

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

Case No. **CV 19-10136-DMG (FFMx)** Date July 27, 2021

Title ***Patrick Rojas v. American Honda Motor Co. Inc., et al.*** Page 1 of 5

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

KANE TIEN
Deputy Clerk

NOT REPORTED
Court Reporter

Attorneys Present for Plaintiff(s)
None Present

Attorneys Present for Defendant(s)
None Present

**Proceedings: IN CHAMBERS—ORDER RE DEFENDANTS’ MOTION TO DISMISS
[85]**

On November 30, 2020, the Court granted Defendants American Honda Motor Co. Inc. (“Honda”) and Honda North America, Inc. (“HNA”)’s Motion to Dismiss (“MTD”) Plaintiff Patrick Rojas’ Class Action Complaint. [Doc. # 81.] On December 21, 2020, Plaintiff filed his First Amended Complaint (“FAC”), alleging breach of express and implied warranties and violation of Florida’s Unfair & Deceptive Trade Practices Act (“FUDTPA”). [Doc. # 82].

Defendants now move to dismiss the FAC. [Doc. # 85.] The motion is fully briefed. [Doc. ## 88, 89.] On April 27, 2021, Plaintiff dismissed Defendant HNA from the action. [Doc. # 91.]

For the reasons stated below, the Court **GRANTS in part** and **DENIES in part** the MTD.

**I.
FACTUAL BACKGROUND¹**

Because the FAC re-pleads substantially the same facts as the Complaint, the Court incorporates by reference the factual allegations set forth in its November 30, 2020 MTD Order regarding Plaintiff’s purchase of a 2016 Honda Civic and the alleged “Rollaway Defect” in his vehicle, as well as in 2017 and 2018 Civics: that the cars fail to provide notice to drivers that their vehicle is out-of-gear, fail to automatically activate the electric parking brake (“EPB”) in certain situations (such as when the driver exits the vehicle or when the driver’s door is opened), and they are prone to—and actually do—unintentionally roll away, often causing crashes or injuries. [Doc. # 81 at 2-3.]

¹ The Court assumes the truth of the Complaint’s material factual allegations solely for the purpose of deciding Defendants’ MTD.

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The FAC also includes additional detail regarding Honda’s 2016 recall of 350,000 2016 Honda Civic vehicles. According to the National Highway Traffic Safety Administration (“NHTSA”) Safety Recall Report, Honda received its first warranty claim of brake warning indicator illumination on December 6, 2015, more than six months before Plaintiff purchased his vehicle. FAC at ¶ 37; *id.*, Ex. A (NHTSA Report) [Doc. # 82-1]. Plaintiff also alleges that Honda learned about the Rollaway Defect from complaints made to its authorized dealerships, its records of parts orders, comments and postings to NHTSA’s website, and on webpages like driver forums. *Id.* at ¶ 38. Between April 20, 2016 and July 15, 2016, Honda had received additional “brake warning indicator illumination complaints” and launched an investigation into the root cause of the brake issue. NHTSA Report at 4. In that period, Honda concluded that under most conditions, rollaways should not occur due to the brake warning indicator light issue. *Id.* Honda continued its investigation through September 22, 2016, then on October 4, 2016, Honda issued a recall of more than 350,000 2016 Honda Civics after receiving 342 warranty claims, no reported roll-aways, and no reports of injuries or crashes related to the defect. *Id.* Plaintiff cites to a news article noting that Honda “is recalling 350,083 of its new 2016 Civics because the electric parking brake may not engage when the engine is turned off, leading to the possibility that the car could roll away and crash.” FAC at ¶ 40, n.14. The Honda Service Bulletin issued on October 7, 2016, notes that if the EPB does not apply, the vehicle could roll away, increasing the risk of a crash. *Id.*, Ex. C (Honda Service Bulletin) [Doc. # 82-3]. The NHTSA describes the remedy program for the defect as a free software update that eliminates the potential of electric parking brake (“EPB”) inoperability. NHTSA Report at 4.

Plaintiff alleges that by the time he purchased his vehicle in June 2016, Honda was aware that the shifter and EPB did not perform as intended. *Id.* at ¶ 46.

According to Plaintiff, Honda “advertised the Class vehicles as ‘safe’ and ‘reliable’ while failing to disclose to Plaintiff and Class Members any hint of the risks posed by the Rollaway Defect, which renders the Class vehicles dangerous and unreliable.” *Id.* at ¶ 61. He also alleges that the Rollaway Defect is not covered under either the “Powertrain or Limited warranties that accompanied each Class Vehicle.” *Id.* at ¶ 65.

II. LEGAL STANDARD

The Court set forth the applicable legal standard governing motions to dismiss under Federal Rule of Civil Procedure 12(b)(6) in its prior Order and therefore need not repeat it here. *See* November 30, 2020 MTD Order at 4 [Doc. # 81].

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**III.
DISCUSSION**

Plaintiff did not re-plead his claim for violation of the Magnuson-Moss Warranty Act, and he concedes that his express warranty claim should be dismissed. *See* Opp. at 5 n.1.² Thus, the Court examines only the implied warranty and FDUTPA claims, as well as Plaintiff's claim for declaratory relief.

A. Breach of Implied Warranty

Plaintiff concedes that he lacks vertical privity of contract with Honda, and that the Court's November 30, 2020 MTD Order concluded that the "overwhelming weight of Florida law" indicates that a plaintiff vehicle purchaser must purchase the vehicle directly from the defendant in order to establish contractual privity to state a breach of implied warranty claim. *Padilla v. Porsche Cars North Am., Inc.*, 391 F. Supp. 3d 1108, 1116 (S.D. Fla. 2019); *see, e.g., Cerasani v. Am. Honda Motor Co.*, 916 So. 2d 843, 847 (Fla. Dist. Ct. App. 2005); *Mesa v. BMW of N. Am., LLC*, 904 So. 2d 450, 458 (Fla. Dist. Ct. App. 2005). Plaintiff's arguments for the Court to reconsider its conclusions and instead adopt the view of a competing line of cases recognizing a third-party beneficiary exception are unpersuasive. In addition, Plaintiff makes only conclusory allegations that he had direct contact with a Honda representative that established contractual privity. *See* FAC at ¶ 26.

Accordingly, the Court **DISMISSES** the breach of implied warranty claim. Because any further amendment would be futile, the Court denies leave to amend.

B. Florida's Deceptive & Unfair Trade Practices Act

The express purpose of the FDUTPA is to "protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce. Fla. Stat. § 501.202(2). A consumer claim for damages under FDUTPA has three elements: (1) an objectively deceptive act or unfair practice; (2) causation; and (3) actual damages. *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 985–86 (11th Cir. 2016); *Rollins, Inc. v. Butland*, 951 So. 2d 860, 869 (Fla. Ct. App. 2006). The FDUTPA must be "construed liberally" to protect consumers, among other policy goals. Fla. Stat. § 501.202(2). As the Court previously concluded, Federal Rule of Civil Procedure 9(b)'s heightened pleading standard does not apply to FDUTPA claims.

² All page references herein are to page numbers inserted by the CM/ECF system.

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The FAC provides additional detail that plausibly allege Honda was aware of the Rollaway Defect in June 2016 such that its representation to Rojas that the 2016 Honda Civic he purchased that month was “safe” and “reliable” was deceptive. The NHTSA Report indicates that Honda began receiving complaints about the EPB on December 6, 2015. FAC at ¶ 37, Ex. A. Although Honda is correct that none of these complaints involved vehicles rolling away, Honda’s NHTSA Report, October 2016 Stop Sale message, and Service Bulletin note that the EPB defect reported in 342 warranty claims increased the risk of rolling away and crashing. Plaintiff’s argument is, in essence, that Honda should have realized the rollaway risk posed by the issues with the EPB and informed consumers of that risk sooner than October 2016. Taking Plaintiff’s allegations as true, the Court concludes that Plaintiff has sufficiently alleged Honda’s awareness of a defect that could result in rollaways by June 2016, when Plaintiff purchased his vehicle. Failure to disclose a known defect can be considered deceptive under the FDUTPA. *Cardenas v. Toyota Motor Corp.*, 418 F. Supp. 3d 1090, 1105 (S.D. Fla. 2019); *see PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003) (noting that deception can include an “omission . . . that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment.”) (quoting *Millenium Commc’ns & Fulfillment, Inc. v. Office of the Attorney Gen.*, 761 So. 2d 1256, 1263 (Fla. Dist. Ct. App. 2000)).

Plaintiff has also alleged that the deception caused him to purchase a vehicle that he would not have purchased, or would have paid less for, had he known of the defect. He has therefore sufficiently alleged causation and actual damages, defined as “the difference in the market value of the product or service in the condition in which it was delivered and its market value in the condition in which it should have been delivered according to the contract of the parties.” *Collins v. DaimlerChrysler Corp.*, 894 So. 2d 988, 990 (Fla. Dist. Ct. App. 2004) (citation and internal quotation marks omitted).

The Court thus **DENIES** Honda’s MTD the FDUTPA claim.

C. Equitable Injunctive Relief and Declaratory Relief

The FDUTPA authorizes a plaintiff to seek the following relief:

- (1) Without regard to any other remedy or relief to which a person is entitled, anyone aggrieved by a violation of this part may bring an action to obtain a declaratory judgment that an act or practice violates this part and to enjoin a person who has violated, is violating, or is otherwise likely to violate this part.

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(2) In any action brought by a person who has suffered a loss as a result of a violation of this part, such person may recover actual damages, plus attorney's fees and court costs as provided in s. 501.2105. However, damages, fees, or costs are not recoverable under this section against a retailer who has, in good faith, engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated this part.

Fla. Stat. Ann. § 501.211.

The Federal Rules of Civil Procedure permit a plaintiff to include in the complaint alternative requests for relief. Fed. R. Civ. P. 8(a)(3) (“A pleading . . . must contain: a demand for the relief sought, which may include relief in the alternative or different types of relief.”). Accordingly, Plaintiff may seek a declaratory judgment and an injunction, in addition to actual damages. The FDUTPA does not authorize, however, any other types of equitable relief such as rescission. *See Parr v. Maesbury Homes, Inc.*, No. CV 09-1268-ORL-(GJKx), 2009 WL 5171770, at *6 (M.D. Fla. Dec. 22, 2009) (dismissing rescission claim under FDUTPA).

The Court thus **GRANTS** Honda’s MTD to the extent the FAC seeks equitable remedies under the FDUTPA other than injunctive relief, but otherwise **DENIES** Honda’s MTD.

**IV.
CONCLUSION**

In light of the foregoing, the Court **GRANTS in part** Honda’s MTD and **DISMISSES, with prejudice**, the warranty claims and any claims for equitable remedies other than an injunction or a declaratory judgment authorized by the FDUTPA. The Court **DENIES** Honda’s motion with respect to the FDUTPA claim.

Honda shall file their Answer to the FAC within 15 days after the date of this Order.

IT IS SO ORDERED.