The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

HADASSAH SHELLENBERGER, individually and on behalf of all others similarly situated,

Plaintiff,

v.

AIG WARRANTYGUARD, INC., and WHIRLPOOL CORPORATION,

Defendants.

No. 2:24-cv-00657-JLR

WHIRLPOOL CORPORATION'S MOTION TO DISMISS AMENDED CLASS ACTION COMPLAINT

NOTE ON MOTIONS CALENDAR: December 11, 2024

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INTRODUCTION

Plaintiff Hadassah Shellenberger's Amended Class Action Complaint, ("FAC," Dkt. #46), suffers from most of the same defects that resulted in the dismissal of her original Class Action Complaint, ("Original Complaint," Dkt. #1). Despite this Court's clear warning, she has once again made "strategic omission[s] of pertinent facts that may undermine her claims." (Order, Dkt. #45 at 27.) She still will not say when or how she received her Extended Service Plan ("ESP") contract, and she refuses to attach documents to the FAC that she references and relies upon. Even so, her strategic omissions do not save her claims. She admits the letter she allegedly relied on in purchasing her ESP stated that "[l]imitations and exclusions apply" and that she could "[s]ee the complete terms and conditions" of her service contract online. (*See* FAC ¶¶ 41, 48; FAC Exs. 4-6 at pp. 51, 56, 59.) She also admits her service contract ***is*** available online. (*See* FAC ¶ 67 n.3.) This Court's prior ruling thus precludes her claim for deceptive marketing under the Washington Consumer Protection Act ("WCPA"), RCW § 19.86, *et seq.*: "Defendants' marketing materials expressly directed Ms. Shellenberger to the complete terms and conditions of a valid contract that she could have reviewed before entering." (Order 19.) No allegations Plaintiff added to or omitted from the FAC can change this outcome.

Plaintiff's claims for breach of contract and breach of the implied duty of good faith and fair dealing are similarly doomed for reasons this Court explained. While Plaintiff has alleged some new details related to her alleged communications with Defendants' customer service representatives, the terms of her contract remain the same. Pursuant to those terms, Defendants could resolve her service claims with an exchange, a buyout, or a repair. (FAC Ex. 8 §§ 1, 10, 12, 20.) Also per the contract, a buyout fulfilled Defendants' obligations, (*id.* § 20), and Defendants cannot be held liable for any delay in performance, (*id.* § 4). Put simply, as this

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Court has already held, Defendants did not breach the contract or any implied duty by buying out Plaintiff's dishwasher five months after she first submitted a service claim. (Order 22-26.)[1]

FACTUAL BACKGROUND

I. THE PLAN PURCHASE

Plaintiff purchased a KitchenAid dishwasher in or around April 2020 from Best Buy for $1,084.99. (FAC ¶ 38.) She purchased a Geek Squad Protection Plan ("GSP Plan"), which Plaintiff "accurate[ly]" understood as offering "to pay for all necessary repairs she would need during her plan term in the event of an appliance malfunction that was covered under her plan." (*Id.* ¶¶ 38, 39.) As she did in her Original Complaint, Plaintiff again fails to attach a copy of her GSP Plan to the FAC.

Plaintiff alleges that "[o]n one or more occasions during April and May 2020," she "received marketing communications from Defendants." (*Id.* ¶ 40.) One of these "marketing communications" was a letter that allegedly included representations about the "benefits" provided by ESPs. (*Id.* ¶¶ 40-42.) Plaintiff still does not attach the letter or reproduce any portion of it, though she once more attaches other marketing letters she received in subsequent years, (FAC Exs. 4-6 at pp. 50-60), and alleges those letters describe the ESP's benefits "using identical language," (FAC ¶ 41).

Plaintiff alleges the letter described the ESPs as "emphas[izing] KitchenAid's affiliation with the plan . . . through its prominent display of KitchenAid's (but not AIGWG's) branding and trademarks,'" "offering repair or replacement benefits for covered malfunctions at no out-of-pocket expenses to the consumer[,] and paying for 100% of the required parts and labor for such repairs." (*Id.* ¶ 42.) Plaintiff also alleges the letter "gave [her] the option to select different plan terms, with the plan price increasing for longer coverage terms," which she

[1] In addition to the arguments Defendant Whirlpool Corporation ("Whirlpool") raises in this motion, Whirlpool also joins in Defendant AIG WarrantyGuard, Inc's ("AIGWG") Motion to Dismiss the First Amended Complaint.

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"understood . . . to mean that she would be entitled to receive the repair or replacement coverage under her [Extended Service] Plan for the duration of the plan term she chose to purchase." (*Id.* ¶ 43.) Plaintiff says these descriptions "were consistent with [her] understanding of how a KitchenAid manufacturer's warranty works." (*Id.* ¶ 44.) Plaintiff further alleges she "read the statement 'Get the only plan backed by the manufacturer beyond the limited standard warranty period,'" which "reinforced her belief that she was being offered an extension of her KitchenAid warranty which is supported and offered by KitchenAid." (*Id.*)

Plaintiff now alleges that in deciding to purchase her ESP, she "relied on" and found "each of these representations" material. (*Id.* ¶¶ 41-45.) Specifically, she says that based on these representations, she "formed the impression that she was being offered a plan that was backed by KitchenAid and would extend the coverage she received under her KitchenAid warranty." (*Id.* ¶ 45.) She says "these beliefs were material" to her purchase decision. (*Id.*)

Plaintiff alleges that the ESPs Defendants offer generally do not provide "a level of coverage comparable to the Whirlpool Warranty." (*Id.* ¶ 8.) She alleges that "the Whirlpool Warranty" differs from the ESP in that (1) the ESP includes an option for Defendants to buyout a covered appliance in lieu of repairing or replacing it, at which point Defendants' obligations under the ESP are fulfilled and the appliance becomes their property, and (2) the ESPs offer "inferior" "access to factory certified repair technicians." (*Id.* ¶ 79; *see also id.* ¶ 69.) But Plaintiff does not identify the terms *she* thought *her* warranty included prior to her purchase of the ESP, or how the ESP terms differ from *her* expectations.

Plaintiff once again alleges that the marketing letter did not "put [her] on notice that her appliance malfunctions may be resolved in a manner that would leave her without a working appliance, or that she may need to incur out-of-pocket expenses to resolve a malfunction that was covered" by the ESP. (*Id.* ¶ 46.) She also alleges that the marketing letter did not "put [her] on notice that the repair benefits, which Defendants represented as lasting for the full duration

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of a KitchenAid Plan, would stop being available to Plaintiff upon Defendants' decision to Buyout her appliance." (*Id.* ¶ 47.)

Each of the letters Plaintiff attaches to the FAC refer to "**KitchenAid Service Plan Benefits***," with a prominent bold asterisk next to the term. The bottom of the first page of each letter includes the following language:

> *KitchenAid Service Plans are offered, sold and issued by AIG WarrantyGuard, Inc., 650 Missouri Avenue, Jeffersonville, IN 47130, an affiliate of American International Group, Inc. (AIG). Limitations and exclusions apply. See the complete terms and conditions at serviceplans.kitchenaid.com/details. KitchenAid is not affiliated with AIG or any of its affiliates. KitchenAid trademarks used with permission.

(FAC Exs. 4-6 at pp. 51, 56, 59.) Plaintiff admits that the letter she allegedly relied on contained the same "disclaimer" found in these letters. (FAC ¶ 48.) She claims that she "did not notice" this disclaimer. (*Id.*) She further asserts that even "[i]f she had noticed and read that disclaimer, [she] would not have understood from that disclaimer that the plan's terms and conditions may conflict with the express representations" in the letter she allegedly relied on. (*Id.*)

On an unspecified date, Plaintiff allegedly purchased an ESP with a three-year term by calling the phone number listed in her letter and speaking with an agent "whom she understood to be a Whirlpool employee." (*Id.* ¶¶ 49-50.) Plaintiff alleges that on May 14, 2020, she received a confirmation email that directed her to a phone number and website "[f]or questions on your service plan." (*Id.* ¶¶ 51-52.) According to Plaintiff, this email did not include a copy of her ESP service contract. (*Id.* ¶ 53.) She also alleges that she "did not receive a copy of her Service Contract for review, from Defendants or otherwise, prior to purchase, at the time of purchase, or on the date of purchase." (FAC ¶ 53.)

Despite the Court's explicit directions, Plaintiff does not allege "whether, when, and how she received a copy of the Service Plan contract." (Order 27.) Instead, she says only that

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"Defendants emailed Plaintiff's Certificate of coverage to Plaintiff several days" after she received her confirmation email, and that she received her service contract "at a later date, but [she] does not recall whether it was mailed or emailed to her." (FAC ¶ 55.) Like she did in the Original Complaint, Plaintiff attaches a copy of her service contract to the FAC, which she again admits she located on "Defendants' website." (FAC ¶ 66 n.3.)

She says that after she purchased her ESP, she cancelled her GSP Plan to obtain a refund. (FAC ¶ 57.) In the FAC, Plaintiff deleted her explicit admission that she did so because the ESP cost less than the GSP Plan, (*compare* Original Compl. ¶¶ 11, 47, *with* FAC ¶ 11), though she still admits that it did cost less, (*id.* ¶ 11). She alleges that if she had known about "the coverage limitations in her Service Contract and the limited availability of factory certified repair technicians" prior to purchasing her ESP, then she "would have kept her GSP Plan." (*Id.* ¶ 72.)

II. THE SERVICE EVENT

Plaintiff alleges that her "dishwasher started to malfunction soon after purchase" due to an issue with "[t]he gasket on the dishwasher door panel." (FAC ¶ 58.) She "contacted Whirlpool and was able to get the gasket replaced under the manufacturer's warranty." (*Id.*) "Sometime in 2022," her dishwasher "started to exhibit similar problems." (*Id.* ¶ 59.) Around September 12, 2022, she called "the phone number for KitchenAid Plans" to submit a claim under her ESP. (*Id.*) While Plaintiff does not remember when or how she received her service contract, she now remembers that during this call, she "spoke with a KitchenAid employee who identified herself as Monica," who told her "that no service was available in their network at the time and that KitchenAid would call Plaintiff when a repair service became available." (*Id.*)

"Around September 15, 2022, Plaintiff received an email from Whirlpool that informed her that" she could hire an independent repair company to fix her appliance "and seek reimbursement from Whirlpool." (*Id.* ¶ 60.) The email allegedly stated that the repair company

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would need to comply with "various conditions," including receiving pre-approval "from Whirlpool" before conducting the repairs. (*Id.* ¶ 61.) Plaintiff further says the email did not recant "Monica's prior promise that Whirlpool would call Plaintiff when a repair appointment became available." (*Id.* ¶ 62.) Plaintiff does not attach a copy of this email to the FAC.

Plaintiff allegedly "spent over a week calling local repair services" to see if she could "find someone who would repair her appliance under the terms Whirlpool required," but she could not find anyone. (*Id.* ¶ 63.) Plaintiff now alleges, for the first time, that she made multiple calls to Whirlpool "[a]round September 26, 2022" to request service, but her requests were denied. (*Id.* ¶ 64.) She allegedly asked to speak with a supervisor and was allegedly told that a supervisor would call her back in three days, but no one did. (*Id.*)

Plaintiff continued using her dishwasher, cleaning out "the accumulated black debris" after each use. (*Id.* ¶ 65.) In February 2023, her dishwasher "stopped working," and she submitted another claim under her ESP. (*Id.* ¶ 66.) Defendants offered to buy out her dishwasher for $764.36, but declined to offer a replacement. (*Id.*) Plaintiff apparently purchased a new dishwasher, (*id.* ¶¶ 67-68), and "had to purchase and pay for a new service plan" to protect that dishwasher, (*id.* ¶ 67). Her replacement dishwasher allegedly cost more than $764.36. (*Id.* ¶¶ 66, 68.)

LEGAL STANDARD

To survive a motion to dismiss, a complaint must allege sufficient facts to state a plausible claim for relief. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "A complaint may fail to show a right to relief either by lacking a cognizable legal theory or by lacking sufficient facts alleged under a cognizable legal theory." *Woods v. U.S. Bank N.A.*, 831 F.3d 1159, 1162 (9th Cir. 2016) (citation omitted).

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ARGUMENT

I. PLAINTIFF FAILS TO PLEAD A WCPA CLAIM

Plaintiff has done nothing to address this Court's prior holding that she failed to state a WCPA claim because she has not pled an unfair or deceptive act. (Order 13-19); *see also Promedev, LLC v. Wilson*, Case No. C22-1063JLR, 2023 WL 2330377, at *5 (W.D. Wash. Mar. 2, 2023) ("To recover under the WCPA, a plaintiff must show," among other elements, an "unfair or deceptive act or practice." (quoting *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 533 (Wash. 1986))). Plaintiff cannot avoid the fact that "much of the challenged conduct is permitted by and conspicuously disclosed in the Service Plan contract," (Order 13), "that she could have reviewed before freely entering" into it (*id.* 19). Nor has Plaintiff adequately pled deception based on an allegedly undisclosed policy of exercising buyouts to increase Defendants' profits, or based on the supposed difference in the availability of certified repair technicians under the ESP and the warranty. (Order 15 n.3.)

Similarly, Plaintiff has failed to adequately address this Court's holding that she failed to comply with Rule 9(b)'s pleading requirements because she still fails to identify the precise marketing statements she read and relied upon. (Order 21.) And even assuming Plaintiff could plead her claims with particularity by saying the letter she received and relied upon was identical to the ones attached to the FAC, she would still fail to plead unfairness or deception because the statements in those letters are not plausibly misleading. She has likewise failed to adequately allege any injury.

A. The Readily Available Service Contract Defeats Plaintiff's Claim of Deception and Unfairness

Most of the contract terms Plaintiff says Defendants failed to disclose or misled her about are clearly and conspicuously set forth in the readily available contract. Once again, Plaintiff takes issue with Defendants' right to buyout her dishwasher based on its depreciated

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value rather than repair or replace it. (FAC ¶¶ 8-12, 43, 46, 47, 69, 70, 72, 75(a)-(c), 79.) But as this Court has already recognized, the Service Plan contract plainly discloses the buyout option in multiple places. (Order 14; FAC Ex. 8 §10 ("After We authorize Your claim, We will at Our option complete the lesser of (a) the repair of Your Product with new or refurbished parts, or (b) Exchange or Buyout Your Product as provided in Section 20."); FAC Ex. 8 § 12 ("If We determine that We are unable to repair Your Product or We determine that a replacement is necessary, We will Exchange or Buyout Your Product as provided in Section 20."); FAC Ex. 8 § 20 ("We have the option, at Our sole discretion, to (a) Exchange Your Product with a replacement product with similar features and functionality, or (b) Buyout Your Product with a cash settlement based on the original purchase price" according to the "depreciation schedule" set forth in the contract).)

Similarly, Plaintiff again takes issue with the fact that a buyout fulfills Defendants' obligations under the Service Plan contract. (FAC ¶¶ 43, 47, 67, 72, 75(d).) But this, too, is disclosed in the contract. (Order 14; FAC Ex. 8 § 20 ("We will have satisfied all contractual obligations owed for the specified Product if We Exchange or Buyout Your Product under this section.") The contract likewise addresses Plaintiff's complaint that upon exercise of the buyout provision, her dishwasher became Defendants' property. (FAC ¶¶ 9, 75(e); FAC Ex. 8 § 20 ("If We Exchange or Buyout the Product, the covered Product becomes Our property and we may, at Our discretion, require the product to be returned to Us (or our designee) at Our expense.") And both the very first paragraph of the contract and the marketing letter Plaintiff allegedly relied on disclose that AIGWG is the ESP offeror. (FAC ¶¶ 32, 33, 44, 45; FAC Ex. 8 ("AIG WararantyGuard, Inc. ("AWG") is contractually obligated to You to provide service under this Contract."); FAC Exs. 4-6 ("*KitchenAid Service Plans are offered, sold and issued by AIG WarrantyGuard, Inc."); Order 19 n.5.)

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The contract's clear terms doom Plaintiff's WCPA claim because she could have reviewed the contract prior to purchasing her ESP. (Order 15-19.) Plaintiff again acknowledges that she found her ESP on "Defendants' website." (FAC ¶ 66 n.3; *see also* Order 15-16.) Plaintiff also acknowledges that the marketing letter she allegedly relied on in purchasing her ESP included the same disclaimer as the marketing letters attached to her Complaint. (FAC ¶ 48; FAC Exs. 4-6 at pp. 51, 56, 59.) That disclaimer instructed her that "[l]imitations and exclusions appl[ied]" to her ESP and that she could "[s]ee the complete terms and conditions at serviceplans.kitchenaid.com/details." (FAC Exs. 4-6 at pp. 51, 56, 59.) In other words, as this Court has recognized, Plaintiff easily could have reviewed the terms of her ESP contract "before freely entering" into it. (Order 19.) Her choice not to do so precludes her from pleading deception or unfairness.

Plaintiff's new allegations that she did not notice the disclaimer in the marketing letter she allegedly relied on and that, even if she had, she would not have understood the disclaimer, are immaterial. (FAC ¶ 48.) This Court has already determined as a matter of law that "[a]ny reasonable consumer—even the least sophisticated reader—would notice the disclaimer and understand its message." (Order 16 (citing *Freeman v. Time, Inc.*, 68 F.3d 285, 289-90 (9th Cir. 1995).) As a result, Plaintiff has failed to plausibly allege that the supposed omissions and misrepresentations identified in the FAC "ha[d] the capacity to deceive substantial portions of the public." *Young v. Toyota Motor Sales, U.S.A.*, 472 P.3d 990, 994 (Wash. 2020) (quoting *Klem v. Wash. Mut. Bank*, 295 P.3d 1179 (Wash. 2013)); (*see also* Order 16.)

In short, as this Court has already held, "a consumer cannot plead deception under the [W]CPA based on 'surprise' contract terms that were fully and sufficiently disclosed to her, but that she failed to read before signing on the dotted line." (Order 18 (collecting cases)); *see also In re Amazon Serv. Fee Litig.*, Case No. 2:22-cv-0743-TLK, 2024 WL 3460939, at *8-9 (W.D. Wash. July 18, 2024) (finding no deception based on supposedly hidden fees that were

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disclosed at checkout and permitted by the terms and conditions to which subscribers had agreed); *Storey v. Amazon.com Servs. LLC*, Case No. C23-1529KKE, 2024 WL 2882270, at *6 (W.D. Wash. July 7, 2024) (rejecting theory that "reasonable consumers do not read all of the terms and conditions of their contracts or should not be expected to do so" and dismissing WCPA claim); *Haywood v. Amazon.com, Inc.*, Case No. 2:22-cv-010904-JHC, 2023 WL 4585362, at *7 (W.D. Wash. July 18, 2023) ("[E]xercising a right that a contract permits and is fully disclosed to the parties in advance is not an unfair or deceptive act or practice."); *Lowden v. T-Mobile USA, Inc.*, No. C05-1482 MJP, 2009 WL 537787, at *3 (W.D. Wash. Feb. 18, 2009) (finding no deception where contract "sufficiently disclosed" the challenged conduct); *Smale v. Cellco P'ship*, 547 F. Supp. 2d 1181, 1189 (W.D. Wash. 2008) (finding no deception where defendant "disclosed from the inception of its relationship with each Plaintiff that it could charge additional fees"); *see also Cole v. Keystone RV Co.*, C18-5182 TSZ, 2021 WL 3111452, at *4-5 (W.D. Wash. July 22, 2021) (concluding the disclosure of material information online, rather than by plaintiff's "preferred method," did "not itself constitute a deceptive act under the CPA").

B. Plaintiff Has Failed to Plead Unfairness or Deception Based on Her Theories that Defendants Have an Undisclosed Buyout Policy or that the ESP Offers Inferior Access to Technicians than the Warranty

Plaintiff's remaining theories of unfairness and deception are inadequately pled and the Court should not credit them. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.) (explaining the Court is not "required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences"), *opinion amended on denial of reh'g*, 275 F.3d 1187 (9th Cir. 2001); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("Factual allegations must be enough to raise a right to relief above the speculative level.").

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For example, Plaintiff once more takes issue with Defendants' supposed policy of using the buyout provision of the ESP contracts to increase their profits even if the covered appliance can be repaired. (FAC ¶ 76.) "But this generalized allegation is wholly unsupported by the facts of [Plaintiff's] case." (Order 15 n.3.) Plaintiff alleges that Defendants did not attempt to buyout her dishwasher when she first submitted a claim under her ESP, but rather offered to pay a third party to repair her dishwasher. (FAC ¶¶ 60-61.) In fact, her claims for breach of contract and breach of an implied duty of good faith and fair dealing rely on her theory that Defendants *failed* to buyout her dishwasher at that time. (*Id.* ¶¶ 111-114, 126, 127.) Simply put, Plaintiff has not alleged that Defendants attempted to buyout her dishwasher due to the application of some supposedly secret policy. In any event, as Plaintiff has recognized, her contract discloses that Defendants will provide "the lesser of a 'repair' or an 'Exchange or Buyout,'" (*id.* ¶ 114 (quoting FAC Ex. 8 § 10)), so she has not alleged deception or unfairness based on this supposed policy, *see* Argument § I.A.

Similarly, Plaintiff repeats her assertion that access to service technicians under the ESP is inferior to access to service technicians under the manufacturer's warranty, (FAC ¶ 79), based solely on the fact that customer service agents allegedly told her there were no service appointments available under her ESP at the time she contacted Whirlpool in September of 2022, (*id.* ¶¶ 59, 64). She also alleges that "[a]ll warranty service is provided exclusively by authorized KitchenAid Service Providers," (*id.* ¶ 69(a)), presumably taking issue with the contract's clear and conspicuous provision allowing Defendants to authorize plan holders to arrange third-party repairs, (*id.* Ex. 8 § 1; Order 23).

As an initial matter, Plaintiffs' theory that either of these supposed facts are deceptive is premised on her allegation that statements in the marketing letter she reviewed caused her to believe the ESP "would extend the coverage she received under her" manufacturer's warranty.

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(FAC ¶ 45.) As explained below in Argument Section I.D.4, no statement in those letters can plausibly be understood to convey that message.

But, even assuming they could be read that way, Plaintiff has not pled facts showing she was misled. For example, Plaintiff once again "neither provides a copy of the manufacturer's warranty nor alleges any concrete facts regarding the availability of technicians under the warranty." (Order 15 n.3.) She does not define the term "KitchenAid Service Providers" nor explain how a "KitchenAid Service Provider" differs from the service providers available under her ESP. (FAC ¶ 69(a).) Nor does she allege that service appointments for her dishwasher would have been available under her manufacturer's warranty in September 2022 had it been in effect at the time.

C. Plaintiff Has Failed to Satisfy Rule 9(b)

As the Court has recognized, Plaintiff's WCPA claim is subject to Rule 9(b)'s heightened pleading standard because it sounds in fraud. *See Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009); *see also Promedev*, 2023 WL 2330377, at *3 (applying Rule 9(b)'s heightened pleading standard to a WCPA claim alleging deceptive practice); (Order 21). Plaintiff has once again failed to meet this standard.

As with the Original Complaint, Plaintiff fails to attach a copy of the "one or more" marketing communications she allegedly received in April and May 2020 and allegedly relied upon in purchasing her ESP. (FAC ¶¶ 40-41.) Instead, she attaches three marketing letters she received on unspecified dates that she calls "examples" of letters she received "between 2020 and 2023."[2] (*Id.* ¶ 41.) Plaintiff says each of the letters "describe the benefits of the" ESP "using identical language," (*id.*), yet a cursory review of the letters attached to the FAC reveals the letters are not, in fact, identical, (FAC Exs. 4-6). And while Plaintiff has attempted to

[2] The letter attached as Exhibit 6 to the FAC states "received by mail 6.2.2023," but Plaintiff does not disclose when she received the other letters.

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describe the content of "representations" in the letter she relied upon, with one exception, (*see* FAC ¶ 44), she has not quoted language from any of the example letters attached to the FAC that was supposedly identical to any statements in the letter she relied upon, (*id.* ¶¶ 41-45).

Plaintiff's strategic omissions further demonstrate her failure to allege the "who, what, when, where, and how" of the alleged fraud. *Kearns*, 567 F.3d at 1124 (quoting *Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1102 (9th Cir. 2003)). For example, she does not allege: when she purchased her ESP; how much she paid for her ESP; when or how she received her ESP contract; whether she reviewed her ESP contract within the contract's free cancellation period, (FAC Ex. 8 § 17); whether she visited the website where the ESP contract is available prior to purchasing her ESP; or any facts related to the extent of available service appointments in her area under her manufacturer's warranty. Nor does she attach key documents referenced in the Complaint, including: the marketing communication or communications she allegedly received in April and May 2020, (FAC ¶ 41); the GSP Plan; her manufacturer's warranty; or the email transmitting her ESP Certificate of Coverage, (FAC ¶ 55).

In short, Plaintiff has failed to comply with this Court's order to "allege with particularity the circumstances of the fraudulent conduct by providing the most complete, clear picture of the alleged facts as possible." (Order 27.)

D. None of the Marketing Statements Plaintiff Allegedly Relied on Support Her WCPA Claim

Plaintiff alleges she relied on certain representations she claims were in the marketing communication she received before purchasing her ESP. (FAC ¶¶ 41-45.) But as explained in Argument Section I.C., Plaintiff merely attempts to convey the general substance of these representations without clearly identifying the actual statements she allegedly relied on in purchasing her ESP. To the extent Plaintiff is claiming the statements found in the letters she attaches to the FAC are deceptive, she has failed to state a claim under the WCPA because

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none of those statements are plausibly misleading and because she has failed to plead causation and injury with respect to some of those statements. (FAC Exs. 4-6.)

1. Plaintiff fails to plausibly allege deception based on the statements regarding "covered repairs" and "out-of-pocket expenses"

Plaintiff alleges that the marketing letter she relied on "described the [ESP] as offering repair or replacement benefits for covered malfunctions at no out-of-pocket expenses to the consumer and paying for 100% of the required parts and labor for such repairs." (FAC ¶ 42.) These allegations may be referring to the following two statements found in the letters attached to the FAC: (i) "**Valuable Protection**: 100% parts and labor for covered repairs, where applicable," and (ii) "**No Service Fee**: No out-of-pocket expenses on covered repairs and replacements." (FAC Exs. 4-6 at pp. 51, 56, 59.) Plaintiff has failed to plausibly allege that these statements are deceptive.

As an initial matter, Plaintiff's ESP ***did*** offer repair or replacement benefits at no out-of-pocket cost. The very first numbered paragraph of Plaintiff's ESP Contract states that Defendants would "furnish labor, parts, and/or replacement equipment (or pay for same) necessary to repair operation or mechanical breakdowns of the" covered appliance. (FAC Ex. 8 § 1.) Subsequent provisions explain that Defendants may offer a replacement or a buyout of the appliance in lieu of a repair. (*Id.* §§ 5, 10.) Per the contract's terms, these benefits are not conditioned on payment of any service fee unless the customer purchased a Service Fee plan, (*id.* § 13), and Plaintiff has not alleged that she purchased a Service Fee plan. And Plaintiff's allegations show Defendants acted consistently with these terms by offering to pay for a third-party service provider to repair her appliance, and later by buying out her appliance, without charging her any fees. (FAC ¶¶ 60-61, 66.)

To the extent Plaintiff claims that a reimbursement at less than full replacement value is equivalent to requiring her to pay an out-of-pocket expense, (FAC ¶ 68), or that her decision to

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purchase a new service plan for her new dishwasher constitutes an out-of-pocket expense, (FAC ¶ 67), these theories fail to plausibly plead deception because they rely on an unreasonable understanding of the term "out-of-pocket expense" in this context. *See Mellon v. Reg'l Tr. Servs. Corp.*, 334 P.3d 1120, 1126 n.2 (Wash. Ct. App. 2014) ("[A] defendant's act or practice is not 'deceptive' unless it involves 'a representation, omission or practice that is likely to mislead' a reasonable consumer." (quoting *Panag v. Farmers Ins. Co. of Wash.*, 204 P.3d 885, 895 (Wash. 2009))); *see also Sing v. John L. Scott, Inc.*, 948 P.2d 816, 819 (Wash. 1997) ("To show a party has engaged in an unfair or deceptive act or practice a plaintiff need not show that the act in question was intended to deceive, but that the alleged act had the capacity to deceive *a substantial portion of the public*." (citation and quotation omitted) (emphasis added)).

As the ESP and the marketing letters attached to the Complaint demonstrate, an out-of-pocket expense in the context of service plans is an outlay of cash—often called a service fee—that a plan holder must pay to receive a benefit under the plan. (FAC Exs. 4-6 at pp. 51, 56, 59 (prefacing the phrase "no out-of-pocket expenses" with the phrase "**No Service Fee**"); FAC Ex. 8 § 13 (explaining that consumers who purchased Service Fee plans need to pay a Service Fee to receive a service appointment under the plan); *see also Out-of-Pocket*, Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/out-of-pocket (last visited July 1, 2024) (defining "out-of-pocket" as "requiring an outlay of cash"). Plaintiff does not allege that she needed to pay any service fee to receive her buyout, and her decision to purchase a ***new*** service plan for the ***new*** appliance she bought has nothing to do with her ability to receive the benefits described in her ESP.

2. Plaintiff fails to plead deception or causation based on the identity of the ESP offeror

The FAC includes several irrelevant allegations that Defendants mislead consumers into

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thinking that Whirlpool, rather than AIGWG, offers the ESP. (FAC ¶¶ 4, 5, 32-37.) Plaintiff also states that the marketing letter she reviewed before purchasing her ESP "emphasized KitchenAid's affiliation with the plan," (FAC ¶ 42), and that "[e]very interaction Plaintiff had with the Defendants suggested that she was dealing with" Whirlpool, (FAC ¶ 56). But Plaintiff does not allege that she believed she was purchasing her ESP from Whirlpool or that such a belief was material to her purchase decision. Rather, at most, she alleges she believed she was purchasing an ESP backed by Whirlpool. (FAC ¶¶ 11, 45.) She has therefore failed to plead causation based on this theory. *See Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 170 P.3d 10, 22 (Wash. 2007) (explaining that in the context of a WCPA claim premised on an affirmative misrepresentation of fact, the "plaintiff must establish that, but for the defendant's unfair or deceptive practice, the plaintiff would not have suffered an injury"); (*see also* Order 19-21). And given Plaintiff's emphatic allegations that Whirlpool backed and even administered her ESP, she has also failed to plead any deception based on this theory. (*See* FAC ¶¶ 16-17, 32, 34, 37, 49, 59-64.)

This WCPA theory also fails because, as explained above in Argument Section I.A., Defendants clearly disclosed that AIGWG offered the ESP, meaning Plaintiff has not pled deception. (*See* Order 19 n.5.)

Plaintiff has further failed to allege deception because she has not, and cannot, allege that the identity of the offeror would be a material fact to a reasonable consumer, especially given that Whirlpool "backed" and administered Plaintiff's ESP. *See Axon v. Freedom R.V., Inc.*, No. 38068-8-III, 2022 WL 1316283, at *1, *6 (Wash. Ct. App. May 3, 2022) (explaining that conduct is deceptive under the WCPA only if it "misleads or misrepresents something of material importance" (quoting *Holiday Resort Cmty. Ass'n v. Echo Lake Assocs.*, 135 P.3d 499, 507 (Wash. Ct. App. 2006))); c*f. Promedev*, 2023 WL 2330377 at *5 ("[Plaintiff] fails to

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identify any authority that recognizes as 'of material importance' the identities of the owners of a company selling a product, or as 'deceptive' the incomplete disclosure thereof.").

3. Plaintiff has not pled injury or deception based on the option to purchase ESPs with different plan terms

Plaintiff alleges that the marketing letter she reviewed before purchasing her ESP gave her "the option to select different plan terms," which she understood "to mean that she would be entitled to receive the repair or replacement coverage under her [ESP] for the duration of the plan term." (FAC ¶ 43.) But Plaintiff has failed to allege any injury based on this theory because once her dishwasher was bought out, she alleges that she purchased a new dishwasher. (*Id.* ¶¶ 67-68.) It is therefore irrelevant whether coverage under her ESP, which Plaintiff recognizes covered only the first dishwasher, (*id.* ¶ 67), remained in effect after the buyout.

Additionally, Plaintiff has failed to plead any deception based on this theory. To the extent she asserts she thought her ESP would cover a new appliance, she has failed to identify any representation giving rise to this impression. Rather, the marketing letters attached to the FAC consistently refer to "your product" and "dishwasher" in the singular, (FAC Exs. 4-6 at pp. 50-60), thereby conveying the common-sense fact that the ESP would cover only the dishwasher she was purchasing it to cover.

And as Plaintiff recognizes, Defendants did not "stop[] offering repair or replacement coverage" until ***after*** they bought out her appliance. (FAC ¶ 67.) As explained above in Argument Section I.A., the ESP contract states in multiple places that a buyout fulfills Defendants' contractual obligations. (FAC Ex. 8 §§ 12, 20.) Thus, there is no deception because "it is not inconsistent for the Plan's coverage term to be [three years], but also for any buyout to fulfill all the Obligor's obligations under the Plan." *Salas v. Whirlpool Corp.*, Case No. 5:23-CV-01549-AB-KK, 2024 WL 694067, at *11 (C.D. Cal. Jan. 24, 2024) (rejecting plaintiff's claim under California law in related litigation that marketing for extended service

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plan was deceptive based on the fact that a buyout would fulfill Defendants' obligations under the plan before the end of the coverage term).

4. Plaintiff has failed to plead a WCPA claim based on her misperception that the ESP merely extended the manufacturer's warranty

Plaintiff alleges that the marketing communication she allegedly relied on in purchasing her ESP included the statement: "Get the only plan backed by the manufacturer beyond the limited standard warranty." (FAC ¶ 44.) This statement appears in each of the letters attached to the FAC. (FAC Exs. 4-6.) The statement allegedly caused her to believe the ESP "would extend the coverage she received under her" manufacturer's warranty. (FAC ¶ 45.) It is implausible, however, that a substantial portion of the public would be deceived by this statement. *Young*, 472 P.3d at 994.

The statement "Get the only plan backed by the manufacturer beyond the limited standard warranty" does not say that the ESP is an extension of the manufacturer's warranty. (FAC ¶ 44.) Instead, it merely states the ESP is the "only plan *backed* by the manufacturer." (*Id.* (emphasis added).) As explained above in Argument Section I.D.2., this statement is true because, per Plaintiff's emphatic allegations, Whirlpool did "back"—and even administered—Plaintiff's ESP. (FAC ¶¶ 16-17, 32, 34, 37, 49, 59-64.) This is in contrast to extended service plans offered by "typical retailers," (FAC Ex. 4-6), such as the GSP Plan that Plaintiff purchased and then cancelled, (FAC ¶¶ 38-39, 57).

Additionally, read in the context provided by the letters attached to the FAC, it is clear that the "plan" backed by Whirlpool is something other than "the limited standard warranty." (FAC ¶ 48.) The letters consistently refer to the ESP as a "KitchenAid Service Plan," not as an extended warranty. (FAC Exs. 4-6.) In fact, the statement Plaintiff identifies is the only place that the first two letters even refer to a "warranty" at all. (FAC Exs. 4-5.) The third letter

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additionally states that the "manufacturer warranty" for the listed dishwasher ends on February 28, 2024, but it does not state or imply that the ESP will extend the manufacturer's warranty. (FAC Ex. 6.) And in each of the three letters, the statement is followed by a graphic comparing the ESP to "typical retailer's plans," (FAC Exs. 4-6), further suggesting a reasonable consumer would understand the statement as drawing a distinction between the extended service plans offered by retailers, and the ESP, which is "backed" by Whirlpool.

As for Plaintiff's claims that her belief that the ESP extended the warranty was informed by other "representations" that she found "consistent with her understanding" of how manufacturer's warranties work, that claim is even less plausible. None of those representations concern or even mention a warranty, and Plaintiff does not explain how those representations are consistent with the terms of the manufacturer's warranty that covered her dishwasher. (FAC ¶¶ 4, 7, 44.)

Simply put, Plaintiff's unreasonable interpretations of the statement "Get the only plan backed by the manufacturer beyond the limited standard warranty" and other "representations" fails to plausibly allege that a substantial portion of the public would be deceived into thinking the ESP merely extends the manufacturer's warranty. *See Mellon*, 334 P.3d at 1126 (explaining deception exists only if a *reasonable* consumer would be misled); *Sing*, 948 P.2d at 819 (explaining that to state a WCPA claim based on deception, the act must plausibly mislead a substantial portion of the public).

In any event, other than her allegation that the ESP includes a buyout option and provides inferior access to service technicians, Plaintiff has not explained how her ESP is different from the warranty. (FAC ¶¶ 69, 79.) As explained above in Argument Sections I.A.. and I.B., those theories of deception also fail to state a WCPA claim.

E. Plaintiff Has Not Adequately Pled Injury

Plaintiff has not pled a viable WCPA claim because she has not pled a cognizable

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injury. *See Promedev*, 2023 WL 2330377 at *5 (explaining that a plaintiff must demonstrate injury to her business or property to recover under the WCPA).

Plaintiff claims she suffered an injury by purchasing the ESP, but that theory of injury fails because the economic benefit she received under the ESP greatly exceeded its cost. *See Brotherson v. Pro. Basketball Club, L.L.C.*, 604 F. Supp. 2d 1276, 1295-96 (W.D. Wash. 2009) (concluding basketball season ticketholders failed to establish the injury element of their WCPA claim seeking a full refund for season tickets because the plaintiffs received the benefit and value of the season tickets by attending games). While Plaintiff does not disclose how much she paid for her ESP, the marketing letter she attaches to her Complaint from 2021 shows her three-year plan would have cost $383.44 if she purchased it then. (FAC Ex. 4.) She received a buyout in the amount of $764.36, (FAC ¶¶ 66-68), meaning that she received a net financial benefit as a result of her purchase. *See Brotherson*, 604 F. Supp. 2d at 1295 (a defendant "may set off the monetary value" of his performance "against the aggrieved party's claim." (quotation marks and citation omitted)). Plaintiff therefore has not stated a cognizable injury to her property under the WCPA.

II. PLAINTIFF HAS FAILED TO STATE A CLAIM FOR BREACH OF CONTRACT

Plaintiff's claim for breach of contract fails because she has not plausibly alleged a breach or resulting damages. *See Lehrer v. Wash. Dep't of Soc. & Health Servs.*, 5 P.3d 722, 727 (Wash. Ct. App. 2000) ("Generally, a plaintiff in a contract action must prove a valid contract between the parties, breach, and resulting damage."); (Order 22).

A. Plaintiff Has Failed to Allege a Breach

Plaintiff alleges that Defendants breached Sections 1 and 10 of her contract by failing to resolve the claim she submitted under her ESP in September 2022 with a repair, replacement, or buyout. (FAC ¶¶ 109-115.) The Court has already rejected this theory. (Order 23 ("Even if

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Ms. Shellenberger had made these allegations in her [Original C]omplaint, they would still fall short.").)

As the Court recognized, the contract provides Defendants with the option to repair, replace, or buyout a covered appliance. (FAC Ex. 8 § 10.) And if Defendants opt to repair the appliance, "the contract unambiguously permits Defendants to fulfill their repair obligations by 'pay[ing]' for—rather than providing—repair services." (Order 23 (citing Original Complaint Ex. 8 § 1); *see also* FAC Ex. 8 § 1.) Here, Defendants offered to do exactly that. Because no service appointments were available when she submitted her claim under the ESP around September 12, 2022, (FAC ¶ 59), Defendants allegedly offered to allow Plaintiff to "hire an independent repair company to fix her appliance," which Defendants would reimburse Plaintiff for, (*id.* ¶ 60). Plaintiff stopped trying after she "spent over a week calling local repair services" unsuccessfully. (*Id.* ¶ 63.) And when Plaintiff called Defendants to let them know her dishwasher stopped working in February 2023, Defendants bought out her appliance, (FAC ¶¶ 66-68), thereby fulfilling their obligations under the contract, (FAC Ex. 8 § 20).

Plaintiff continues to suggest that her claims in September 2022 and February 2023 are distinct service events for purposes of analyzing the alleged breach, but this Court has already rejected that theory. (Order 24 ("The court rejects Ms. Shellenberger's invitation to treat her September 2022 and February 2023 warranty claims as wholly independent from on another for breach of contract purposes.").) Plaintiff once again argues that "Defendants breached the contract by failing to resolve her September 2022 claim by the time she filed a second claim for the same product five months later," but as the Court observed, "[t]he contract imposes no such deadline." (Order 24.) To the contrary, the contract makes clear that "a buyout resolves all contractual obligations for the covered product." (*Id.* (citing Original Complaint Ex. 8 §§ 12, 16, 20); *see also* FAC Ex. 8 §§ 12, 16, 20.) The contract further makes clear that Defendants

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are not "liable for any damages whatsoever arising out of delays" related to the availability of service. (FAC Ex. 8 § 4.)

This same logic means Plaintiff's new allegation that Defendants promised to call her back when a service appointment became available but never did cannot save her theory of breach. (FAC ¶¶ 59, 62, 64.) In essence, Plaintiff has alleged a five-month delay of service, but as discussed above, Defendants were not contractually obligated to resolve her service claim within five months. And any delay would not be actionable in light of the contract's express disclaimer of liability for any delay in performance due to unavailability of service appointments. (FAC Ex. 8 § 4.) Both Plaintiff and Defendants had trouble finding a repair service to fix her dishwasher in September 2022, and Plaintiff has not alleged that service appointments became available at any point between September 2022 and February 2023. (FAC ¶¶ 59-64.)

Additionally, Plaintiff has alleged throughout the FAC that she did not want a buyout of her dishwasher, (*id.* ¶¶ 11-12, 18, 46, 66, 72), and that her dishwasher continued to function between September 2022 and February 2023, (*id.* ¶ 65). Plaintiff has thus failed to allege a breach based on a five-month delay of performance. *See Nguyen v. Allstate Ins. Co.*, No. C11-610 JCC, 2012 WL 2367071, at *3 (W.D. Wash. June 20, 2012) (concluding one year delay of insurance payout did not amount to a breach of contract); *Mansur Props. LLC v. First Am. Title Ins. Co.*, 635 F. Supp. 3d 1116, 1131 (W.D. Wash. 2022) (same), *appeal dismissed*, No. 22-35947, 2023 WL 2064158 (9th Cir. Jan. 31, 2023).

Even if she had, for the reasons set forth below, she has not pled resulting damage.

B. Plaintiff Has Failed to Allege Damages

Plaintiff has also failed to adequately address this Court's conclusion that she has failed to plausibly allege contract damages. (Order 24-25.) As the Court has recognized, "[i]n Washington, contract damages are ordinarily based on 'an injured party's reasonably expected

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benefit of the bargain.'" (*Id.* 24 (quoting *Ford v. Trendwest Resorts, Inc.*, 146 Wash. 2d 146, 155, 43 P.3d 1223, 1227 (2002).) Plaintiff received the buyout benefits of $764.36 that she was entitled to under the contract. (Order 24; FAC ¶¶ 66, 68.) Because a buyout fulfills Defendants' obligations under the contract, Plaintiff received the benefit of her bargain and, as a result, has failed to allege cognizable contract damages. (Order 24.)

Plaintiff's allegation that "[s]he is entitled to recover the value of the repair services that she did not receive" in September 2022, (FAC ¶ 119), ignores the contract language. Plaintiff was not entitled to a repair in September 2022; she was entitled to, at Defendants' option, a repair, replacement, or buyout of her dishwasher. (FAC Ex. 8 §§ 10, 12, 20.) Had Defendants bought out her dishwasher in September 2022 as Plaintiff says they should have, (FAC ¶¶ 125-126), Defendants' obligations under the contract would have been fulfilled, (*id.* Ex. 8 §§ 16, 20). Plaintiff does not allege that she would have received a larger sum had Defendants purchased her dishwasher in September 2022 rather than February 2023. Nor could she under the ESP contract's depreciation schedule. (*Id.* Ex. 8 § 20.) Furthermore, under the express contract terms, "the value of the repair services that she did not receive" could not exceed the amount of her buyout. (*Id.* § 10.)

These alleged facts demonstrate that Plaintiff received the maximum monetary benefit she would have been entitled to under the contract in September 2022 when Defendants bought out her appliance in February 2023, and Plaintiff cannot state a claim for damages under the contract terms based on the five-month delay. As a result, she has not alleged any cognizable contract damages, so her claim must be dismissed. *See Becerra v. Allstate Northbrook Indem. Co.*, Case No. 22-cv-00202-BAS-MSB, 2022 WL 2392456, at *6-7 (S.D. Cal. July 1, 2022) (concluding plaintiff failed to allege cognizable contract damages where she already recovered the maximum payout under an insurance policy).

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III. PLAINTIFF HAS FAILED TO STATE A CLAIM FOR BREACH OF AN IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING

While Washington law imputes "an implied duty of good faith and fair dealing" in every contract, that duty "does not extend to obligate a party to accept a material change in the terms of its contract." *Badgett v. Sec. State Bank*, 807 P.2d 356, 360 (Wash. 1991). Plaintiff nonetheless alleges Defendants breached this duty by offering to repair her dishwasher in September 2022 even though there were no service appointments available at the time. (FAC ¶ 125.)

This argument fails because the contract gave Defendants sole discretion to resolve Plaintiff's service claims with a repair (whether arranged for by Defendants or Plaintiff), replacement, or buyout of her dishwasher. (FAC Ex. 8 §§ 1, 10, 12, 20.) This is not the sort of discretion that the implied duty of good faith and fair dealing applies to. *Compare Rekhter v. State, Dep't of Soc. & Health Servs.*, 180 Wash. 2d 102, 113, 323 P.3d 1036, 1042 (2014) (explaining duty of good faith and fair dealing applies where parties to a contract could not determine how performance would be rendered at the time of contracting, meaning one party had "discretion to set a future contract term"); *with Volvo Constr. Equip. N. Am., LLC v. Clyde/West, Inc.*, No. C14-0534JLR, 2014 WL 6886679, at *4 (W.D. Wash. Dec. 3, 2014) (concluding duty of good faith and fair dealing did not apply to party's decision over whether to terminate contract with 180 days-notice or provide an opportunity to cure before terminating the contract because the contract explicitly gave the party exclusive discretion to choose between these two options).

In other words, Defendants were entitled to stand on their rights to perform according to the explicit terms of the contract, which, in any event, disclaimed any liability for a delay in service due to the unavailability of service technicians. *See Badgett*, 807 P.2d at 360 ("As a

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matter of law, there cannot be a breach of the duty of good faith when a party simply stands on its rights to require performance of a contract according to its terms.")

Even if the implied duty of good faith and fair dealing did apply here, Plaintiff has failed to plausibly allege Defendants breached that duty. As this Court has already concluded, it is implausible that Plaintiff would have preferred to have received a buyout in September 2022 given she has repeatedly stated and implied she did not want Defendants to buyout her dishwasher even after it no longer worked, much less when it was still operational. (Order 23-24; FAC ¶¶ 11-12, 18, 46, 66, 72.) Given Plaintiff preferred a repair, and given that her dishwasher continued to function between September 2022 and February 2023, it was not unreasonable for Defendants to offer for Plaintiff to either find her own repair service or wait until a repair appointment became available.

IV. THE COURT SHOULD DISMISS PLAINTIFF'S CLAIMS WITH PREJUDICE

"Although there is a general rule that parties are allowed to amend their pleadings, it does not extend to cases in which any amendment would be an exercise in futility, or where the amended complaint would also be subject to dismissal." *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1998) (citation omitted). The FAC should be dismissed with prejudice because, as demonstrated throughout this Motion, it re-alleges previously dismissed claims without meaningfully attempting to rehabilitate them. Additionally, Plaintiff has disobeyed this Court's order to allege her claims with particularity and to refrain from the sort of strategic omissions that doomed her Original Complaint. Dismissal with prejudice is further appropriate because Plaintiff's claims cannot be salvaged through further amendment. *Mujica v. AirScan Inc.*, 771 F.3d 580, 593 & n.8 (9th Cir. 2014).

CONCLUSION

For all the reasons set forth in this Motion and in AIGWG's Motion to Dismiss, Plaintiff's claims should be dismissed with prejudice.

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I certify that this memorandum contains 8,382 words, in compliance with the Local Civil Rules.

DATED: October 30, 2024

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s/ Galen D. Bellamy

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The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

HADASSAH SHELLENBERGER, individually and on behalf of all others similarly situated, Plaintiff, v. AIG WARRANTYGUARD, INC., and WHIRLPOOL CORPORATION, Defendants.	Case No. 2:24-cv-00657-JLR **[PROPOSED] ORDER GRANTING WHIRLPOOL CORPORATION'S MOTION TO DISMISS AMENDED CLASS ACTION COMPLAINT**

On October 30, 2024, Defendant Whirlpool Corporation ("Whirlpool") filed its Motion to Dismiss Amended Class Action Complaint. Having considered all papers filed in support of and in opposition to the Motion and all other pleadings and papers on file herein,

IT IS HEREBY ORDERED THAT:

1. Whirlpool's Motion to Dismiss is GRANTED;

2. Plaintiff's claim for Violations of the Washington Consumer Protection Act, RCW § 19.86, *et seq.*, is DISMISSED WITH PREJUDICE;

3. Plaintiff's claim for Breach of Contract is DISMISSED WITH PREJUDICE;

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4. Plaintiff's claim for Breach of Implied Covenant of Good Faith and Fair Dealing is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

DATED this ___ day of _____, 2024

HON. JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

Presented by:

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