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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIKE MANDANI, et al.,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA,
INC.,

Defendant.

Case No. [17-cv-07287-HSG](#)

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS AND MOTION
FOR RECONSIDERATION**

Re: Dkt. No. 91

On December 22, 2017, Plaintiffs Mike Madani and Romsin Oushana¹ brought this putative class action against Volkswagen Group of America, Inc. (“VWGoA”), Volkswagen AG, and Audi AG for, among other things, purported breaches of express and implied warranties, and violations of various consumer protection laws based on allegedly defective direct-shift gearbox (“DSG”) transmissions in 2010–2014 Audi S4, S5, S6, S7, and RS5 vehicles. See Dkt. No. 1. On April 23, 2018, Plaintiffs filed a first amended complaint. See Dkt. No. 50 (“FAC”). Defendants filed a motion to dismiss the first amended complaint, which the Court granted in part and denied in part. See Dkt. Nos. 56, 69. Plaintiffs thereafter filed a second amended complaint, which (1) added John Chess as Plaintiff, (2) only named VWGoA as a Defendant, and (3) included 2015 vehicle models. See Dkt. No. 71 (“SAC”). Defendants filed a motion to dismiss the second amended complaint, which the Court granted in part and denied in part. See Dkt. Nos. 72, 84 (“Order”). The Court granted Plaintiffs Madani and Oushana leave to amend two claims for the

¹ The original complaint included other parties who have since been voluntarily dismissed, see Dkt. No. 12 (dismissing Brian Gillard); Dkt. No. 49 (dismissing Shant Bakalian), as well as parties whose claims this Court dismissed with prejudice. See Doc. 84 (Order dismissing Eric Walley, Richard DeVico, and Michael Warchut).

1 limited purpose of pleading reliance on Defendant’s omissions. Dkt. No. 84 at 19. Plaintiffs have
2 filed a third amended complaint. See Dkt. No. 86 (“TAC”).

3 Pending before the Court is Defendant’s motion to partially dismiss the operative
4 complaint, briefing for which is complete. See Dkt. Nos. 91 (“Mot.”), 94 (“Opp.”), 96 (“Reply”).
5 After carefully considering the parties’ arguments, the Court **GRANTS** Defendant’s motion.²

6 **I. DISCUSSION**

7 Plaintiffs’ third amended complaint realleges seven causes of action: (1) Breach of Express
8 Warranty; (2) Violation of the Magnuson-Moss Warranty Act; (3) Breach of Implied Warranty
9 Pursuant to Song-Beverly Consumer Warranty Act, 15 U.S.C. § 2301, et seq.; (4) Violation of the
10 California Consumers Legal Remedies Act, California Civil Code § 1750, et seq.; (5) Violation of
11 the California Unfair Competition Law Cal. Bus. & Prof. Code § 17200, et seq.; (6) Violation of
12 the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq., and Fed. R. Civ. P. 57; (7) Equitable
13 Injunctive and Declaratory Relief. TAC ¶¶ 132-204. A complete review of the allegations
14 underlying these claims can be found in the Court’s previous Order granting in part and denying in
15 part Defendant’s motion to dismiss the second amended complaint. See Dkt. No. 84.

16 Here, Defendant moves to dismiss claims 1 and 2 to the extent that they are premised upon
17 VWGoA’s marketing statements, and claim 3 as time-barred. Mot. at 3, 6.

18 **A. Breach of Express Warranty (Claim 1) and Magnuson-Moss Warranty Act**
19 **(Claim 2)**

20 Defendant contends that Plaintiffs Oushana and Chess’ claim alleging a breach of express
21 warranty must be dismissed to the extent that it relies on VWGoA’s alleged marketing statements,
22 Mot. at 6. Plaintiffs Oushana and Chess concede that any reference to VWGoA’s marketing
23 statements was inadvertently included in the TAC, and that they do not intend to pursue any
24 claims based on them. See Opp. at 5. Given this concession, the Court dismisses claims 1 and 2
25 to the extent that they reference express warranties created by VWGOA’s marketing statements.

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28 ² The Court finds that this matter is appropriate for disposition without oral argument and the
matter is deemed submitted. See Civil L.R. 7-1(b).

B. Song-Beverly Act (Claim 3)

1 Defendant contends that the claim for breach of implied warranty under the Song-Beverly
2 Consumer Warranty Act, brought only on behalf of Plaintiff Madani, is time barred and must be
3 dismissed. Mot. at 3. The Court previously denied Defendant’s attempt to dismiss on this
4 ground. See Dkt. No. 84 at 11. Accordingly, the Court construes Defendant’s argument as a
5 motion for reconsideration of the Court’s previous order. Under Civil Local Rule 7-9, “[b]efore
6 the entry of a judgment adjudicating all of the claims and the rights and liabilities of all the parties
7 in a case, any party may make a motion before a Judge requesting that the Judge grant the party
8 leave to file a motion for reconsideration of any interlocutory order on any ground set forth in
9 Civil L.R. 7-9 (b).” Civil L.R. 7-9(a). The Local Rule further directs that:

[t]he moving party must specifically show reasonable diligence in bringing the motion, and one of the following:

- 12 (1) That at the time of the motion for leave, a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order for which reconsideration is sought. The party also must show that in the exercise of reasonable diligence the party applying for reconsideration did not know such fact or law at the time of the interlocutory order; or
- 15 (2) The emergence of new material facts or a change of law occurring after the time of such order; or
- 16 (3) A manifest failure by the Court to consider material facts or dispositive legal arguments which were presented to the Court before such interlocutory order.

17 Civil L.R. 7-9(b).

18 In the Court’s previous order, it rejected Defendant’s argument that Plaintiff Madani’s
19 claim was time-barred, finding that the delayed discovery rule applied. See Dkt. No. 84 at 11
20 (“The Court first finds that Madani’s claim is not time-barred. Under the Song-Beverly Act, a
21 claim accrues ‘when the breach is or should have been discovered.’ Cal. Com. Code § 2725(2).”).
22 Madani contends that because he only first experienced issues associated with the alleged defect in
23 October 2017 and filed this action in December 2017, the four-year statute of limitations for
24 implied warranty claims had not elapsed. TAC ¶ 96.

25 Defendant argues that the Court misapplied the California Commercial Code’s delayed
26 discovery rule. Mot. at 3. Defendant asserts that the rule is “only available for warranties that
27 explicitly extend to future performance,” and that an implied warranty does not, as a matter of law,
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1 “explicitly extend to future performance.” *Id.* (internal quotations and citations omitted). In
2 support, Defendant cites the California Court of Appeal decision in *Cardinal Health 301, Inc. v.*
3 *Tyco Elecs. Corp.*, 169 Cal. App. 4th 116, 130, 134 (Cal. Ct. App. 2008), as well as numerous
4 federal cases interpreting *Cardinal Health*. See *Mot.* at 4. Defendant also claims that no “tolling”
5 of the statute of limitations may apply here, whether on a theory of equitable estoppel or active
6 and fraudulent concealment. *Id.*

7 Upon reconsideration, the Court agrees with Defendant that Madani’s claim under the
8 Song-Beverly Act is time-barred. Although Defendant notably failed to sufficiently brief this
9 issue in its motion to dismiss Plaintiffs’ SAC, see *Dkt. No. 72* at 15, the California Court of
10 Appeal has emphasized that the future performance exception “must be narrowly construed,” as it
11 “applies only when the seller has expressly agreed to warrant its product for a specific and defined
12 period of time.” *Cardinal Health*, 169 Cal. App. 4th at 130, 134 (emphasis added); see also *J.B.*
13 *Painting & Waterproofing, Inc. v. RGB Holdings, LLC*, 650 Fed. Appx 450, 453 (9th Cir. 2016)
14 (“A future-performance exception, under which ‘the cause of action accrues when the breach is or
15 should have been discovered,’ Cal. Com. Code § 2725(2), applies only if: (1) the warranty
16 explicitly extends to future performance of the goods; and (2) the breach could not have been
17 discovered before performance.”). Plaintiffs’ claim is a breach of implied warranty claim, not one
18 for breach of express warranty, and thus does not explicitly extend to future performance, as this
19 Court has recognized since its ruling on the motion to dismiss the SAC. See *Mangiapane v. Ford*
20 *Motor Co.*, No. 19-cv-02014-HSG, 2019 WL 5199534, at *3 (N.D. Cal. Oct. 16, 2019) (“Because
21 an implied warranty is one that arises by operation of law rather than by an express agreement of
22 the parties, courts have consistently held it is not a warranty that explicitly extends to future
23 performance of the goods.”) (quoting *Cardinal Health*, 169 Cal. App. 4th at 134). Accordingly,
24 because more than four years elapsed between Madani’s April 2013 purchase of the car and the
25 December 2017 initiation of the present action, the claim for breach of implied warranty under the
26 Song-Beverly Act is time-barred.

27 Plaintiffs dispute this theory, relying primarily on a single case: *Garcia v. Ford Motor Co.*,
28 No. 19-cv-00385-JAM-AC, 2019 WL 3297354, at *2–3 (E.D. Cal. July 23, 2019). Significantly,

1 Garcia involved a fraudulent joinder argument in connection with a motion to remand and did not
2 involve a merits determination. 2019 WL 3297354, at *1–2. The Garcia court noted this
3 difference, finding that although “the Northern District of California has repeatedly found the
4 ‘delayed discovery rule’ inapplicable to implied warranty claims,” the dismissal standard (at issue
5 in the Northern District cases) differed from the remand standard. Id. at *3. Given the differing
6 standards at issue, the Court does not find Garcia persuasive.

7 Plaintiffs further argue that the “repair doctrine” under California Civil Code Section
8 1795.6 tolled the implied warranty claim. California Civil Code Section 1795.6 states that:

9 Notwithstanding the date or conditions set for the expiration of the
10 warranty period, such warranty period shall not be deemed expired if
11 . . . the warranty repairs or service performed upon the
12 nonconforming goods did not remedy the nonconformity for which
13 such repairs or service was performed and the buyer notified the
14 manufacturer or seller of this failure within 60 days after the repairs
15 or service was completed. When the warranty repairs or service has
16 been performed so as to remedy the nonconformity, the warranty
17 period shall expire in accordance with its terms, including any
18 extension to the warranty period for warranty repairs or service.

19 Cal. Civ. Code § 1795.6(b). The plain language of the provision makes clear that Section 1795.6
20 addresses extending the “warranty period,” not tolling the statute of limitations, during the time of
21 repair. Id.; cf. Judicial Council of California Civil Jury Instructions Nos. 3212, 3231.

22 Importantly, even assuming extending the duration of the implied warranty under the repair
23 doctrine would extend the statute of limitations, Madani took his vehicle for repairs in October
24 2017. TAC ¶¶ 97-98, 100. At that point, the four-year statute of limitations had already elapsed.
25 Thus, the repair doctrine does not provide any basis for tolling the statute of limitations.

26 Finally, Plaintiffs fail to respond to Defendant’s argument that equitable estoppel and
27 fraudulent concealment do not apply in this case. See generally Opp. The third amended
28 complaint also fails to include allegations that either doctrine applies beyond conclusory
statements. See TAC ¶¶ 89, 129. Accordingly, the Court agrees that Plaintiffs’ breach of implied
warranty claim under the Song-Beverly Act is time-barred.

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II. CONCLUSION

For the reasons noted above, the Court **GRANTS WITHOUT LEAVE TO AMEND** Defendant's motion to dismiss. Leave to further amend the complaint would be futile because the dismissed claims fail as a matter of law.

IT IS SO ORDERED.

Dated: 7/13/2020


HAYWOOD S. GILLIAM, JR.
United States District Judge