
8 rate—which assumed that the age factor would remain constant—was lower than the amount that
9 Healthy Paws consumers were ultimately charged in Washington, New Jersey, and California.
10 *See* Dkt. #45 at ¶¶ 66-67, 91, 107, 137, 149, 162.

11 Healthy Paws argues that Plaintiffs’ claims are still insufficient to circumvent the filed
12 rate doctrine because they fail to plead that the insurers charged rates higher than those approved
13 “by *in fact applying* the pet-age factor” to Plaintiffs’ premiums. Dkt. #49 at 10, 14. Healthy Paws
14 offers no support for their proposition that surviving the doctrine at the pleading stage requires
15 such specific allegations—particularly where Plaintiffs have pleaded that their premiums
16 increased based on their pets’ ages. *See, e.g.*, Dkt. #45 at ¶ 197. The filed rate doctrine aims to
17 bar actions that directly challenge rates that are filed and approved by a state regulatory agency.
18 Here, the gravamen of the SAC is clear: the rates Plaintiffs paid allegedly exceeded those filed
19 with and approved by their respective state insurance agencies because of the misrepresented pet
20 age factor. At the motion to dismiss stage, these allegations are sufficient to survive the filed rate
21 doctrine. *Cf. Alpert v. Nationstar Mortg. LLC*, 243 F. Supp. 3d 1176, 1183 (W.D. Wash. 2017)
22 (challenge to facially unreasonable amounts that servicer charged mortgagor would require court
23

1 to determine what rates would have been reasonable to charge consumers, thereby “plac[ing] the
2 Court directly on the toes of the Insurance Commissioner”).

3 Healthy Paws also seeks to use judicially noticeable rate filing documents to refute
4 Plaintiffs’ claim that the pet-age factor was applied to their premiums at any time before the factor
5 was disclosed by their insurer. Although the incorporation by reference doctrine allows courts to
6 consider certain documents that are alleged but not physically attached to a pleading, *Knievel*,
7 393 F.3d at 1076, Healthy Paws’ extensive factual arguments for applying the filed rate doctrine
8 are not well-taken at the motion to dismiss stage, which merely aims to address the adequacy of
9 the pleadings—not their veracity. Nevertheless, the Court will consider these arguments herein
10 given that it need not “accept as true allegations that contradict matters properly subject to judicial
11 notice or by exhibit.” *Gonzalez v. Planned Parenthood*, 759 F.3d 1112, 1115 (9th Cir. 2014).

12 First, Healthy Paws relies on an April 2010 California rate filing wherein Markel disclosed
13 the pet-age factor with California’s state insurance agency. The Court cannot conclude that this
14 single filing “contradicts” Plaintiff Benanav’s claims that he paid rates that included the
15 undisclosed age factor, given that his policy did not become effective until two years later, on
16 March 27, 2012. Dkt. #45 at ¶ 15. Healthy Paws also cites to ACE’s 2012 rate filing as evidence
17 that California “approved application of the pet-age factor between 2010 and 2012.” Dkt. #57 at
18 8. Yet the 2012 filing states that the pet age factor “applied at the policy inception *will not change*
19 *through the life of the pet* as long as it is continuously insured under the policy (including any
20 rewrite of the policy).” Dkt. #45-8 at 28 (emphasis added). Given that the 2012 filing appears to
21 refute Healthy Paws’ contention that the pet age factor was approved in 2012, the Court cannot
22 rely on these documents as a basis for dismissing Benanav’s claims at the pleading stage.

1 Healthy Paws also challenges Plaintiffs’ claims that they paid rates that exceeded those
2 approved by California’s state insurance agency when their policies were prematurely transferred
3 to Westchester, which disclosed the pet age factor in their premiums. *Id.* at ¶¶ 73-81. The Court
4 takes judicial notice of policy documents reflecting that Plaintiffs Benanav, Gage, and Caughlin
5 still held policies underwritten by ACE or Indemnity in 2019, which would indicate that their
6 policies were not prematurely transferred to Westchester. *See* Dkts. #50-10 (Benanav’s ACE
7 policy, effective March 27, 2019); #50-14 (Gage’s Indemnity policy, effective February 16,
8 2019); #50-21 (Caughlin’s ACE policy, effective January 20, 2019). Nevertheless, even if these
9 policy documents refute Plaintiffs’ claims as to their Westchester policies, the Court declines
10 Healthy Paws’ invitation to conclude that Plaintiffs at no point paid rates higher than those
11 approved by their state agencies. To the extent Healthy Paws seeks to challenge the factual basis
12 of the claims set forth in Plaintiffs’ complaint, such arguments are properly reserved for summary
13 judgment or trial.

14 Finally, Healthy Paws argues that Plaintiffs’ general allegations that some Healthy Paws
15 customers were charged the pet-age factor at some point in time is “too vague to establish that
16 *Plaintiffs . . . paid premiums in excess of filed rates.*” Dkt. #49 at 12 (emphasis in original).
17 Again, Healthy Paws offers no support for its argument that the filed rate doctrine imposes such
18 a high burden on plaintiffs at the pleading stage. Given that Plaintiffs allege that the premiums
19 they paid included the pet age factor, that the factor was not disclosed to the state insurance
20 agencies when rates were filed and approved, and the premiums charged exceeded those approved
21 rates, Plaintiffs have met their burden to survive dismissal at this stage based on the filed rate
22 doctrine.

23 //

1 *ii. Standing*

2 Healthy Paws also moves for dismissal of Plaintiff Thomas’ CFA claims and Kowalski’s
3 ICFA claims for lack of standing under Fed. R. Civ. P. 12(b)(1). Pursuant to Article III of the
4 U.S. Constitution, federal courts are courts of limited jurisdiction, hearing only live “cases” and
5 “controversies.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559 (1992); U.S. Const. art. III, §
6 2. To satisfy the case-or-controversy requirement, the plaintiff must establish “(1) [A]n ‘injury
7 in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or
8 hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it
9 is likely, as opposed to merely speculative, that the injury will be redressed by a favorable
10 decision.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81
11 (2000). A challenge based on lack of standing is appropriate under Rule 12(b)(1). *Walsh v.*
12 *Microsoft Corp.*, 63 F. Supp. 3d 1312, 1317–18 (W.D. Wash. 2014). Furthermore, “a plaintiff
13 must demonstrate standing separately for each form of relief sought.” *Friends of the Earth, Inc.*,
14 528 U.S. at 185 (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983)). Healthy Paws
15 challenges Ms. Kowalski’s standing based on (i) injury in fact and (ii) causality. The Court will
16 address each argument in turn.

17 1. Injury in Fact

18 Healthy Paws argues that Plaintiffs Thomas and Kowalski have failed to allege injury in
19 fact because they fail to allege that her premiums “were *in fact* increased based on the age of their
20 pet.” Dkt. #49 at 15 (emphasis in original). To the extent the SAC fails to specifically allege that
21 their rates increased because of the undisclosed age factor, it nevertheless contains sufficient
22 factual allegations to satisfy injury-in-fact. At the pleading stage, “general factual allegations of
23 injury resulting from the defendant’s conduct may suffice, for on a motion to dismiss we presume

1 that general allegations embrace those specific facts that are necessary to support the claim.”
2 *Lujan*, 504 U.S. at 561 (internal quotations omitted). Here, Kowalski claims that CHUBB’s rate
3 filings in Illinois misrepresented the basis for calculating premium increases for Healthy Paws
4 insurance by stating that monthly premiums may change “to reflect changes in the cost of
5 veterinary medicine” without disclosing the pet age factor. Dkt. #45 at ¶¶ 83-84. She also claims
6 that her premiums drastically increased between the time she purchased them in 2011 and in 2020,
7 when she discovered reports indicating that pet age was a factor increasing Healthy Paws
8 insurance premiums. *See* Dkt. #45 at ¶¶ 121-132. Although she does not know at what point
9 Healthy Paws insurance began using age as a factor in its premiums, she claims that her premium
10 increased at a rate that was “substantially greater” than the overall change in costs of veterinary
11 medicine during that time. *Id.* at ¶¶ 128-130. Similarly, Thomas alleges that ACE’s rate filing in
12 New Jersey disclosed that the pet age factor would remain constant. *Id.* at ¶ 107. However, she
13 alleges that her premiums increased beyond the change in the costs of veterinary medicine and,
14 had she known her premiums would increase drastically as her dog aged, she never would have
15 signed up for the policy. *Id.* at ¶¶ 114-120. These claims are sufficient to allege injury-in-fact in
16 the form of paying insurance premiums higher than Plaintiffs believed they would be paying.

17 2. Causality

18 Healthy Paws also argues that Thomas and Kowalski fail to allege harm that is fairly
19 traceable to Healthy Paws’ alleged misrepresentations. Regarding Kowalski, Healthy Paws
20 points out that the time period covered by the Nationwide Purdue Veterinary Price Index (2014-
21 2018) (“the Purdue Study”) does not overlap with the most “drastic” increase for Ms. Kowalski’s
22 premiums (2019 and 2020). *See* Dkt. #45 at ¶¶ 127-129. Similarly, it notes that Thomas’ alleged
23 premium increase over the time period of the Purdue Study was lower than the increase in the

1 national average reported in the study. *See id.* at ¶¶ 110-111. Healthy Paws’ arguments regarding
2 the overlap between the Purdue Study’s time period, the facts reported in that study, and the dates
3 of Plaintiffs’ alleged harm improperly conflates the standing inquiry with the summary judgment
4 standard. To allege causality, Plaintiffs merely need to claim that Healthy Paws’
5 misrepresentations are fairly traceable to their alleged injuries, which was the payment of
6 premiums higher than they were lead to believe they would be paying. *Friends of the Earth, Inc.*,
7 528 U.S. at 180–81. Both Plaintiffs have done so here. *See id.* at ¶¶ 126-134; 216-218
8 (Kowalski’s claims); *id.* at ¶¶ 110-120 (Thomas’ claims). To the extent Healthy Paws contends
9 that Plaintiffs’ arguments are unsupported by the facts, that argument is more properly addressed
10 at summary judgment—not at the pleading stage.

11 *iii. Plaintiff Benanav’s Time-Barred Claims*

12 Healthy Paws also moves to dismiss Plaintiff Benanav’s claims as barred by the applicable
13 statute of limitations. Dkt. #49. Parties agree that claims under Washington’s CPA and
14 California’s UCL have four-year statute of limitations periods such that any claims that arose
15 before March 19, 2016 are time-barred. *See* Wash. Rev. Code § 19.86.120; Cal. Bus. & Prof.
16 Code § 17208. Given that Healthy Paws has made an initial showing that the claim is time-barred,
17 the burden shifts to Plaintiffs to demonstrate that tolling applies. *See In re Capital Options, LLC*,
18 719 F. App’x 609, 612 (9th Cir. 2018) (“[T]he burden of alleging facts which would give rise to
19 tolling falls upon the plaintiff.”) (internal quotations omitted). Plaintiffs argue that
20 notwithstanding the four-year limitations period, Benanav’s claims are tolled by the discovery
21 rule, the equitable doctrine of fraudulent concealment, and the continuing violations doctrine. For
22 the reasons set forth below, the Court finds that Plaintiff has alleged sufficient facts to apply the
23 discovery rule here.

1 Under California law, the discovery rule of accrual postpones accrual of a claim until “the
2 plaintiff discovers, or has reason to discover, the cause of action.” *Norgart v. Upjohn Co.*, 21
3 Cal.4th 383, 397, 87 Cal. Rptr. 2d 453, 981 P.2d 79 (Cal. 1999). The rule delays accrual only
4 when a plaintiff “has no reason to suspect wrongdoing and cannot discover his or her claims with
5 reasonable diligence.” *Plumlee v. Pfizer, Inc.*, 664 F. App’x 651, 653 (9th Cir. 2016). Similarly,
6 under Washington law, the cause of action “accrues when the plaintiff discovers, or in the
7 reasonable exercise of diligence should discover, the elements of a cause of action.” *1000*
8 *Virginia Ltd. P’ship v. Vertecs Corp.*, 158 Wn.2d 566, 575 (2006), *as corrected* (Nov. 15, 2006)
9 (internal citations omitted). “The key consideration under the discovery rule is the factual, as
10 opposed to the legal, basis of the cause of action.” *Cox v. Oasis Physical Therapy, PLLC*, 153
11 Wash. App. 176, 189–90 (2009) (internal quotations omitted).

12 Here, Benanav claims that he attempted to discover the reasons why his premiums were
13 increasing so drastically when he contacted Healthy Paws in 2019. Dkt. #45 at ¶ 98. In deeming
14 Benanav’s 2019 inquiry too late to toll the limitations period, Healthy Paws relies on the well-
15 established principle that a plaintiff must exercise reasonable diligence *within* the limitations
16 period. *Plumlee*, 664 F. App’x at 653. However, Benanav alleges sufficient facts to establish
17 that he did not have inquiry notice of Healthy Paws’ alleged misrepresentation until several years
18 into paying premiums for his Healthy Paws policy. Inquiry notice serves to toll the limitations
19 period until the point a plaintiff has “reason to suspect an injury and some wrongful cause”
20 *Plumlee*, 664 F. App’x at 653 (internal quotations omitted). Here, the SAC alleges that his
21 premiums “increased dramatically” from 2013 until 2019, Dkt. #45 at ¶ 90, yet clarifies that the
22 increases were modest in the early years such that Benanav was not put on notice of any
23 wrongdoing. Indeed, between 2013 and 2016, his premiums only increased from \$33.85 to

1 \$44.80, in contrast to the jump to \$55.61 in 2018, \$69.76 in 2019, and finally to \$104.50 in 2020.

2 *Id.* at ¶ 92. Given this incremental increase until 2016, the Court finds that Healthy Paws’ alleged
3 misrepresentation about the rising premium costs is the very the type of claim contemplated by
4 the discovery rule: an instance where the defendant is in “a far superior position to know of the
5 act and the injury, and the act and the injury are difficult for the plaintiff to detect” *Josten*
6 *v. Rite Aid Corp.*, No. 18-CV-0152-AJB-JLB, 2019 WL 3718739, at *4 (S.D. Cal. Aug. 7, 2019).

7 Here, the SAC does not indicate that Benanav had any reasonable basis to suspect Healthy Paws’
8 alleged wrongdoing earlier than March 2016, while his premiums were only modestly increasing.

9 Healthy Paws also argues that Benanav was on inquiry notice of the misrepresentation,
10 given that California law “presumes that policyholders know the contents of their insurers’ rate
11 filings” and Markel’s 2010 rate filing disclosed that the pet age factor would be applied as the pet
12 aged. Dkt. #57 at 15 (citing *Hellgren v. Providential Home Income Plan Inc.*, 2006 WL 8447964,
13 at *3 (N.D. Cal. Oct. 26, 2006)). As an initial matter, it is unclear to the Court that Markel’s 2010
14 filing applied to Benanav’s policy that he purchased nearly two years later. Moreover, ACE’s
15 2012 filing—approved six months after Benanav purchased his policy—appears to reverse course
16 and not apply the pet age factor. *See* Dkt. #45-8 at 28. Having considered Benanav’s allegations
17 that the modest premium increases made Healthy Paws’ alleged misrepresentations difficult to
18 detect and the unresolved factual question as to when the insurer disclosed the pet age factor in
19 its rate filing, Court finds that Plaintiffs have met their burden at this stage to show that Benanav’s
20 claims were tolled under the discovery rule. It therefore declines to dismiss Benanav’s claims as
21 time-barred at this stage.

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1 iv. *Failure to Plead Fraud with Particularity*

2 Finally, Healthy Paws moves to dismiss Plaintiffs’ claims for failure to plead fraud with
3 particularity as required under Fed. R. Civ. P. 9. To satisfy the pleading standard under Rule 9(b),
4 a plaintiff must articulate “the who, what, when, where, and how of the misconduct alleged.”
5 *Kearns*, 567 F.3d at 1126. In addition to specifying which statements mislead the consumer and
6 why those statements are misleading, a plaintiff pleading under Rule 9(b) must also identify which
7 fraudulent statements were relied upon that resulted in the fraudulent conduct. *See id.* (plaintiff
8 failed to satisfy Rule 9(b) particularity requirement where he “failed to specify which sales
9 material he relied upon in making his decision”). The purpose of Rule 9(b) is to require plaintiffs
10 to plead allegations that are “specific enough to give defendants notice of the particular
11 misconduct which is alleged to constitute the fraud charged so that they can defend against the
12 charge and not just deny that they have done anything wrong.” *Semegen v. Weidner*, 780 F.2d
13 727, 731 (9th Cir. 1985).

14 In its previous analysis of Plaintiffs’ claims under Rule 9(b), the Court concluded that
15 Plaintiff Benanav sufficiently pleaded fraud under the WCPA and the UCL by alleging that he
16 purchased the policy “in reliance on Healthy Paws’ representations on its website, including that
17 monthly premiums would not increase based on a pet’s age and instead would only increase for
18 all policyholders based on the rising cost of veterinary care.” Dkt. #42 at 13 (quoting Dkt. #25 at
19 ¶ 64) (emphasis omitted). From this statement, the Court inferred that Benanav’s reliance on
20 Healthy Paws’ website “encompass[e]d the FAQ Page and Sample Policy.” *Id.* However, it
21 contrasted this claim with Plaintiffs Kowalski’s and Thomas’ more generalized allegations that
22 they “purchased the policy in reliance on Healthy Paws’ representations, including that monthly
23 premiums would not increase based on a pet’s age and instead would only increase for all

1 policyholders based on the rising cost of veterinary care.” *Id.* (quoting Dkt. #25 at ¶¶ 76, 87).
2 The Court found that the “vague wording” in Plaintiffs Kowalski’s and Thomas’ claims “made it
3 unclear which of the alleged misrepresentations they were exposed to when purchasing their
4 policies.” *Id.*

5 The SAC alleges that Kowalski, Gage, Purvey and Caughlin “purchased the policy in
6 reliance on Healthy Paws’ representations on its website and in its marketing materials, including
7 that monthly premiums would not increase based on a pet’s age and instead would only increase
8 for all policyholders based on the rising cost of veterinary care.” Dkt. #45 at ¶¶ 126, 139, 151,
9 164. While the Court previously inferred from Mr. Benanav’s reference to the “website” that he
10 relied on the FAQ Page and Sample Policy when he purchased the policy, Plaintiffs’ general
11 reference to unidentified “marketing materials” they reviewed before purchasing their policies
12 injects new uncertainty into the question of which specific materials they relied upon and prevents
13 the Court from drawing the same conclusion. Indeed, even though the SAC cites the specific
14 language of the FAQ Page from the year Kowalski signed up for her policy and the language of
15 the Sample Policy all Plaintiffs received, *see id.* at ¶¶ 45, 52, nowhere does it allege that Plaintiffs
16 actually reviewed and/or relied upon these particular documents. In light of the Court’s previous
17 ruling, which clarified that a plaintiff must “specify which misleading sales material he relied
18 upon in order to satisfy Rule 9(b),” it is puzzling why Plaintiffs continue to speak in generalities
19 rather than expressly identify the FAQ Page, the Sample Policy, or other materials as the specific
20 documents they reviewed and relied upon. Dkt. #42 at 12.

21 For these reasons, the Court finds that the general reference to Healthy Paws’
22 representations “on its website and in its marketing materials” for Plaintiffs Kowalski, Gage,
23 Purvey and Caughlin repeats the same mistake that previously warranted dismissal of their claims:

1 the Court cannot discern which of Healthy Paws’ specific alleged misrepresentations they were
2 exposed to and/or relied upon when they purchased their policies. The Court therefore cannot
3 conclude that the SAC gives Healthy Paws sufficient notice to meaningfully defend against the
4 alleged fraud, as required under Rule 9(b). *Semegen*, 780 F.2d at 731; *see also Kearns*, 567 F.3d
5 at 1126 (concluding that plaintiff “failed to articulate the who, what, when, where, and how of
6 the misconduct alleged” by failing to specify “which sales material he relied upon” nor “when he
7 was exposed to them or which ones he found material.”). Accordingly, dismissal of their claims
8 for failure to state fraud with particularity under Rule 9(b) is appropriate.

9 **E. Leave to Amend**

10 Ordinarily, leave to amend a complaint should be freely given following an order of
11 dismissal, “unless it is absolutely clear that the deficiencies of the complaint could not be cured
12 by amendment.” *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987); *see also DeSoto v. Yellow*
13 *Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (“A district court does not err in denying
14 leave to amend where the amendment would be futile.” (citing *Reddy v. Litton Indus., Inc.*, 912
15 F.2d 291, 296 (9th Cir. 1990)).

16 Permission to file an amended complaint is typically granted where claims are dismissed
17 for failure to state a claim. *See* Fed. R. Civ. P. 15(a) (“[L]eave to amend shall be freely given
18 when justice so requires”). A motion to dismiss “under Rule 9(b) for failure to plead with
19 particularity is the functional equivalent of a motion to dismiss under Rule 12(b)(6) for failure to
20 state a claim.” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1107 (9th Cir. 2003). For that
21 reason, the Court finds it appropriate to grant Plaintiffs a final opportunity to plead Kowalski’s,
22 Gage’s, Purvey’s and Caughlin’s claims with sufficient specificity to satisfy Rule 9(b). *See*
23 *Salazar v. Cty. of Orange*, 564 F. App’x 322, 322–23 (9th Cir. 2014) (“Before affirming a district

1 court's dismissal with prejudice, 'we look to see whether the district court might have adopted
2 less drastic alternatives. Permitting plaintiffs to replead twice' is a less drastic alternative.")
3 (quoting *McHenry v. Renne*, 84 F.3d 1172, 1178 (9th Cir. 1996)) (internal citation omitted).

4 **F. Motion to Strike Plaintiffs' Nationwide Class Allegations**

5 Lastly, the Court considers Healthy Paws' Motion to Strike Plaintiffs' Nationwide Class
6 Allegations pursuant to Fed. R. Civ. P. 12(f). Dkt. #52. Plaintiffs argue that Healthy Paws'
7 motion to strike is premature. Dkt. #56. For the reasons set forth below, the Court denies Healthy
8 Paws' Motion.

9 Rule 12(f) provides that a court may, on its own or on a motion, "strike from a pleading
10 an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed.
11 R. Civ. P. 12(f). "Motions to strike are generally disfavored . . . [and] are generally not granted
12 unless it is clear that the matter sought to be stricken could have no possible bearing on the subject
13 matter of the litigation." *In re Clorox Consumer Litig.*, 894 F. Supp. 2d 1224, 1236 (N.D. Cal.
14 2012) (internal citations and quotations omitted). Although class allegations are normally
15 considered on a motion for class certification, not at the pleading stage, *id.*, in certain instances
16 courts find that the issues "are plain enough from the pleadings to determine whether the interests
17 of the absent parties are fairly encompassed within the named plaintiff's claim." *Gen. Tel. Co. of*
18 *Sw. v. Falcon*, 457 U.S. 147, 160 (1982). Consequently, courts have struck class allegations in
19 instances "where it is clear from the pleadings that class claims cannot be maintained." *Clorox*,
20 894 F. Supp. 2d at 1236.

21 Healthy Paws argues that Plaintiffs' class allegations should be struck because of (1)
22 discrepancies in applicable state laws that vary materially from state to state; and (2) Plaintiffs'
23 failure to allege facts giving rise to a plausible inference that common questions will predominate

1 over individual issues. Regarding discrepancies in applicable state laws, Healthy Paws highlights
2 the fact that some states apply the filed rate doctrine whereas others either provide a rebuttable
3 presumption of reasonableness or do not require the premiums be approved by the state agency.
4 *Compare McCarthy Fin., Inc. v. Premera*, 347 P.3d 872, 876 (Wash. 2015) with *Corbin v. Allstate*
5 *Corp.*, 140 N.E.3d 810, 816 (Ill. App. 5th Dist. 2019), *appeal denied*, 124 N.E.3d 464 (Ill. 2019).
6 Healthy Paws further argues that Plaintiffs should not be permitted to circumvent the filed rate
7 doctrine of their respective states by bringing their claims under Washington law.

8 As set forth above, the Court has determined that the filed rate doctrine does not bar
9 Plaintiffs' claims at this stage of the litigation. *See supra*, § III(D)(i). It is therefore premature
10 for Healthy Paws to speculate that this doctrine will yield disparate results depending on which
11 state's consumer protection statute applies, given the possibility that the filed rate doctrine may
12 pose no bar to Plaintiffs' claims. Healthy Paws further argues that parties and the Court should
13 not be subjected to the "enormous and unwarranted burden" of conducting a 50-state survey of
14 insurance laws, since "Plaintiffs have not plausibly alleged that any Healthy Paws customers were
15 injured outside their respective states." Dkt. #52 at 9. Yet both cases that Healthy Paws relies
16 upon are orders denying class certification—not Rule 12(f) motions to strike. *See Zinser v.*
17 *Accufix Research Institute, Inc.*, 253 F.3d 1180 (9th Cir. 2001); *Kunzelmann v. Wells Fargo Bank,*
18 *N.A.*, 2013 WL 139913 (S.D. Fla. Jan. 10, 2013). Whereas the issues of complexity and
19 differences between states in their application of the filed-rate doctrine are appropriately
20 evaluated at the class certification stage, *see id.*, the Court cannot conclude that Healthy Paws'
21 conclusory arguments satisfy its higher burden under Rule 12(f) to demonstrate that Plaintiffs'
22 class allegations are so insufficient, redundant, or immaterial that they must be struck in entirety.

23 //

1 Finally, Healthy Paws argues that the SAC does not allege facts giving rise to a plausible
2 inference that questions common to the nationwide class will predominate. Dkt. #52 at 10.
3 Healthy Paws specifically cites to the fact that Washington consumers whose rates were
4 overcharged were already made whole by the OIC’s Consent Order, such that Washington
5 customers are not similarly situated to other Healthy Paws policyholders. Healthy Paws also
6 argues that the factual question of whether the pet-age factor—or any other factor allegedly
7 inconsistent with Healthy Paws’ representations—affected a policyholder’s premium will vary
8 between each state, each insurer, and each time period. In light of these drastic differences
9 between customers, Healthy Paws argues, Plaintiffs cannot establish that questions common to
10 the nationwide class predominate over individualized issues. *Id.* at 10-11. While Healthy Paws’
11 arguments are well-taken, the Court again declines to resolve these issues at the pleading stage
12 and deprive Plaintiffs of the opportunity to fully brief the class certification issue. *See Sousa v.*
13 *7-Eleven Inc.*, No. 19-CV-2142 JLS (RBB), 2020 WL 6399595, at *5 (S.D. Cal. Nov. 2, 2020)
14 (collecting cases where courts expressed reluctance to preemptively deny plaintiffs the
15 opportunity to present a motion for class certification); *Moussouris v. Microsoft Corporation*,
16 2016 WL 4472930 (W.D. Wash. Mar. 7, 2016) (“Plaintiffs deserve the chance to develop the facts
17 surrounding the class definition—and if necessary, the class definition itself—through class
18 discovery”).

19 For these reasons, Healthy Paws’ Motion to Strike is denied.

20 IV. CONCLUSION

21 Having reviewed Defendant Healthy Paws’ Motions, Plaintiffs’ Responses, Defendant’s
22 Replies, and the remainder of the record, it is hereby ORDERED as follows:
23

24 ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT HEALTHY PAWS’ MOTION TO DISMISS AND
DENYING DEFENDANT’S MOTION TO STRIKE - 25

1 (1) Defendant Healthy Paws' Motion to Dismiss, Dkt. #49, is GRANTED IN PART and
2 DENIED IN PART. The Court DISMISSES without prejudice Counts 2 and 3 under the
3 California Unfair Competition Law and Illinois Consumer Fraud and Deceptive Practices Act as
4 to Plaintiffs Gage, Purvey, Caughlin, and Kowalski.

5 (2) Defendant Healthy Paws' Motion to Dismiss is DENIED as to the remaining claims.

6 (3) Plaintiffs are ORDERED to file a Second Amended Complaint within thirty (30) days
7 from the date of this Order.

8 (4) Defendant Healthy Paws' Motion to Strike Plaintiffs' Nationwide Class Allegations,
9 Dkt. #52, is DENIED.

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11 DATED this 23rd day of September, 2021.

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15 RICARDO S. MARTINEZ
16 CHIEF UNITED STATES DISTRICT JUDGE
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