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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEE FITZGERALD, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

THE SHADE STORE, LLC,

Defendant.

Case No. C23-1435RSM

ORDER DENYING MOTION TO
DISMISS

I. INTRODUCTION

This matter comes before the Court on Defendant The Shade Store, LLC’s Motion to Dismiss, Dkt. #30. The Shade Store argues that Plaintiff Lee Fitzgerald’s claims should be dismissed for failing to adequately allege damages and for other certain reasons, and that Plaintiff’s nationwide class allegations should be dismissed for lack of standing. Plaintiff has filed an opposition, Dkt. #37. The Court has determined that it can rule without the need of oral argument. For the reasons stated below, the Court DENIES The Shade Store’s Motion.

II. BACKGROUND

For purposes of this 12(b)(6) Motion, the Court will accept all facts in the First Amended Complaint, Dkt. #29, as true. The Court will briefly summarize the relevant facts.

Defendant The Shade Store is a Delaware company that makes, sells, and markets blinds, shades, and other window covering products through its website, www.theshadestore.com.

1 On February 27, 2022, Plaintiff Fitzgerald purchased a set of cellular shades from
2 Defendant’s website. She made this purchase while living in Seattle, Washington.

3 This purchase occurred during an advertised sale. On February 18, 2022, Defendant
4 stated on its website that a “20% OFF ALL ORDERS” sale was running through the date of
5 Ms. Fitzgerald’s purchase until “3/2.” Defendant represented that the list price of the Product
6 that Ms. Fitzgerald purchased was \$640.00 and that Ms. Fitzgerald was receiving a discount of
7 \$128.00. Defendant confirmed this in an email it sent to Ms. Fitzgerald after she made her
8 purchase. Ms. Fitzgerald includes screenshots of all of this in her Complaint.
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10 Ms. Fitzgerald alleges she read and relied on the above representations from the website
11 and email confirmation, specifically that her shades were being offered at a discount for a
12 limited time and had a higher regular price, and that she would be receiving a price reduction.
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14 Plaintiff alleges that The Shade Store “creates an illusion” that customers are receiving
15 a limited-time discount “by advertising fake limited-time sales, fake regular prices, and fake
16 discounts based on the fake regular prices.” Dkt. #29 at 8. These discounts are advertised as
17 available for a limited time, however immediately after each sale ends Defendant generates
18 another similar or identical discount, with a new expiration date. Examples screenshots
19 showing a 20% off sale continuing after the end date are included in the Amended Complaint.
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21 *See id.* at 17. According to the allegations, the shades are never sold at non-sale prices.

22 Plaintiff alleges that the above is deceptive and unfair and induced her to make a
23 purchase that she would not otherwise have made. She alleges that she and others in the
24 proposed class “received Products with market values lower than the promised market values.”
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26 *Id.* at ¶ 84.
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1 The Amended Complaint brings claims for: violation of the Washington Consumer
2 Protection Act (“CPA”); breach of contract; breach of express warranty; quasi-contract/unjust
3 enrichment; and intentional misrepresentation. Plaintiff seeks actual and punitive damages.

4 III. DISCUSSION

5 A. Legal Standard under Rule 12(b)(6)

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

18 B. Analysis

19 As an initial matter, the Court notes that the legal theories at issue here are familiar to
20 the Court and to this Defendant in particular. The Shade Store has been sued in California by a
21 different consumer for essentially the same conduct at issue. That lawsuit asserts materially
22 identical claims both in common law and under a similar state statute, Defendant moved to
23 dismiss, and the Court denied that Motion in part. *See Crowder v. Shade Store, LLC*, 2024 U.S.
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1 Dist. LEXIS 41896 (N.D. Cal. Feb. 12, 2024). Plaintiffs in that case amended the complaint,
2 Defendant again moved to dismiss, and the Court denied the motion to dismiss the state
3 statutory claims, intentional misrepresentation, and punitive damages claims, but dismissed the
4 quasi-contract/unjust enrichment and negligent misrepresentation claims. *Crowder v. The*
5 *Shade Store, LLC*, Case No. 23-cv-02331-NC, Dkt. #69 (N.D. Cal. June 26, 2024).

7 This type of “fake discount” case has also been tried here as a violation of
8 Washington’s CPA. “Inducing a plaintiff into spending money she otherwise would not have
9 spent, based on a misrepresentation, is clearly a cognizable injury” under the CPA. *Nemykina*
10 *v. Old Navy, LLC*, 461 F. Supp. 3d 1054, 1061 (W.D. Wash. 2020).

11 Considering the above, the Court finds that Plaintiff’s claims are generally plausible
12 where sufficient facts have been alleged. The Court will go through the facts of each claim
13 below.

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15 **1. CPA Claim**

16 The Shade Store first moves to dismiss Plaintiff’s CPA claim for failure to adequately
17 allege a cognizable injury or that it engaged in an unfair act or deceptive practice. A CPA
18 claim requires a plaintiff to allege “(1) ... an unfair or deceptive act or practice, (2) in trade or
19 commerce, (3) that impacts the public interest, (4) resulting in injury to business or property,
20 and (5) a causal link between the unfair or deceptive practice and the injury suffered.” RCW
21 19.86.020; *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784-
22 85, 719 P.2d 531 (1986).

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25 The Amended Complaint is fairly detailed and specific as to the circumstances of
26 Plaintiff’s shades purchase. Plaintiff alleges that “Defendant’s advertisements harm consumers
27 by inducing them to make purchases they otherwise would not have made, based on false
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1 information,” Dkt. #29 at ¶ 49, and that she herself “would not have made the purchase if she
2 had known that the Product was not discounted as advertised, and that she was not receiving
3 the advertised discount,” *id.* at ¶ 54. She also alleges that “due to Defendant’s
4 misrepresentations, [she] and the class paid more for the Products they bought than they
5 otherwise would have.” *Id.* at ¶ 49. Plaintiff includes detailed factual allegations explaining
6 why this is. *See id.* (“Defendant’s advertisements artificially increase consumer demand for
7 Defendant’s Products. This puts upward pressure on the prices that Defendant can charge for its
8 Products. As a result, Defendant can charge a price premium for its Products, that it would not
9 be able to charge absent the misrepresentations”). This is all that is required to adequately
10 plead the injury element of a CPA claim. The Court further finds that the Amended Complaint
11 adequately alleges an unfair act or deceptive practice. The Amended Complaint identifies with
12 particularity the advertisements Plaintiff claims are deceptive, with screenshots. It explains in
13 detail why and how the advertisements are false. Defendant should have no trouble responding
14 to these allegations. Further arguments about the sufficiency of the evidence can be dealt with
15 at a later stage in this litigation.

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19 Defendant argues that the CPA claim should be dismissed under the reasoning in
20 *Kinney v. Amazon.com, Inc.*, 2024 U.S. Dist. LEXIS 35162 (N.D. Ill. Feb. 29, 2024), and
21 *Montes v. Sparc Grp. LLC*, 2023 U.S. Dist. LEXIS 108379 (E.D. Wash. June 22, 2023).
22 Plaintiff explains in her Response brief how the pleading in those cases falls short of the
23 pleading in the instant case. *See* Dkt. #37 at 10–11. Despite the outcomes in those cases, the
24 pleading here states a plausible claim.
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1 further finds that she has adequately alleged how Defendant has received an unjust benefit
2 given the above. The Court sees no reason to dismiss this claim at this stage.

3 **6. Punitive Damages**

4 Plaintiff states that the only “punitive” damages she is seeking are the treble damages
5 expressly authorized by the CPA and characterizes Defendant’s motion to dismiss this claim as
6 “semantic.” Dkt. #37 at 19. On Reply, Defendant points out that Plaintiff seeks “[d]amages,
7 treble damages, and punitive damages where applicable.” Dkt. #38 at 15 (citing Dkt. #29 at ¶
8 118). The Court finds that the parties essentially agree on what damages are available. No
9 further ruling is needed from the Court at this time, however this may be the subject of a
10 motion in limine later.
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12 **7. Lack of Standing for Nationwide Class Allegations**

13 Defendant argues that Plaintiff does not have standing to assert breach of contract,
14 breach of express warranty and quasi-contract/unjust enrichment on behalf of a nationwide
15 class because different states have different laws as to those claims. Dkt. #30 at 21–22.
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17 The parties disagree about whether this issue needs to be addressed now or at the class
18 certification stage, each citing cases to support their positions. *See id.* (citing *Brenner v. Vizio,*
19 *Inc.*, 2018 WL 2229274, at *2 (W.D. Wash. May 16, 2018) and *Hamilton v. NuWest Grp.*
20 *Holdings LLC*, 2023 WL 130485, at *3 (W.D. Wash. Jan. 9, 2023)); Dkt. #37 at 24 (citing
21 *Melendres v. Arpaio*, 784 F.3d 1254 (9th Cir. 2015); *Sultanis v. Champion Petfoods United*
22 *States Inc.*, 2021 U.S. Dist. LEXIS 145293, at *20-21 (N.D. Cal. Aug. 3, 2021); *Patterson v.*
23 *RW Direct, Inc.*, 2018 U.S. Dist. LEXIS 198887, at *2 (N.D. Cal. Nov. 21, 2018); and *Healy v.*
24 *Milliman, Inc.*, 2022 U.S. Dist. LEXIS 65701, at *6 (W.D. Wash. Apr. 8, 2022)). Given the
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1 facts and legal claims of this case, the Court finds that Defendants' standing arguments are
2 better suited for determination at the class certification stage and will defer a ruling at this time.

3 **IV. CONCLUSION**

4 Having reviewed the relevant pleadings and the remainder of the record, the Court
5 hereby finds and ORDERS that Defendant The Shade Store's Motion to Dismiss, Dkt. #30, is
6 DENIED.
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8 DATED this 25th day of July, 2024.
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11 RICARDO S. MARTINEZ
12 UNITED STATES DISTRICT JUDGE
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