UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SHAWN SPENCER, individually on behalf of himself and all others similarly situated, Plaintiffs, v. HONDA MOTOR CORP. LTD., a Japanese Corporation, et. al. Defendants.	No. 2:21-cv-00988-JAM-DMC **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS**

Plaintiff Shawn Spencer, representing himself and all others similarly situated, sues Honda Motor Corporation, a Japanese corporation, and American Honda Motor Company, Inc., a subsidiary headquartered in California, collectively ("Defendants" or "Honda"), for three claims: (1) violation of the California Consumer Legal Remedies Act, (2) violation of the California Unfair Competition Law, and (3) violation of the California False Advertising Law. See Complaint ("Compl."), ECF No. 1.

Defendants move to dismiss all claims for failure to state a claim upon which relief may be granted under Federal Rule of Civil Procedure 12(b)(6). See Motion to Dismiss ("Mot."), ECF No. 10. Plaintiff opposes the motion. See Opp'n, ECF No. 19. Defendants replied. See Reply, ECF No. 20. For the reasons set

forth below, the Court GRANTS in part and DENIES in part Defendants' motion to dismiss.[1]

I. BACKGROUND

Defendants manufacture and market various models of off-road vehicles known generally as utility terrain vehicles ("UTVs"). Compl. ¶ 1. Each Honda UTV model allegedly has a label that states the vehicle's rollover protection system ("ROPS") complies with the Department of Occupational Safety and Health Administration's ("OSHA") requirements under 29 C.F.R. § 1928.53. Id. ¶¶ 3-5. Plaintiff alleges that, contrary to Defendants' label claim, Defendants' testing practices do not comply with OSHA's requirement. Id. ¶ 37. Plaintiff alleges he saw and relied upon Defendants' ROPS label when he purchased his UTV. Id. ¶ 45. Plaintiff avers that "[i]f the sticker said that the ROPS structure failed to meet OSHA requirements, he would not have purchased [the vehicle]." Id. Plaintiff thus brings claims for fraud and misrepresentation under California law. Id. ¶¶ 92-93, 99-109, 115-116.

II. OPINION

A. Judicial Notice

Federal Rule of Evidence 201 allows the Court to notice a fact if it is "not subject to reasonable dispute," such that it is "generally known" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

[1] This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for August 23, 2022.

Defendants request the Court take judicial notice of a table of vehicle weights published by the United States Department of Energy and a publication by the International Organization for Standardization ("ISO"). See Req. for Judicial Notice, ECF No. 11. The Court grants Defendants' request for judicial notice. See Pargett v. Wal-Mart Stores., 2020 WL 5028317, at *3 (C.D. Cal. Apr. 10, 2020) (taking judicial notice of documents published on the Department of Energy's website); see also In re Toyota Motor Corp., 785 F. Supp. 2d 883, 901 (C.D. Cal. 2011) (taking judicial notice of certain documents published by the ISO, because they "embrace proper subjects of judicial notice"). The Court's judicial notice, however, extends only to the existence of these documents and not to their substance to the extent it is disputed or irrelevant. Lee v. City of Los Angeles, 250 F.3d 668, 690 (9th Cir. 2001).

B. Legal Standard

Federal Rule of Civil Procedure 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." When a plaintiff fails to "state a claim upon which relief can be granted," the Court must dismiss the suit. Fed. R. Civ. P. 12(b)(6). To defeat a motion to dismiss, a plaintiff must "plead enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). Plausibility under Twombly requires "factual content that allows the Court to draw a reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "At this stage, the Court 'must accept as true all of the allegations

contained in a complaint.'" Id. But it need not "accept as true a legal conclusion couched as a factual allegation." Id.

Here, where Plaintiff alleges claims based in fraud, Plaintiff's allegations must satisfy the heightened pleading standard of Rule 9(b). Fed. R. Civ. P. 9(b). "To comply with Rule 9(b), allegations of fraud must be specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud." Swartz v. KPMG LLP, 476 F.3d 756, 764 (9th Cir. 2007) (internal quotation marks omitted). The "[a]verments of fraud must be accompanied by the who, what, when, where, and how of the misconduct charged." Kearns v. Ford Motor Co., 567 F.3d 1120, 1124 (9th Cir. 2009) (internal quotation marks omitted). It is not enough to set forth "the neutral facts necessary to identify the transaction. The plaintiff must set forth what is false or misleading about a statement, and why it is false." Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003). This heightened pleading standard applies to state-law claims sounding in fraud. Vess, 317 F.3d at 1103-04.

Leave to amend shall be granted, unless the "pleading could not possibly be cured by the allegation of other facts." Cooks, Perkiss & Leiche, Inc. v. N. Cal. Collection Serv., Inc., 911 F.2d 242, 246-47 (9th Cir. 1990).

C. Analysis

1. Misrepresentation

To state a claim under the California's Consumer Legal Remedies Act ("CLRA"), Unfair Competition Law ("UCL") and False Advertising Law ("FAL"), a plaintiff must allege that

defendant's purported misrepresentation is likely to deceive a reasonable consumer. See Branca v. Nordstrom, Inc., 2015 WL 1841231, at *6 (S.D. Cal. Mar. 20, 2015) (citing Williams v. Gerber Prods. Co., 552 F.3d 934, 938 (9th Cir. 2008)). Defendants contend that Plaintiff cannot identify an actionable misrepresentation because, contrary to Plaintiff's allegations, Defendants complied with OSHA's requirements at 29 C.F.R. § 1928.53 as a matter of law.

Section 1928.53 requires that, when testing a vehicle's roll-over protection system, the manufacturer use the vehicle's weight as a variable. §§ 1928.53(d)(2)(ii), (d)(3)(A), and (d)(4)(A). "Weight" is defined at 29 C.F.R § 1928.51(a) as:

> Tractor weight [that] includes the protective frame or enclosure, all fuels, and other components required for normal use of the tractor. Ballast shall be added as necessary to achieve a minimum total weight of 110 lb. (50.0 kg.) per maximum power take-off horsepower at the rated engine speed or the maximum gross vehicle weight specified by the manufacturer, whichever is the greatest. Front end weight shall be at least 25 percent of the tractor test weight. In case power take-off horsepower is not available, 95 percent of net engine flywheel horsepower shall be used.

Plaintiff contends that Defendants used the wrong weight as a matter of fact; Defendants contend that they used the correct weight as a matter of law. Mot. at 7; Opp'n at 12. The crux of their competing views lies in whether the last sentence of this provision, regarding flywheel horsepower, applies to situations where the vehicle in question lacks a power take-off ("PTO")[2].

[2] "A PTO is a device that transfers power from a vehicle's engine to a secondary application . . . allowing the secondary application to perform its function without a need for an additional engine to power it." Mot. at 8, n.1.

The Court finds that Plaintiff is correct in that it does.

Defendants' argument that § 1928.53's testing requirements permit them to use "gross vehicle weight" in all instances when their vehicle lacks a PTO is unpersuasive. Mot. at 9. The statute states that a vehicle's weight is the greater of two values, either the maximum gross vehicle weight or 110 pounds times the maximum power take-off horsepower at the rated engine speed. § 1928.51(a). When the power take-off is not available, the second value shall be calculated instead as 110 pounds times 95 percent of the net engine flywheel horsepower. Id.

Vehicle Weight is the Greater of A or B		
A	**B**	
Maximum Gross Vehicle Weight	**If PTO horsepower is available:**	**If PTO horsepower is not available:**
	110 lb. x PTO Horsepower	110 lb. x .95(Flywheel Horsepower)

When a vehicle lacks a PTO, the value of that vehicle's PTO horsepower is "not available" within the meaning of the statute, and the flywheel horsepower should be used instead.

The Court declines to adopt Defendants' proposed interpretation that the PTO horsepower of a vehicle without a PTO is "available" within the meaning of the statute merely because the horsepower of a nonexistent engine is logically zero. Mot. at 9. Defendants' interpretation would render the last sentence of this provision superfluous because, in cases where a PTO is installed, the PTO horsepower would apply, and,

in cases where a PTO is not installed, the PTO horsepower would still apply (as zero). This would mean that the flywheel horsepower value would only apply in situations where a PTO is installed but the PTO horsepower is somehow uncalculatable. Mot. at 12. Given that Defendants suggest that PTO horsepower can be calculated even when a PTO does not exist, the Court declines to credit their suggestion that PTO horsepower might be uncalculatable when a PTO does exist.

As Defendants noted, the Court "must interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless, or superfluous." Boise Cascade Corp. v. U.S. E.P.A., 942 F.2d 1427, 1432 (9th Cir. 1991). As such, the Court concludes that, in the absence of a PTO, Defendants were required under § 1928.51(a) to compare their vehicle's gross vehicle weight with 110 pounds times 95 percent of the net engine flywheel horsepower and to use the greater value in their ROPS tests. Plaintiff alleges Defendants failed to do so. Compl. ¶ 37. The Court finds that this allegation is sufficient to state an actionable misrepresentation under the CLRA, UCL, and FAL at this motion to dismiss stage.

2. Specific Acts

Defendants contend Plaintiff failed to satisfy the specificity requirement of Rule 9(b) because "he lumps AHM and HMC together, without identifying which defendant—AHM or HMC—made the alleged statements." Mot. at 14. Outside these lumping statements, Defendants argue, "Spencer does not

attribute a single statement to HMC." Id. However, the Ninth Circuit has held "[t]here is no flaw in a pleading . . . where collective allegations are used to describe the actions of multiple defendants who are alleged to have engaged in precisely the same conduct." United States ex rel. Swoben v. United Healthcare Ins. Co., 848 F.3d 1161 (9th Cir. 2016), 1184. "Plaintiff's assertion throughout the Complaint [is] that both Honda Motor and American Honda cheated on the ROPS test and misrepresented their UTVs as ROPS compliant." Opp'n at 13. As such, Plaintiff's use of "Defendants" or "Honda" to refer to both defendants does not run afoul of the specificity requirements of Rule 9(b). The Court finds that Plaintiff has sufficiently pled specific acts under Rule 9(b) and declines to dismiss his claims for this reason.

3. Equitable Restitution and Injunctive Relief

Defendants next move to dismiss Plaintiff's claims for equitable restitution and injunctive relief under the CLRA, UCL, and FAL, arguing that Plaintiff's claims for equitable remedies fail under Sonner v. Premier Nutrition Corp., 971 F.3d 834 (9th Cir. 2020), because Plaintiff fails to show he lacks an adequate remedy at law.

With respect to injunctive relief, this Court, applying Sonner, found that a "plaintiff may pursue her equitable claims for injunctive relief to the extent they are premised on alleged future harm." Roper v. Big Heart Pet Brands, Inc., 510 F. Supp. 3d 903, 918 (E.D. Cal. 2020). In Roper, the plaintiff alleged facts about deceptively labeled dog food that were of "sufficient detail to support, by way of inference, an alleged

practice of false advertising with respect to the Products." Id. This and the plaintiff's allegation that "she and other future purchasers will continue to be misled" was "sufficient to suggest a likelihood of future harm amendable to injunctive relief." Id.

Here, Plaintiff has made similar allegations that Defendants made misrepresentations about their UTVs' compliance with OSHA requirements and that these misrepresentations "will continue to cause irreparable injury to consumers unless enjoined or restrained." Compl. ¶ 125. However, Plaintiff has not alleged that he and others are at risk for future harms nor that they intend to shop for or buy UTVs in the future. As such, Plaintiff has not sufficiently pled a prospective harm that would be redressed by an injunction. Accordingly, the Court dismisses Plaintiff's claims for injunctive relief without prejudice.

With respect to equitable restitution, the Court agrees with Defendants that Sonner controls. In Sonner, the Ninth Circuit held that a plaintiff must allege the absence of an adequate legal remedy to obtain equitable relief in a case pending before a federal court. Sonner, 971 F.3d at 840-41. Plaintiff's complaint states numerous times that he and the putative class "are damaged based on the benefit of the bargain" and "have lost money or property" as a result of Defendants' alleged misconduct. Compl. ¶¶ 41, 44, 49-50, 92, 107, 123-24. As such, the Court finds that Plaintiff has an adequate remedy at law. The Court dismisses Plaintiff's request for equitable restitution without prejudice. See Guzman v. Polaris Indus.,

No. 21-55520, 2022 WL 4543709 (9th Cir. Sep. 29, 2022) (holding that dismissal of claims for lack of equitable jurisdiction should be without prejudice).

III. ORDER

For the reasons set forth above, the Court GRANTS in part and DENIES in part Defendants' Motion to Dismiss. Defendants' Motion to Dismiss Plaintiff's claims for injunctive relief and equitable restitution under the CLRA, FAL, and UCL is GRANTED WITHOUT PREJUDICE. The remainder of Defendants' Motion to Dismiss is DENIED. If Plaintiff intends to file an amended complaint, he must do so within twenty (20) days of this Order. Defendants' responsive pleading is due twenty (20) days thereafter. If Plaintiff does not file an amended complaint, the case will proceed on the remaining claims in his complaint.

IT IS SO ORDERED.

Dated: October 25, 2022

JOHN A. MENDEZ,
SENIOR UNITED STATES DISTRICT JUDGE