UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**CV 15-4007 DMG (MRWx)**	Date	November 2, 2015
Title	***Lianna Kabbash, et al. v. The Jewelry Channel, Inc. USA***	Page	1 of 11

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN	NOT REPORTED
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s) None Present	Attorneys Present for Defendant(s) None Present

Proceedings: IN CHAMBERS—ORDER RE: MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6) AND FED. R. CIV. P. 9(B) [23]

I. PROCEDURAL BACKGROUND

On May 28, 2015, Plaintiffs Lianna Kabbash ("Kabbash") and Angela Hovind ("Hovind") filed a Complaint on behalf of themselves and all others similarly situated against Defendant The Jewelry Channel, Inc. USA d/b/a Liquidation Channel ("LC") alleging: (1) negligent misrepresentation (nationwide class); (2) intentional misrepresentation (nationwide class); (3) unjust enrichment; (4) violation of California's False Advertising Law ("FAL") (Cal. Bus. & Prof. Code § 17500 *et seq.*); (5) violation of the California Consumer Legal Remedies Act ("CLRA") (Cal. Civ. Code § 1750 *et seq.*); (6) violation of California's Unfair Competition law ("UCL") (Cal. Bus. & Prof. Code § 17200 *et seq.*); (7) negligent misrepresentation (California class); (8) intentional misrepresentation (California class); (9) violation of Oklahoma's Consumer Protection Act ("OCPA") (15 Okl. St. § 751 *et seq.*); (10) negligent misrepresentation (Oklahoma class); and (11) intentional misrepresentation (Oklahoma class). [Doc. # 2.] On July 24, 2015, Defendant LC filed the instant motion to dismiss. [Doc. # 23.] On August 21, 2015, Plaintiffs filed an opposition. [Doc. # 31.] On September 4, 2015, Defendant filed a reply. [Doc. # 33.] A hearing on the matter was set for September 18, 2015. The Court took the matter under submission as it deemed the motion appropriate for decision without oral argument.

Having carefully reviewed the parties' written submissions, the Court **DENIES** Defendant's motion to dismiss.

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II.
FACTUAL BACKGROUND[1]

Defendant LC operates a web-based home shopping network that sells jewelry, gemstones, and related items on the web site, http://www.liquidationchannel.com. Complaint ¶ 7. It also operates a television-based home shopping network called The Liquidation Channel selling the same. *Id.* On the website, all of Defendant's products are advertised according to a standard formula. *Id.* ¶ 15. All jewelry items are displayed with photographs, general descriptions, an "estimated retail value" ("ERV"), an "LC Price" and a bolded black or red box describing the percentage savings. *Id.* ¶ 16. The ERV is often over 80 percent higher than the LC Price. *Id.* ¶ 17. When a customer clicks on a product, the same information – the ERV, LC Price, and percentage saved – appears. *Id.* When a customer places an item in his or her shopping cart and checks out, the "Order Confirmation" screen lists the total cost and a notice in bold displaying how much money the customer saved (e.g., "You saved **$130.00** today!"). *Id.* ¶ 18.

Defendant's television programming focuses on a single item of jewelry or other product. *Id.* ¶ 21. The Liquidation Channel airs 24 hours a day, 7 days a week and reaches 120 million households in the United States, Puerto Rico, and parts of Canada. *Id.* ¶ 12. The television programming similarly displays the ERV, the LC price, and the percentage saved. *Id.* During the program, the host will conduct a "drop auction," where the bidding for the product will begin at the ERV and then the price will steadily decline, encouraging customers to buy the product at an increasingly discounted price. *Id.* ¶ 22.

Between November 21, 2014 and November 30, 2014, Plaintiff Kabbash, a California resident, purchased approximately 15 items from Defendant at a total sales price of approximately $522.40. *Id.* ¶ 5. Between March 4, 2014 and January 25, 2015, Plaintiff Hovind, an Oklahoma resident, purchased approximately 171 items from Defendant at a total sales price of approximately $3,162.27. *Id.* ¶ 6.

Plaintiffs now contend that the discounts as advertised on Defendant's web site and television channel were illusory because the actual market value of the items they purchased was considerably less than the ERV. *Id.* ¶ 5. Plaintiffs allege that the ERV bears no relation to the prevailing market value of the products nor do they accurately represent the price at which the

[1] The Court accepts all material factual allegations in the complaint as true solely for purposes of deciding the motion to dismiss.

product is sold at any market location for any period of time. *Id.* ¶ 24. Plaintiffs also contend that the discounts on the products are not discounted at all, but rather are approximately equal to the true value of the items and the ERVs are inflated. *Id.* ¶ 26. Finally, Plaintiffs allege that this pricing scheme was used to induce Plaintiffs into making their purchases. *Id.* ¶¶ 5-6.

III.
LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a defendant may seek dismissal of a complaint for failure to state a claim upon which relief can be granted. A court may grant such a dismissal only where the plaintiff fails to present a cognizable legal theory or fails to allege sufficient facts to support a cognizable legal theory. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). On a motion to dismiss, a court can consider documents attached to the complaint, documents incorporated by reference in a complaint, or documents subject to judicial notice. *U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

To survive a Rule 12(b)(6) motion, a complaint must articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974, 167 L. Ed. 2d 929 (2007). Although a pleading need not contain "detailed factual allegations," it must contain "more than labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Id.* at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L.Ed. 2d 868 (2009). "The plausibility standard is not akin to a 'probability requirement' but it asks for more than a sheer possibility that a defendant has acted unlawfully" or "facts that are 'merely consistent with' a defendant's liability." *Id.*

In evaluating the sufficiency of a complaint, courts must accept all factual allegations as true. *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 555, 127 S. Ct. at 1964). Legal conclusions, in contrast, are not entitled to the assumption of truth. *Id.*

Rule 9(b) imposes a heightened pleading standard on a party alleging fraud. *See* Fed. R. Civ. P. 9(b) (requiring party to "state with particularity the circumstances constituting fraud or mistake"). Rule 9(b) requires that averments of fraud be specific enough to give the opposing party notice of the particular misconduct in order to allow the opposing party to defend against the charge and not just deny that it has done anything wrong. *See Vess v. CIBA–Geigy Corp.*

USA, 317 F.3d 1097, 1106 (9th Cir. 2003) ("Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged.") (citations omitted).

IV.
DISCUSSION

A. Rule 12(b)(6)

i. Non-actionable Puffery

Defendant LC makes the same overarching argument as to Plaintiffs' UCL, FAL, CLRA (Claims 4, 5, and 6), and common law misrepresentation claims (Claims 1, 2, 7, 8, 10, and 11) – the ERVs and ERV-based discounts were opinions, not statements of fact, and therefore are not actionable. Specifically, LC argues that the ERVs and ERV-based discounts were "equivalent to puffery." (Mot. at 8.)

"[T]he determination of whether an alleged misrepresentation is a 'statement of fact' or is instead 'mere puffery' is a legal question that may be resolved on a Rule 12(b)(6) motion. *Newcal Industries, Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1053 (9th Cir. 2008) (quoting *Cook, Perkiss, & Liehe v. Northern California Collection Service, Inc.*, 911 F. 2d 242, 245 (9th Cir. 1990)). As a result, the Court finds it appropriate to resolve this issue on a motion to dismiss.

"The common theme that seems to run through cases considering puffery in a variety of contexts is that consumer reliance will be induced by specific rather than general assertions." *Cook*, 911 F. 2d at 246. "Thus, a statement that is quantifiable, that makes a claim as to the 'specific or absolute characteristics of a product,' may be an actionable statement of fact while a general, subjective claim about a product is non-actionable puffery." *Newcal Indus., Inc.*, 513 F.3d at 1053 (quoting *Cook*, 911 F.2d at 245). [2]

The UCL, FAL, and CLRA are governed by the "reasonable consumer" test – i.e., whether "members of the public are likely to be deceived" by the representation. *Williams v.*

[2] In *Cook*, the Ninth Circuit provided an example that highlighted the difference between puffery and quantifiable statements. While an advertiser's statement that its lamps were "far brighter than any lamp ever before offered for home movies" was puffery, the statement that the lamps had "35,000 candle power and 10–hour life" was numerically quantifiable, and thus there was potential for a Lanham Act claim. 911 F.2d at 246.

Gerber Products Co., 552 F.3d 934, 938 (9th Cir. 2008); *see also Consumer Advocates v. Echostar Satellite Corp.*, 113 Cal. App. 4th 1351, 1360 (2003).

Here, the phrase "estimated retail value" and the final display of cost savings upon check out could induce reasonable consumer reliance because they are quantifiable statements. The phrase "estimated retail value" can reasonably be read to imply that the figure is at least measurably based on a list retail price that is presumed to be suggested by the manufacturer and capable of verification. This is further confirmed by the fact that when the customer views the "Order Confirmation," the customer will see a notice upon checkout that he or she saved a quantifiable amount of money. *Complaint* ¶ 18 ("For instance, a customer who purchased the earrings and necklace . . . would receive a notice in her order summary, exclaiming, 'You saved **$130.00** today!' with the dollar figure in bold type . . . .").

LC argues that the ERVs and discounts based on the ERVs are "opinions (estimates) of opinions (value)" and cites to cases where courts hold "estimates" and representations of "value" to be non-actionable opinions.[3] (Mot. at 9.) This argument falls short, as it neglects to examine the meaning of the word "retail" which ultimately makes the representation quantifiable. While "estimates" and "value" taken as individual terms are general assertions that may amount to puffery, the phrase "estimated retail value" is anchored in fact by a quantifiable retail price.

Indeed, in the Federal Trade Commission context, several courts have found that "[m]isrepresentation as to the retail value of merchandise by means of an attached, fictitious price and deception as to savings afforded by the purchase of the product at a substantially lower price than that indicated thereon constitute unfair methods of competition." *Baltimore Luggage Co. v. F.T.C.*, 296 F.2d 608, 610 (4th Cir. 1961); *see also Niresk Indus., Inc. v. F.T.C.*, 278 F.2d 337, 340 (7th Cir. 1960), *cert. denied*, 364 U.S. 883, 81 S. Ct. 173, 5 L. Ed. 2d 104; *Harsam Distributors, Inc. v. F.T.C.*, 263 F.2d 396, 397 (2d Cir. 1959). In the context of securities litigation, "cost estimates" are similarly considered "too specific to be considered mere puffery." *In re NovaGold Res. Inc. Sec. Litig.*, 629 F. Supp. 2d 272, 301-02 (S.D.N.Y. 2009).

[3] Defendant relies on *In re Century 21-RE/MAX Real Estate Advertising Claims Litigation*, where the court held that a bar graph claiming RE/MAX conducted 725,000 "'Estimated' transactions" in 1992 was non-actionable puffery. 882 F.Supp. 915, 927 (C.D. Cal. 1994). In so holding, the court noted that "[w]hen one refers to a number as an estimate, that person is telling the audience that the number does not represent a specific factual assertion, but rather an opinion or guess incapable of verification." *Id.* This case is distinguishable. *In re Century 21* involved an estimate of a number of undefined "transactions," which, due to the vagueness of the term "transactions" were not verifiable. Here, to the contrary, a product's "retail value," estimated or not, is capable of verification.

Defendant also argues that Plaintiffs fail to allege the element of justifiable reliance in their CLRA, FAL, UCL, and misrepresentation claims because consumers cannot justifiably rely on opinions. (Mot. at 14.) As explained above, Defendant's representations were of quantifiable retail prices and cost savings to the consumer, and therefore they are not opinions but statements of fact.[4]

Thus, the Court concludes that the phrase "estimated retail value" and the final display of cost savings upon check out do not constitute non-actionable puffery.

ii. Oklahoma Consumer Protection Act

Plaintiffs have alleged a violation of the Oklahoma Consumer Protection Act Claim (Claim 9). Specifically, Plaintiff Hovind contends that "[b]y misrepresenting the ERV of its items, and thus any discounts derived therefrom," Defendant committed "deceptive trade practices" and/or "unfair trade practices" as defined in the OCPA. *Complaint* ¶ 116; Okla. Stat. tit. 15, §§ 752.13-752.14.

In order to establish a consumer's private action under the OCPA, Plaintiffs must allege: "(1) that the defendant engaged in an unlawful practice as defined at 15 O.S. (1991), § 753; (2) that the challenged practice occurred in the course of defendant's business; (3) that the plaintiff, as a consumer, suffered an injury in fact; and (4) that the challenged practice caused the plaintiff's injury." *Patterson v. Beall*, 19 P.3d 839, 846 (2000).

Although not specifically cited in the Complaint, Plaintiff Hovind has sufficiently alleged that LC committed "deceptive trade practices" and/or "unfair trade practices," which fall under the catchall provision of the OCPA, Okla. Stat. tit. 15, § 753(20). With regard to the remaining elements, Hovind alleged that LC's use of the ERVs occurred in the course of running its business (*Complaint* ¶¶ 14-26), Plaintiff was harmed (*id.* ¶ 117), and the harm was caused by LC's misleading ERVs (*id.*). Accordingly, Plaintiff Hovind has adequately alleged her claim for violation of the OCPA.

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[4] Moreover, as to the California claims, California courts have held that whether or not reliance was justified is a question of fact for the fact finder to decide. *See Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 231 (2013) (citing *Alliance Mortgage Co. v. Rothwell*, 10 Cal.4th 1226, 1239 (1995) ("Except in the rare case where the undisputed facts leave no room for a reasonable difference of opinion, the question of whether a plaintiff's reliance is reasonable is a question of fact.")).

iii. Unjust Enrichment

As for Plaintiffs' unjust enrichment claim (Claim 3), LC contends that in California there is no cause of action for "unjust enrichment" and it should accordingly be dismissed. Plaintiffs argue that recent Ninth Circuit case law has held that a claim for "unjust enrichment" should be construed as a "quasi-contract claim seeking restitution." Plaintiffs are correct.

In *Astiana v. Hain Celestial Grp., Inc.*, the Ninth Circuit held that unjust enrichment and restitution "describe the theory underlying a claim that a defendant has been unjustly conferred a benefit 'through mistake, fraud, coercion, or request.'" 783 F.3d 753, 762 (9th Cir. 2015). "The return of the benefit that was unjustly given is what is 'typically sought' in a quasi-contract cause of action." *Id.* (citing 55 Cal. Jur. 3d Restitution § 2). Here, similar to the plaintiff in *Astiana*, Plaintiffs have adequately alleged a quasi-contract cause of action by alleging that Defendant was "unjustly enriched" by its "deceptive, misleading, and unlawful advertising" such that it "would be inequitable for [Defendant] to retain the profits, benefits, and other compensation it obtained." *Complaint* ¶¶ 68-69. Defendant's argument that the unjust enrichment claim is superfluous because restitution is available under Plaintiffs' CLRA and UCL claims is without merit. "A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones." Fed. R. Civ. P. 8(d)(2); *Astiana*, 783 F.3d at 762-63.

In sum, the Court concludes that the phrase "estimated retail value" and the final display of cost savings upon check out are not non-actionable puffery, and Plaintiffs have adequately stated a claim as to the remaining claims for relief. The Court therefore **DENIES** Defendant's motion to dismiss under Rule 12(b)(6).

B. Rule 9(b)

Defendant argues that "all of Plaintiffs' claims sound in fraud" and that Plaintiffs have not pled their claims with the requisite particularity. (Mot. at 19.) Plaintiffs respond that their claims for negligent misrepresentation are not subject to Rule 9(b) because they do not constitute allegations of fraud. (Opp. at 14.) Nonetheless, even in cases "where fraud is not a necessary element of a claim, a plaintiff may choose nonetheless to allege in the complaint that the defendant has engaged in a unified course of fraudulent conduct and rely entirely on that course of conduct as the basis of a claim." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103 (9th Cir. 2003). When that is the case, the claim is said to "sound in fraud," and "the pleading of that claim as a whole must satisfy the particularity requirement of Rule 9(b)." *Id.* at 1103-04.

Here, Plaintiffs have alleged a "unified course of fraudulent conduct" – that Defendant used inflated ERVs to deceive consumers into thinking they were getting huge discounts and to induce them to buy the products. Plaintiffs' negligent misrepresentation claims arise out of the same factual allegations of this unified course of conduct as alleged in the fraud claims. Therefore, Plaintiffs' negligent misrepresentation claims are subject to Rule 9(b)'s heightened pleading standard.[5]

Defendant contends that Plaintiffs have failed to plead the "who, what, when, where, and how" of the misconduct charged in all of the claims. Specifically, Defendant argues that Plaintiffs failed to allege all 186 products purchased, the fraudulent misrepresentations, how the ERVs were fraudulent, where the fraud occurred, and when they viewed and relied on the fraud. (Mot. at 19.) Plaintiffs contend that they have sufficiently alleged that Defendant employed a "false price advertising scheme" across all of its product lines. (Opp. at 15.)

Plaintiffs' specific claims are that Defendant's ERV pricing is "fabricated and inflated and do not represent an accurate retail price." *Complaint* ¶ 1. Plaintiffs have further alleged that the ERV is displayed on Defendant's web site or television channel with the retail price struck through and that the amount "saved" is highlighted by the dollars saved and percentage of cost savings. *Id.* ¶ 3. This pricing scheme is meant to induce customers to buy the products and did allegedly induce Plaintiffs Kabbash and Hovind to make their purchases. *Id.* ¶¶ 5-6. The events at issue took place between March 2014 and January 2015. *Id.* These factual assertions are more than conclusory allegations. The purpose of the "heightened pleading" in Rule 9(b) is to put Defendants on "notice of the particular misconduct." *Vess*, 317 F.3d at 1106. The Complaint does so. Moreover, it is not necessary, as Defendant contends, for Plaintiffs to describe all 186 products at issue in order to meet Rule 9(b)'s heightened pleading standards. *See, e.g., Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997) (where complaint asserting claims of improper revenue recognition identified (i) some of the specific customers defrauded, (ii) the type of conduct at issue, (iii) the general time frame in which the conduct occurred, and (iv) why the conduct was fraudulent, it was "not fatal to the complaint that it [did] not describe in detail a single specific transaction . . . by customer, amount, and precise method.").

[5] As Plaintiffs concede, there is divided authority in the Central District as to whether negligent misrepresentation is subject to 9(b)'s heightened pleading requirement. *Compare Hernandez v. Specialized Loan Servicing, LLC*, No. CV 14-9404-GW (JEMx), 2015 WL 1401784, at *4 (C.D. Cal. Mar. 23, 2015) *with Sater v. Chrysler Grp. LLC*, No. EDCV 14-00700-VAP (DTBx), 2015 WL 736273, at *11 (C.D. Cal. Feb. 20, 2015). In *Sater*, although the court held that allegations of negligent misrepresentation are not subject to Rule 9(b)'s more exacting criteria, it recognized that courts that hold otherwise "do so because the negligent misrepresentation claims arose out of the same factual allegations as other claims for fraud." 2015 WL 736273, at *11-*12.

Defendant also contends that Plaintiffs have failed to plead the element of reasonable reliance with the requisite particularity. Plaintiffs have pled that they were induced to buy the products because of the deceptive ERVs. *Complaint* ¶¶ 5-6. Therefore, Plaintiffs have met Rule 9(b)'s heightened pleading requirements. The Court **DENIES** Defendant's motion to dismiss under Rule 9(b).

C. Plaintiffs Have Standing to Seek Injunctive Relief on Behalf of the Class

LC argues that Plaintiffs lack standing to bring claims for injunctive relief because future injury is unlikely. Specifically, LC contends that Plaintiffs have failed to allege that they are likely to purchase its products in the future. (Mot. at 24.)

To establish Article III standing, a plaintiff must demonstrate injury, causation, and redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). In order to assert claims on behalf of a class, Plaintiffs must be in danger of the kind of harm for which relief is sought. *Armstrong v. Davis*, 275 F.3d 849, 860 (9th Cir. 2001). If there is no reasonable belief that there will continue to be an immediate threat to the named plaintiffs, generally those plaintiffs lack standing for injunctive relief. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983).

While it is implausible to believe that Plaintiffs will continue to purchase products from Defendant so long as it continues the challenged conduct, to construe that as a lack of redressability here would render California consumer protection laws ineffectual. *Henderson v. Gruma Corp.*, CV 10-04173 AHM (AJWx), 2011 WL 1362188, at *7 (C.D. Cal. Apr. 11, 2011) (citing *Fortyune v. American Multi–Cinema, Inc.*, No. CV 10–5551, 2002 WL 32985838, at *7 (C.D. Cal. Oct. 22, 2002)); *see also Ries v. Arizona Beverages USA LLC*, 287 F.R.D. 523, 533 (N.D. Cal. 2012). The California Supreme Court has held that the purpose of these laws is "to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services." *See Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 344 (2011) (emphasis omitted). Due to the fact that the alleged false advertising plausibly poses an immediate threat to consumers who comprise the putative class, Plaintiffs may pursue injunctive relief on their behalf. *See Henderson*, 2011 WL 1362188, at *8.

As the court in *Henderson* aptly pointed out:

> If the Court were to construe Article III standing for FAL and UCL claims as narrowly as the Defendant advocates, federal courts would be precluded from

> enjoining false advertising under California consumer protection laws because a plaintiff who had been injured would always be deemed to avoid the cause of the injury thereafter ("once bitten, twice shy") and would never have Article III standing.

Henderson v. Gruma Corp., CV 10–04173 AHM (AJWx), 2011 WL 1362188 (C.D. Cal. Apr. 11, 2011).

This point rings especially true in class actions, in which plaintiffs seek "to represent broader interests than [their] own." *Hawkins v. Comparet–Cassani*, 251 F.3d 1230, 1237 (9th Cir. 2001). The very existence of class actions creates a certain "tension" with standing doctrine. *See Gratz v. Bollinger*, 539 U.S. 244, 263 n.15 (2003) (tension between adequacy of representation and standing); *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 987 (9th Cir. 2007) (tension between standing and mootness). The same type of tension exists in consumer class actions seeking prospective relief. While a consumer must have been injured to have standing to bring a claim under a consumer protection statute in the first instance, a lead plaintiff need not allege that he will willingly subject himself to future misconduct, or that he will be fooled by false advertising he now knows to be false, in order to seek injunctive relief on behalf of a class.

Because some members of the class do not have the same knowledge as Plaintiffs now do, there is a likelihood of repeat injury for the class as a whole, and on the basis of "class standing," the claims may proceed. The Second Circuit has addressed standing with respect to the differing posture of various class members, distilling several Supreme Court cases to find that:

> [i]n a putative class action, a plaintiff has class standing if he plausibly alleges (1) that he "personally has suffered some actual ... injury as a result of the putatively illegal conduct of the defendant," [*Blum v. Yaretsky*, 457 U.S. 991, 999, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982)] (quotation marks omitted), and (2) that such conduct implicates "the same set of concerns" as the conduct alleged to have caused injury to other members of the putative class by the same defendants, *Gratz*, 539 U.S. at 267, 123 S.Ct. 2411, 156 L.Ed.2d 257.

NECA–IBEW Health & Welfare Fund v. Goldman Sachs & Co., 693 F.3d 145, 162 (2d Cir. 2012), *cert. denied*, __ U.S. __, 133 S. Ct. 1624, 185 L. Ed. 2d 576 (2013). Here, Plaintiffs have clearly alleged an injury due to Defendant's claimed misrepresentations and it implicates the same concerns as those of putative class members who will be harmed by their lack of

knowledge of Defendant's misrepresentations. Because Plaintiffs have standing to assert their own claims, they may seek injunctive relief on behalf of the class.

For the foregoing reasons, the motion to dismiss for lack of standing is **DENIED**.

V.
CONCLUSION

In light of the foregoing, Defendant LC's motion to dismiss is **DENIED** in its entirety. Defendant shall file its Answer within 15 days from the date of this Order.

IT IS SO ORDERED.