UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 15-2052-DOC (KESx) Date: November 21, 2016

Title: BILLY GLENN, ET AL. V. HYUNDAI MOTOR AMERICA, ET AL.

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Deborah Goltz	Not Present
Courtroom Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:	ATTORNEYS PRESENT FOR DEFENDANT:
None Present	None Present

PROCEEDINGS (IN CHAMBERS): ORDER DENYING DEFENDANTS' MOTION TO DISMISS [71]

Before the Court is Defendant Hyundai Motor America's ("Hyundai," or "Defendant")[1] Motion to Dismiss ("Motion") (Dkt. 71). The Court finds this matter appropriate for resolution without oral argument. Fed. R. Civ. P. 78; L.R. 7-15. Having reviewed the moving papers and considered the parties' arguments, the Court DENIES the Motion.

I. Background

A. Facts

The following facts are drawn from Plaintiffs Billy Glenn, Kathy Warburton, Kim Fama, Corrine Kane, Roxana Fitzmaurice, and Jahan Mulla's (collectively, "Plaintiffs") Second Amended Complaint ("SAC") (Dkt. 66).

The instant case involves panoramic sunroofs—larger versions of sunroofs that span almost the whole roof—installed in several models of Hyundai vehicles. SAC ¶ 1. Panoramic sunroofs, introduced in the mid-2000s, are an alternative to traditional

[1] There is another defendant in this action—Hyundai Motor Corporation. However, this Motion was brought only by HMA.

sunroofs. *Id.* ¶¶ 1, 18. Defendant Hyundai "markets the panoramic sunroofs as a luxury upgrade, since the sunroofs provide extra light and an 'open air' feeling while driving, and charges its customers several thousand dollars for the upgrade." *Id.* Plaintiffs specifically focus on the factory-installed panoramic sunroofs in the 2011–2016 Hyundai Sonata, Tuscon, and Veloster, and the 2013–2016 Hyundai Santa Fe, Santa Fe Sport, and Elantra GT (collectively, the "Class Vehicles"). *Id.* ¶ 17.

Hyundai makes these sunroofs out of "tempered glass" —a type of glass that is processed in a way that makes it stronger. *Id.* ¶ 20. In recent years, Hyundai switched to using a thinner glass for its panoramic sunroofs that is difficult to temper properly, and thus, more susceptible to compromise. *See id.* ¶ 21. Indeed, the glass used by Hyundai "cannot withstand the pressures and flexing that the sunroof and vehicle demand," *id.* ¶ 25; as a result, the panoramic sunroofs are "prone to spontaneous and dangerous shattering," even under normal driving conditions, *id.* ¶¶ 25, 27. The shattering is so jarring that drivers "have compared it to the sound of a gunshot." *Id.* ¶ 2.

Plaintiffs allege Hyundai has "long known" of this hazard. *Id.* ¶ 27. On October 2, 2012, the National Highway Traffic and Safety Administration ("NHTSA") launched an investigation into the 2012 Hyundai Veloster after receiving numerous complaints of shattering panoramic sunroofs. *Id.* ¶ 28. In response to this investigation, Hyundai recalled the 2012 Veloster vehicles produced from July 4, 2011 through October 31, 2011. *Id.* ¶ 30. Separately, the Korean Automobile Testing & Automobile Research Institute ("KATRI"), South Korea's automotive safety government agency, began an investigation into several automotive manufacturers' sunroofs, including Hyundai. *Id.* ¶¶ 3, 31.

Despite these investigations and knowledge of this defect since at least 2012, Hyundai continues to conceal this information from potential consumers. *See id.* ¶ 45. Hyundai does not warn consumers at the point of sale, does not instruct dealerships to do so, and has made no other effort to alert Hyundai drivers about the risks of the panoramic sunroofs. *Id.* Hyundai provides a 5-year/60,000-mile new vehicle limited warranty that "[c]overs repair or replacement of any component manufactured or originally installed by Hyundai that is defective in material or factory workmanship, under normal use and maintenance." *Id.* ¶ 40. When customers report sunroof failure, Hyundai denies warranty coverage. *Id.* ¶ 43.

Each of the six named Plaintiffs owned Hyundai vehicles with panoramic sunroofs that shattered. Billy Glenn ("Glenn") purchased a new 2014 Hyundai Santa Fe Sport in September 2014 from the Eastern Shore Hyundai dealership in Daphne,

Alabama. *Id.* ¶ 49. Glenn researched the vehicle online, including on Hyundai's website, and spoke with dealership personnel prior to purchasing the vehicle. *Id.* In February 2015, Glenn was driving with his wife and daughter when the panoramic sunroof shattered without warning. *Id.* ¶ 50. Glenn contacted the dealership and Hyundai, but both refused to cover the costs of repair. *Id.* ¶ 51. Subsequently, Glenn filed a claim with his insurance company and paid a deductible in connection with the sunroof replacement. *Id.* The replacement panoramic sunroof spontaneously shattered in March 2015. *Id.* ¶ 52.

Kathy Warburton ("Warburton") purchased a new 2014 Hyundai Santa Fe in September 2014 from the Garlyn Shelton Hyundai dealership located in Bryan, Texas. *Id.* ¶ 54. Prior to her purchase, Warburton conducted online research, read Consumer Reports reviews of the vehicle, and spoke with dealership personnel. *Id.* A few months after her purchase, Warburton was driving with her daughter when the sunroof shattered. *Id.* ¶ 55. Hyundai refused to cover the costs; Warburton then filed a claim with her insurance company and incurred rental car costs. *Id.* ¶ 56.

Kim Fama ("Fama") purchased a new 2013 Hyundai Elantra GT in October 2013 from Salem Ford Hyundai in Salem, New Hampshire. *Id.* ¶ 58. Like the other Plaintiffs, Fama conducted research prior to purchasing the car, the panoramic sunroof in her car shattered, and Hyundai refused to cover the cost of repair. *Id.* ¶¶ 58–60.

Corrine Kane ("Kane"), a citizen and resident of Vancouver, Washington, purchased a 2011 Hyundai Tucson in November 2011 through a vehicle broker based in California. *Id.* ¶¶ 9, 62. Kane does not specifically allege where she purchased the vehicle. *See generally* SAC. Kane's research prior her purchase of the car included visiting Hyundai's website, looking at safety ratings, and speaking with personnel at a local Hyundai dealership. *Id.* ¶ 62. After her car's panoramic sunroof shattered and Hyundai refused to pay for repairs, Kane incurred insurance and rental car costs. *Id.* ¶¶ 63–64. Kane subsequently sold her car "because she felt unsafe driving it." *Id.* ¶ 64.

Roxana Fitzmaurice ("Fitzmaurice") purchased a 2016 Hyundai Sonata in March 2015 from Sacramento Hyundai in Sacramento, California. *Id.* ¶ 66. Like the other Plaintiffs, Fitzmaurice conducted research prior to purchasing the car and the panoramic sunroof in her car shattered. *Id.* ¶ 66–67. Fitzmaurice contacted Sacramento Hyundai. *Id.* ¶ 68. Its personnel did not offer repairs under the warranty but did advised her to file an insurance claim. *Id.*

Jahan Mulla ("Mulla") purchased a 2013 Hyundai Tucson in December 2012 from Freehold Hyundai in Freehold, New Jersey. *Id.* ¶ 70. Like the other Plaintiffs, Mulla

conducted research prior to purchasing the car and the panoramic sunroof in her car shattered. *Id.* ¶¶ 70–71. Mulla contacted personnel at Freehold Hyundai to arrange for repair under the warranty but Freehold refused to cover the costs. *Id.* ¶ 72.

All Plaintiffs allege that had "Hyundai adequately disclosed the panoramic sunroof defect," they would not have purchased their vehicles, or "would have paid substantially less" for them. *Id.* ¶¶ 53, 57, 61, 65, 69, 74.

Based on the allegations that Hyundai failed to disclose the panoramic sunroof defect, Plaintiffs assert the following claims against Hyundai: (1) Fitzmaurice individually and on behalf of the proposed California class alleges a violation of California's Unfair Competition Law ("UCL"), California Business and Professions Code § 17200, *et seq.*, (2) Fitzmaurice individually and on behalf of the proposed California class alleges a violation of California's Consumers Legal Remedies Act ("CLRA"), California Civil Code § 1750, *et seq.*, (3) Fitzmaurice individually and on behalf of the proposed California class alleges a violation of California's Song-Beverly Consumer Warranty Act for Breach of Implied Warranty, California Civil Code § 1790, *et seq.*, (4) Plaintiffs Glenn, Fama, Mulla, Warburton, and Kane, individually and on behalf of the Alabama, New Hampshire, New Jersey, Texas, and Washington classes allege a violation of state consumer protection statutes, (5) Plaintiffs Glenn, Fitzmaurice, Fama, Warburton, and Kane, individually and on behalf of the proposed Alabama, California, New Hampshire, Texas, and Washington classes allege unjust enrichment, and (6) Plaintiffs Glenn, Fitzmaurice, Fama, Warburton, and Kate, individually and on behalf of the proposed Alabama, California, New Hampshire, Texas, and Washington classes, allege violation of the Magnuson-Moss Warranty Act ("MMWA"), 15 U.S.C. § 2301, *et seq.*. *See generally* SAC.

Plaintiffs also bring this putative class action on behalf of "[a]ll persons who purchased or leased a Class Vehicle" in Alabama, California, New Hampshire, Texas, and Washington.[2]

B. Procedural History

Plaintiffs filed this action against Defendants on December 10, 2015 (Dkt. 1). Plaintiffs filed their First Amended Complaint on February 26, 2016 (Dkt. 38). On March 24, 2016, Defendant Hyundai filed a motion to dismiss (Dkt. 41). On June 24, 2016, the

[2] Despite adding New Jersey resident Jahan Mulla as a named plaintiff, the SAC fails to include New Jersey among the proposed statewide classes. SAC ¶ 75. However, a New Jersey Class is referenced in the fourth cause of action and prayer for relief. *Id.* at 32, 37.

Court granted in part Defendant's motion ("Order") (Dkt. 55). The Court granted dismissal of Plaintiffs' claims under California's UCL and CLRA after a choice-of-law analysis indicated Plaintiffs' individual claims must be governed by the consumer protection laws of their home states.[3] Order at 14–15.

On August 8, 2016, Plaintiffs filed a Second Amended Class Action Complaint ("SAC") (Dkt. 66). Hyundai filed the instant Motion on September 9, 2016 (Dkt. 71). Plaintiffs opposed on October 10, 2016 (Dkt. 72), and Hyundai replied on October 24, 2016 (Dkt. 73).

II. Legal Standard

Under Federal Rule of Civil Procedure 12(b)(6), a complaint must be dismissed when a plaintiff's allegations fail to set forth a set of facts that, if true, would entitle the complainant to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (holding that a claim must be facially plausible in order to survive a motion to dismiss). The pleadings must raise the right to relief beyond the speculative level; a plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). On a motion to dismiss, this court accepts as true a plaintiff's well-pleaded factual allegations and construes all factual inferences in the light most favorable to the plaintiff. *See Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The court is not required to accept as true legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678.

III. Discussion

Defendant HYUNDAI moves to dismiss Fitzmaurice's claim for breach of implied warranty of merchantability under the Song-Beverly Consumer Warranty Act and unjust enrichment claims of all defendants. Mot. at 1. Below, the Court will address Defendant's arguments as to each claim.

A. Song-Beverly

Defendant moves to dismiss Fitzmaurice's claim for breach of implied warranty of merchantability under California's Song-Beverly Consumer Warranty Act. Mot. at 1.

[3] The subsequently filed SAC added Fitzmaurice as a new named plaintiff. *See generally* SAC. Fitzmaurice resides in California and bought her 2016 Hyundai Sonata in California. SAC ¶¶ 10, 66. The dismissed UCL and CLRA claims are re-alleged as to Fitzmaurice individually and on behalf of the California class. SAC at 27–29.

Defendant argues that Fitzmaurice fails to state a claim because she has not alleged that the defect "manifested" within the one-year statutory warranty period. *Id.* Plaintiffs argue that there is no deadline for discovering latent defects. Opp'n at 2.

Under Song-Beverly, for new consumer goods "[t]he duration of the implied warranty of merchantability . . . shall be coextensive in duration with an express warranty which accompanies the consumer goods . . . *but in no event* shall such implied warranty have a duration of less than 60 days nor *more than one year* following the sale of new consumer goods to a retail buyer." Cal. Civ. Code § 1791.1(c) (emphasis added).

In *Mexia v. Rinker Boat Co., Inc.*, 174 Cal. App. 4th 1297, the California Court of Appeal held that "[t]here is nothing that suggests a requirement that the purchaser discover and report to the seller a *latent* defect within that time period." *Mexia*, 174 Cal. App. 4th at 1310 (emphasis added). Initially, federal district courts in California gave *Mexia* "mixed treatment." *Daniel v. Ford Motor Co.*, 806 F.3d 1217, 1223 (9th Cir. 2015); *see Peterson v. Mazda Motor of Am., Inc.*, 44 F. Supp. 3d 965, 970–71 (C.D. Cal. 2014) (noting division among district courts and requiring that plaintiff allege that "symptoms of the defect manifested during the warranty period).

In *Daniel*, the Ninth Circuit instructed that *Mexia*'s "rule that § 1791.1 does not create a deadline for discovering latent defects or for giving notice to the seller must be followed." *Daniel*, 806 F.3d at 1223 (citations omitted). In its analysis of *Mexia*, the Ninth Circuit noted that *Mexia* is consistent with the holding in *Hicks v. Kaufman & Broad Home Corp.*, 89 Cal. App. 4th 908, (2001), that "proof of breach of warranty does not require proof the product has malfunctioned but only that it contains an inherent defect which is substantially certain to result in malfunction during the useful life of the product." *Hicks*, 89 Cal. App. 4th at 918; *see Daniel*, 806 F.3d at 1223. Since *Daniel*, district court decisions have aligned with *Mexia*. *See Philips v. Ford Motor Co.*, No. 14-CV-02989-LHK, 2016 WL 1745948, at *9 (N.D. Cal. May 3, 2016) (discussing and following *Daniel* and *Mexia*); *Sharma v. BMW of N. Am., LLC*, No. C 13-2274 MMC, 2016 WL 945985, at *2 (N.D. Cal. Mar. 14 2016) (denying dismissal of Song-Beverly claim upon reconsideration in light of *Daniel*). Accordingly, Defendant's reliance upon pre-*Daniel* district court cases requiring a manifestation of the defect during the one-year implied warranty period is misplaced.

Here, Fitzmaurice alleges a defect stemming from the manufacture of the panoramic sunroofs. *See* SAC ¶¶ 21–25. "In the case of a latent defect, a product is rendered unmerchantable, and the warranty of merchantability is breached, by the existence of the unseen defect, not by its subsequent discovery." *Daniel*, 806 F.3d at

1223. Under *Daniel* and *Mexia*, it is enough that Fitzmaurice alleges a latent defect that renders the good unmerchantable—she need not discover the latent defect within the one year period. *Id.*; *Mexia*, 174 Cal. App. at 1305.

Accordingly, the Court DENIES Defendant's Motion to Dismiss as to Fitzmaurice's Song-Beverly claim.

B. Unjust Enrichment

Defendant moves to dismiss Plaintiffs Glenn, Fitzmaurice, Fama, Warburton, and Kane's claims for unjust enrichment. *See generally* Mot. Defendant argues that Plaintiffs cannot state a claim for unjust enrichment because a valid, enforceable contract governs the subject matter of their claims. Mot. at 8. Defendant further argues that Plaintiffs cannot plead unjust enrichment in the alternative where the validity of the express warranty is undisputed. *See* Mot. at 9. As to unjust enrichment claims by Fitzmaurice, Warburton, and Fama, Defendant argues that unjust enrichment is not an independent cause of action under California, Texas, or New Hampshire law. Mot. at 10. As to unjust enrichment claims by Fama and Kane, Defendant argues that it remains unclear which states' laws apply to those Plaintiffs. Mot. at 7–8.

1. Independent Cause of Action

"The doctrine of unjust enrichment is recognized where there is no enforceable agreement between the parties on the subject matter at issue or where no adequate legal remedy exists." *Ball v. Johanns*, No. CIV S-07-1190 LKK/DAD, 2008 WL 269069, at *2 (E.D. Cal. Jan. 29, 2008). "[I]n California, there is not a standalone cause of action for 'unjust enrichment,' which is synonymous with 'restitution.'" *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir. 2015) (citing *Durell v. Sharp Healthcare*, 183 Cal. App. 4th 1350, 1370 (2010)).

However, "[w]hen a plaintiff alleges unjust enrichment, a court may 'construe the cause of action as a quasi-contract claim seeking restitution.'"[4] *Id.* (quoting *Rutherford Holdings, LLC v. Plaza Del Rey*, 223 Cal. App. 4th 221, 231 (2014)). Furthermore, "restitution may be awarded in lieu of breach of contract damages when the parties had

[4] The Court notes Defendant's reliance upon this Court's holding in *Tait v. BSH Home Appliances Corp.*, No. SACV 10-711 DOC (ANx), 2011 WL 1832941 (C.D. Cal. May 12, 2011) for the proposition that there is no cause of action in California for unjust enrichment. However, the Court notes that its 2011 decision in *Tait* clarified that "authority on this issue is somewhat split." *Tait*, 2011 WL 1832941, at *5. Since then, both state courts and the Ninth Circuit have provided additional guidance. *See, e.g.*, *Astiana*, 783 F.3d 753.

an express contract, but it was *procured by fraud* or is unenforceable or ineffective for some reason." (emphasis added) (quoting *McBride v. Boughton*, 123 Cal. App. 4th 379, 388 (2004)) (internal quotation marks omitted). Thus, "a claim for restitution is permitted even if the party inconsistently pleads a breach of contract claim that alleges the existence of an enforceable agreement." *Rutherford Holdings*, 223 Cal. App. 4th at 231.

Likewise, in Texas, "[u]njust enrichment is an independent cause of action." *Pepi Corp. v. Galliford*, 254 S.W.3d 457, 460 (Tex. App. 2007). The same is true of New Hampshire. *See Animal Hosp. of Nashua, Inc. v. Antech Diagnostics*, No. 11-cv-448-SM, 2012 WL 1801742, at *6 (D.N.H. May 17, 2012) (denying motion for judgment on the pleadings as to an unjust enrichment claim).

Accordingly, the Court is unpersuaded by Defendant's argument that there is no independent cause of action for unjust enrichment in California, Texas or New Hampshire.

2. Implication of an Express Warranty

"[U]njust enrichment . . . cannot lie where a valid express contract covering the same subject matter exists between the parties." *Gerlinger v. Amazon.com, Inc.*, 311 F. Supp. 2d 838, 856 (N.D. Cal. 2004). "Although certain situations permit plaintiffs to pursue an unjust enrichment claim as an alternative to a breach of contract claim, this alternative pleading theory is not available where a plaintiff expressly pleads, and relies on, the existence of an express agreement between the parties relating to the same issues." *Tait v. BSH Home Appliances Corp.*, No. SACV 10-711 DOC (ANx), 2011 WL 1832941, at *6 (C.D. Cal. May 12, 2011); *see Selman v. CitiMortgage, Inc.*, No. 12-0441-WS-B, 2013 WL 838193, at *13 (S.D. Ala. Mar. 5, 2013) ("[N]o cause of action for unjust enrichment is cognizable where, as here, there is an express contract between the parties."); *Vernon v. Qwest Comms. Int'l, Inc.*, 643 F. Supp. 2d 1256, 1266 (W.D. Wash. 2009) ("Unjust enrichment is an equitable theory that invokes an implied contract when the parties either have no express contract or have abrogated it.") (internal quotation marks omitted); *Axenics, Inc. v. Turner Const. Co.*, 164 N.H. 659, 669 (2013) ("It is a well-established principle that the court cannot allow recovery under a theory of unjust enrichment when there is a valid, express contract covering the subject matter at hand."); *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000) ("[W]hen a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory.")

Plaintiffs argue that the unjust enrichment claim falls outside the scope of the warranty. Opp'n at 8. Specifically, Plaintiffs argue that the claim arises principally from Hyundai's "*pre-sale* conduct," namely alleged fraudulent concealment of the defect and its attendant danger. *Id.* Indeed, "unjust enrichment is an action in quasi-contract[, which] cannot lie where a valid express contract covering the same subject matter exists between the parties." *Gerlinger v. Amazon.com, Inc.*, 311 F. Supp. 2d 838, 856 (N.D. Cal. 2004). However, the legal theory here is that any fraudulent concealment before the contract is not within the scope of the warranty. *See* SAC ¶¶ 129–31.

Moreover, Plaintiffs have an additional theory. Although the warranty covers "defect[s] in material or factory workmanship," Plaintiffs allege, in part, a defect in *design*, which is not expressly covered by the warranty. *Id.* ¶¶ 40–42. The Court is persuaded that Plaintiffs' allegations can be read to "describe the theory underlying a claim that . . . [D]efendant has been unjustly conferred a benefit through mistake, fraud, coercion, or request." *Astiana*, 783 F.3d at 762 (internal quotation marks omitted); *see also Tait*, 2011 WL 1832941, at *6 ("the Court can imagine certain unjust enrichment claims that properly might be brought to recover for injuries not covered by an express warranty.").

Accordingly, the Court DENIES Defendant's Motion to Dismiss as to Plaintiffs' unjust enrichment claims.

IV. DISPOSITION

For the reasons explained above, the Court DENIES Defendant's Motion to Dismiss.

The Clerk shall serve this minute order on the parties.