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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JACOB BEATY, et al.,

9 Plaintiffs,

10 v.

11 FORD MOTOR COMPANY,

12 Defendant.

C17-5201 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable
14 Thomas S. Zilly, United States District Judge:

15 (1) The motion for summary judgment, docket no. 257, filed by Defendant
16 Ford Motor Company (“Ford”) is GRANTED in part, DENIED in part, and DEFERRED
17 in part.

18 a. Ford argues that it is entitled to summary judgment on all claims
19 because Plaintiffs lack evidence that Ford knew about the alleged panoramic
20 sunroof (“PSR”) defect at the time of sale. The Court concludes that there is a
21 triable issue of material fact regarding whether Ford knew of a PSR defect in
22 Plaintiffs’ 2013 Ford Escape at the time of sale. *See* Order (docket no. 245 at 30);
23 Mem. Dispo. (docket no. 237 at 6). The motion is DENIED as it relates to Ford’s
alleged knowledge of the defect.

b. Ford also contends that it is entitled to summary judgment on
Plaintiffs’ Washington Consumer Protection Act (“WCPA”) claim because its
conduct was neither “deceptive” nor “unfair.” To prevail on a WCPA action, a
plaintiff must establish an “unfair or deceptive act or practice.” *Hangman Ridge
Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 719 P.2d 531
(1986). If the relevant facts about a party’s act or practice are undisputed, a trial

1 court may decide whether the act or practice was deceptive or unfair as a matter of
2 law. *See Young v. Toyota Motor Sales, U.S.A.*, 196 Wn.2d 310, 317, 472 P.3d 990
3 (2020) (citing *Leingang v. Pierce Cnty. Med. Bureau, Inc.*, 131 Wn.2d 133, 150,
4 930 P.2d 288 (1997)). For example, in *Young*, there was no dispute that some
5 2014 Toyota Tacoma trucks had been incorrectly advertised as having an outside
6 temperature display on the rearview mirror. *Id.* at 314–15. According to Ford,
7 there is no dispute concerning the relevant facts as to what the parties did in this
8 case, namely, that Ford did not affirmatively disclose the possibility that the PSR
9 in Plaintiffs’ vehicle could shatter. Ford, however, has oversimplified the facts at
10 issue in this action. Plaintiffs claim that Ford failed to disclose a material defect in
11 2013 Ford Escape PSRs despite having knowledge of the alleged defect at the time
12 of sale. Ford disputes that Plaintiffs’ PSR shattered spontaneously,¹ whether the
13 PSR is defective, and its knowledge of the alleged defect at the time of sale.
14 Under Washington law, an act can be considered deceptive if a representation,
15 omission, or practice is likely to mislead a reasonable consumer. *Panag v.*
16 *Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 50, 204 P.3d 885 (2009). Where the
17 alleged act is a failure to disclose, a plaintiff must prove that the omitted fact was
18 material. *See Young*, 196 Wn.2d at 318–19; *see also* Mem. Dispo. (docket no. 237
19 at 6) (“We also conclude that a reasonable juror could find that the risk of a
20 spontaneously shattering PSR is material to consumers under Washington law.”).²
21 The Court concludes that genuine issues of material fact preclude summary
22 judgment on Plaintiffs’ claim under the WCPA. The motion is DENIED as it
23 relates to Plaintiffs’ WCPA claim.

13 c. Finally, Ford argues that it is entitled to partial summary judgment
14 as to Plaintiffs’ request for overpayment, replacement sunroof, and diminished
15 value damages (categories three through five in Plaintiffs’ initial disclosures).

15 i. The motion is DEFERRED as it relates to Plaintiffs’ request
16 for overpayment damages. Plaintiffs have proposed a damages model that
17 is purportedly capable of quantifying their overpayment damages. It
18 appears, however, that Plaintiffs’ experts have not yet quantified the alleged
19 overpayment damages in this case. Plaintiffs are DIRECTED, on or before
20 June 10, 2022, to submit an offer of proof on their request for overpayment

19 ¹ Ford contends that Plaintiffs’ PSR shattered as a result of an apparent rock strike.

20 ² An act or practice can be “unfair” without being “deceptive.” *Rush v. Blackburn*, 190 Wn.
21 App. 945, 963, 361 P.3d 217 (2015). An act or practice can be considered “unfair” if: (i) it
22 offends public policy or falls within “the penumbra of some common-law, statutory, or other
23 established concept of unfairness”; (ii) it is “immoral, unethical, oppressive, or unscrupulous”;
and/or (iii) it causes substantial injury to consumers. *Id.* at 962–63 (citation omitted).

1 damages. Plaintiffs' offer of proof must be limited to expert reports,
2 documents, and other materials presented to Ford during the discovery
period.

3 ii. The motion is GRANTED as to Plaintiffs' request for
4 replacement sunroof damages *beyond* any out-of-pocket expenses Plaintiffs
5 incurred from replacing their PSR. Plaintiffs did not specifically address
Ford's argument concerning this category of damages and have not
6 presented any evidence showing that they incurred replacement sunroof
damages in addition to their out-of-pocket costs.³

7 iii. The motion is GRANTED as to Plaintiffs' request for
8 diminished value damages. In response to Ford's motion, Plaintiffs
9 contend that their theory of damages is not based on diminished value as
Ford attempts to define it. Plaintiffs do not contest Ford's argument that
10 they have never tried to sell or trade in their Ford Escape, and that they
have never attempted to determine the resale value of the vehicle. Plaintiffs
11 have not presented any evidence showing that their vehicle diminished in
value due to the alleged defect.

(2) The Clerk is directed to send a copy of this Minute Order to all counsel of
11 record.

12 Dated this 26th day of May, 2022.

13 Ravi Subramanian

14 Clerk

15 s/Gail Glass

16 Deputy Clerk

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20 _____
21 ³ The parties appear to agree that replacement sunroof damages fall under Plaintiffs' claim for
22 out-of-pocket costs in connection with the replacement of their PSR. According to Plaintiffs,
"Ford appears to concede that replacement sunroof damages are available in the amount of
23 Plaintiffs' out-of-pocket costs." Resp. (docket no. 259 at 22).