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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 IN RE: AMAZON PRIME VIDEO
10 LITIGATION,

Master File No. 2:22-cv-00401-RSM

ORDER ON MOTION TO DISMISS

11 This Document Relates To: All Actions
12

13 **I. INTRODUCTION**

14 This matter comes before the Court on Defendant Amazon.com, Inc. (“Amazon”)’s
15 Motion to Dismiss for Failure to State a Claim, Dkt. #67. Plaintiffs Mary Baron, Amanda Caudel,
16 Allison Carranza-Cordero, Cathy Diomartich, Calhea Johnson, Malika McLean, Shaney Scott,
17 and Tony Walton (collectively “Plaintiffs”) oppose the Motion. Dkt. #69. For the reasons stated
18 below, the Court GRANTS IN PART and DENIES IN PART Amazon’s Motion to Dismiss.

19 **II. BACKGROUND**

20 Plaintiffs filed their amended Complaint on September 12, 2022. Dkt. #64. Plaintiffs
21 bring this putative class action alleging damages from overpaying for Digital Content due to
22 Amazon’s misconduct. *Id.* at ¶ 22. Plaintiffs allege that Amazon overcharged and “[d]eceived
23 consumers by misrepresenting that it was selling them Digital Content when, in fact, it was really
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1 only licensing it to them[.]” *Id.* at ¶ 24. Plaintiffs raise claims under California, New York, and
2 Washington consumer protection law, including: (1) California’s Consumer Legal Remedies Act
3 (“CLRA”); (2) California’s False Advertising Law (“FAL”); (3) California’s Unfair Competition
4 Law (“UCL”); (4) New York’s General Business Law (“GBL”); and (5) the Washington
5 Consumer Protection Act (“WCPA”), as well as common law claims for unjust enrichment. *Id.*
6 at ¶¶ 74-169. Plaintiffs seek monetary damages, including but not limited to statutory,
7 compensatory, incidental, and consequential damages, injunctive relief, equitable monetary
8 relief, punitive or exemplary damages, and reasonable attorneys’ fees and costs. *Id.* at 31-32.

9 **A. Amazon Digital Content**

10 Amazon “is the largest American online retailer” and “provides consumers with the
11 option to ‘Buy’ movies . . . television or cable shows . . . and music” via its website or “Prime
12 Video app.” Dkt. #64 at ¶¶ 1-2. Amazon also offers some of its content for “rent.” *Id.* at ¶ 2.
13 Amazon rental fees are approximately \$5.99 for movies, but the option to “buy” this content is
14 for a higher fee of around \$19.99 per movie or \$2.99 per television episode. *Id.* at ¶¶ 46, 49.
15 Consumers can purchase this Digital Content by clicking a “Buy” button, then the Digital Content
16 is stored in a folder titled “Video Purchases & Rentals.” *Id.* at ¶ 3.

17 In reality, according to Amazon’s terms, all Digital Content purchases are subject to a
18 limited licensing agreement. *Id.* at ¶ 4. Amazon cannot pass title of any of this content to
19 consumers, thus consumers do not own the Digital Content forever. *Id.* If the licensing
20 agreement for any of the Digital Content is terminated, Amazon has to pull the Digital Content
21 from not only its site but from all consumers’ purchased folders, “which it does without prior
22 warning, and without providing any type of refund or remuneration to consumers.” *Id.* “In other
23 words, unlike a Best Buy or Target store that obtains title from a Digital Content’s owner that it
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1 then conveys to a purchaser for value, [Amazon’s] licensing arrangements prevent it from ever
2 being able to pass title to Digital Content it claims it “sells” to consumers. *Id.* at ¶ 5.

3 **B. Plaintiffs**

4 Plaintiffs are Amazon consumers from New York, California, and Washington. *Id.* at ¶¶
5 28-44. Plaintiffs allege that they purchased Digital Content of movies or television shows from
6 Amazon. *Id.* Plaintiffs also allege that they lost access to the Digital Content they purchased.
7 *Id.* at ¶¶ 29, 31, 35, 37, 39, 41, 43. However, all Plaintiffs allege injury at the time of purchase
8 because they would not have “overpaid” for the Digital Content if they had known they were
9 only purchasing a limited license. *Id.* at ¶¶ 28-44.

10 **III. DISCUSSION**

11 **A. Legal Standard**

12 **a. Standing**

13 Pursuant to Article III of the US. Constitution, federal courts have limited jurisdiction to
14 hear only live “cases” and “controversies.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559
15 (1992); U.S. CONST. art III, § 2. Accordingly, “Article III standing is a necessary component of
16 subject matter jurisdiction.” *In re Palmdale Hills Prop., LLC*, 654 F.3d 868, 873 (9th Cir. 2011).
17 To satisfy the case-or-controversy requirement, “a plaintiff must show (1) it has suffered an
18 ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural
19 or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and
20 (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable
21 decision.” *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81
22 (2000). When a plaintiff lacks standing, dismissal under Federal Rule of Civil Procedure 12(b)(1)
23 is appropriate. *See Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011); *Walsh v.*
24 *Microsoft Corp.*, 63 F.Supp. 3d 1312, 1317-18 (W.D. Wash. 2014).

1 A motion to dismiss under Rule 12(b)(1) can attack the factual allegations establishing
2 standing or can attack plaintiff’s standing facially. *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th
3 Cir. 2014). “The district court resolves a facial attack as it would a motion to dismiss under
4 12(b)(6): Accepting the plaintiff’s allegations as true and drawing all reasonable inferences in
5 the plaintiff’s favor, the court determines whether the allegations are sufficient as a legal matter
6 to invoke the court’s jurisdiction.” *Id.* at 1121 (citing *Pride v. Correa*, 719 F.3d 1130, 1133 (9th
7 Cir. 2013)). At the pleading stage, a plaintiff need not satisfy *Iqbal/Twombly*’s¹ plausibility
8 standard but “must ‘clearly . . . allege facts demonstrating’ each element” of standing. *Spokeo,*
9 *Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Warth v. Seldin*, 422 U.S. 490, 518 (1975)). As
10 such, the inquiry does not touch directly on the merits of the plaintiff’s case. *See Maya*, 658 F.3d
11 at 1068 (contrasting with consideration of a Rule 12(b)(6) motion which “necessarily assesses
12 the merits of the plaintiff’s case”).

13 **b. Rule 12(b)(6)**

14 In making a 12(b)(6) assessment, the court accepts all facts alleged in the complaint as
15 true and makes all inferences in the light most favorable to the non-moving party. *Baker v.*
16 *Riverside County Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009) (internal citations omitted).
17 However, the court is not required to accept as true a “legal conclusion couched as a factual
18 allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555
19 (2007)). The complaint “must contain sufficient factual matter, accepted as true, to state a claim
20 to relief that is plausible on its face.” *Id.* at 678. This requirement is met when the plaintiff
21 “pleads factual content that allows the court to draw the reasonable inference that the defendant
22 is liable for the misconduct alleged.” *Id.* The complaint need not include detailed allegations,
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24 ¹ See *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S.

1 but it must have “more than labels and conclusions, and a formulaic recitation of the elements of
2 a cause of action will not do.” *Twombly*, 550 U.S. at 555. Absent facial plausibility, a plaintiff’s
3 claims must be dismissed. *Id.* at 570.

4 Where a complaint is dismissed for failure to state a claim, “leave to amend should be
5 granted unless the court determines that the allegation of other facts consistent with the challenged
6 pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture*
7 *Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

8 **B. Analysis**

9 **a. Article III Standing**

10 Amazon argues that Plaintiffs lack Article III standing because they fail to allege any
11 actual harm or threat of future injury. Dkt. #67 at 12. Amazon contends that Plaintiffs’ potential
12 harm is no more than speculative because Plaintiffs have not lost access to their Digital Content.
13 *Id.* at 12-14. Amazon further argues that Plaintiffs’ “overpayment” injury holds no water because
14 it “rests on the same threat of future unavailability” and is “conclusory.” *Id.* at 14-16.

15 The Court concludes that Plaintiffs have established standing. Plaintiffs have alleged an
16 injury in fact, *i.e.*, they overpaid for a purchase they otherwise would not have paid for because
17 they did not get the full value of their purchase, owning outright vs purchasing a limited license.
18 Plaintiffs allege this injury was caused by Amazon’s misrepresenting how consumers can “buy”
19 Digital Content from Amazon, satisfactorily tracing Plaintiffs’ alleged injuries to Amazon.
20 Finally, Plaintiffs’ economic injuries are likely to be cured by a favorable outcome in this case.
21 Drawing all reasonable inferences in Plaintiffs’ favor and accepting the allegations as true, the
22 Court finds that Plaintiffs have established standing and deny Amazon’s dismissal on these
23 grounds.

24 **b. Failure to State a Claim**

1 i. “Buy” vs “Limited License”

2 Amazon argues that its use of the word “buy” for Digital Content is not deceptive
3 “because no reasonable consumer would have thought that the Digital Content they purchased
4 was not subject to a license.” Dkt. #67 at 22. Quoting Webster’s Dictionary, Amazon asserts
5 that “buy” means “rights to the use or services of payment” rather than perpetual ownership, and
6 its disclosures properly warned Plaintiffs that they may lose access to purchased Digital Content.
7 *Id.* at 21-22. Plaintiffs disagree, arguing that “the ordinary consumer understands that when they
8 Buy something, they acquire *possession* and *ownership* of it.” Dkt. #69 at 17. Pointing to
9 Amazon’s use of the “Buy” button when purchasing tangible goods from Amazon as well,
10 Plaintiffs reason that customers “do not expect Amazon to return to their homes to repossess
11 items after delivery[,]” thus Amazon’s argument that a customer should expect this with the
12 purchase of digital content is unreasonable. *Id.* at 16.

13 In *Andino v. Apple, Inc.*, the U.S. District Court for the Eastern District of California held
14 that “buy” is commonly understood to mean “to acquire possession over something[,]” thus “[i]t
15 seems plausible, at least at the motion to dismiss stage, that reasonable consumers would expect
16 their access [to Digital Content] couldn’t be revoked.” 2021 WL 1549667, at *4 (E.D. Cal. Apr.
17 20, 2021) (plaintiff’s claims were brought pursuant to California’s CLRA, FAL, UCL, and
18 common law unjust enrichment). Furthermore, in *McTyere v. Apple, Inc.*, the U.S. District Court
19 for the Western District of New York also held that a reasonable consumer could be misled by
20 the word “buy” not meaning ownership or possession but actually meaning “right to the use of”
21 digital content. 663 F. Supp. 3d 247, 254 (W.D.N.Y. 2023) (plaintiffs’ claims were brought
22 pursuant to New York’s GBL). “Drawing every inference in the plaintiffs’ favor at this stage”
23 on a Motion to Dismiss, the court concluded that plaintiffs sufficiently alleged that use of the
24 word “buy” for digital content was misleading “[b]ecause reasonable consumers might have

1 believed that their purchasing digital content . . . gave them the ability to use that digital content
2 indefinitely—not merely to use it for some limited time[.]” *Id.* at 255 (citing *Lisa Coppola, LLC*
3 *v. Higbee*, 2020 WL 1154749, at *8 (W.D.N.Y. Mar. 10, 2020) (“In most cases, whether a
4 representation would mislead a reasonable consumer is a question of fact.”)).

5 Like the courts mentioned above, this Court concludes that Plaintiffs have sufficiently
6 alleged that the word “buy” regarding Digital Content could be materially misleading to the
7 reasonable consumer. Suppose, for example, a consumer “bought” *Barbie* and *Oppenheimer* for
8 \$19.99 each from Amazon, anticipating having a “Barbenheimer” weekend event. But after
9 watching *Barbie*, she finds *Oppenheimer* now unavailable because Amazon suddenly lost its
10 license to the film. Not sublime! Understandably, this consumer “might feel a little miffed [or
11 go nuclear] if she were told that she received exactly what she paid for.” *McTyere*, 663 F. Supp.
12 3d at 254. Thus, drawing all inferences in Plaintiffs’ favor at this stage, the Court concludes that
13 reasonable consumers might be misled by the term “buy,” and Plaintiffs have sufficiently alleged
14 that Amazon’s terms were materially misleading.

15 ii. Terms

16 Amazon further argues that Plaintiffs agreed to the terms for purchasing Digital Content,
17 thus Plaintiffs contradict their assertion that the terms were deceptive. Dkt. #67 at 17-20.
18 Plaintiffs contend that Amazon’s disclosures are hidden within the Terms of Use and are not
19 sufficiently clear to define “buy” for a reasonable consumer. Dkt. #69 at 13-16.

20 Courts have held that plaintiffs affirmatively consent to all terms when they click a yellow
21 “Buy” or similar button and enter billing information and the full terms of use are available via
22 a hyperlink in close proximity to the “Buy” button. *Viveros v. Audible, Inc.*, 2023 WL 6960281
23 at *7-8 (W.D. Wn. 2023); *Hall v. Time*, 2020 WL 2303088 at *4 (C.D. Cal. Mar. 13, 2020); *Hall*
24 *v. Time*, 857 F. App’x 385, 386 (9th Cir. 2021). However, this Court has found that, though

1 consumers affirmatively consent through the above actions, certain terms and policies could fail
2 to meet statutory standards of clearness and effectiveness. See *Daly, et al. v. Amazon, Inc., et*
3 *al.*, 2024 WL 775901 at *7 (W.D. Wash. Feb. 26, 2024).

4 Accordingly, giving Plaintiffs the benefit of every inference at this stage, the Court finds
5 that it is not clear that Amazon’s Terms and Conditions sufficiently informed Plaintiffs that their
6 digital content was not, in fact, “bought” in the usual sense of the term but was “limitedly
7 licensed” and subject to cancellation. Plaintiffs have raised a factual dispute regarding this
8 disclosure that the Court declines to determine at this stage in the proceedings.

9 **iii. Overpayment**

10 Finally, Amazon argues that Plaintiffs fail to bring an unjust enrichment claim because
11 “they do not allege any facts supporting the allegedly diminished value of the Purchased Digital
12 Content or what they may have overpaid.” Dkt. #67 at 24. Furthermore, Amazon reasons that
13 “because there is a contract between Plaintiffs and Amazon, Plaintiffs cannot proceed with any
14 unjust enrichment claim.” *Id.*

15 In similar cases dealing with misrepresentations, courts have upheld claims for unjust
16 enrichment under California and New York law. See, e.g., *Mctyere*, 663 F. Supp. 3d 247
17 (W.D.N.Y. 2023); *Morrell v. WW International, Inc.*, 555 F. Supp. 3d 173 (S.D.N.Y. 2021);
18 *Dutcher v. Google LLC*, 2021 WL 628347 (Cal. Super. Jan. 27, 2021). However, Washington
19 law is clear that “[u]njust enrichment is the method of recovery for the value of the benefit
20 absent any contractual relationship[.]” *Young v. Young*, 164 Wn.2d 477, 484, 191 P.3d 1258,
21 1262 (2008) (emphasis added); see *Chandler v. Wash. Toll Bridge Auth.*, 17 Wn.2d 591, 604,
22 137 P.2d 97 (Wash. 1943) (“A party to a valid express contract is bound by the provisions . . .
23 and may not disregard the same and bring an action on an implied contract relating to the same
24 matter[.]”); see also *Pengbao Xia v. Feast Buffet, Inc.*, 387 F. Supp. 3d 1181, 1191 (W.D. Wash.

1 2019) (“Where a valid contract governs the rights and obligations of the parties, unjust
2 enrichment does not apply.”). As stated above, Plaintiffs affirmatively consented to the contracts
3 with Amazon for the purchases of Digital Content. The question at large is if the terms of said
4 contracts were ineffectively clear or misleading, not if a contractual relationship exists.

5 Plaintiffs argue that this Court recognizes a theory of unjust enrichment for overpaying
6 for alleged defective or not-as-advertised products when plaintiffs “allege the defendant
7 effectively tricked them into buying something.” Dkt. #69 at 18. The cases Plaintiffs cite,
8 however, are distinguishable from the instant case. In *Keithly v. Intelius, Inc.*, this Court allowed
9 an unjust enrichment claim to proceed past the pleading stage when consumers were
10 unknowingly and confusingly roped into a subscription service from a third party when signing
11 up for a different service with a different party. 764 F. Supp. 2d 1257 (W.D. Wash. 2011). This
12 is different from Plaintiffs’ claims alleging that they did knowingly buy the Digital Content from
13 Amazon but did not receive the full benefit of what they paid for. Plaintiffs also point to
14 *Cousineau v. Microsoft Corp.*, but that case is also distinguishable because there, the plaintiff
15 alleged that her location data was being collected and shared even though she expressly denied
16 her information being transmitted, where as here, Plaintiffs consented to the purchase of Digital
17 Content. 992 F. Supp. 2d 1116 (W.D. Wash. 2012). Plaintiffs do not allege that they were
18 tricked into purchasing Digital Content but that Amazon was misleading as to what buying the
19 Digital Content actually meant. The Court concludes that a contractual relationship exists
20 between Plaintiffs and Amazon, thus Plaintiffs unjust enrichment claims under Washington law
21 are dismissed.

22 IV. CONCLUSION

23 Having reviewed the relevant briefing and the remainder of the record, the Court hereby
24 finds and ORDERS that Defendant Amazon’s Motion to Dismiss, Dkt. #67, is GRANTED IN

1 PART and DENIED IN PART. Plaintiffs' unjust enrichment claims under Washington law are
2 DISMISSED. Defendant Amazon's Motion is DENIED as to all other claims. The parties are
3 to promptly propose a class certification briefing schedule.

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5 DATED this 15th day of March, 2024.

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8 RICARDO S. MARTINEZ
9 UNITED STATES DISTRICT JUDGE
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