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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TECKROM, INC.,

Plaintiff,

v.

FORD MOTOR COMPANY, et al.,

Defendants.

Case No.: 3:22-cv-00357-RBM-KSC

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS**

[Doc. 3]

Currently pending before the Court is a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) filed by Defendant Ford Motor Company (“Ford”). (Doc. 3 (hereinafter “MTD”).) Plaintiff Teckrom, Inc. (“Plaintiff”) filed an opposition to Ford’s MTD (Doc. 5 (hereinafter “Opp.”)), and Ford filed a reply (Doc. 6). The Court finds the matter suitable for determination without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons discussed below, Ford’s MTD is **GRANTED**.

I. BACKGROUND

On or around June 2, 2017, Plaintiff purchased (or leased) a 2017 Ford F150 Raptor, Vehicle Identification Number 1FTFW1RG2HFC10980 (the “Vehicle”), from Ford, the Vehicle’s manufacturer. (Doc. 1-2, Compl. ¶ 4.) The Vehicle was purchased for personal or household purposes. (*Id.*) Plaintiff alleges Ford gave Plaintiff an express written warranty, which provided that, in the event a defect developed in the Vehicle during the

1 warranty period, Plaintiff could deliver the vehicle to Ford’s authorized repair facilities for
2 services. (*Id.* ¶ 5.) Plaintiff alleges the Vehicle developed nonconformities during the
3 warranty period, including: “[v]ehicle transmission getting stuck in gear, Vehicle stalling
4 while in drive, loss of control in Vehicle steering, excessive and repeated engine noise from
5 Vehicle, excessive and repeated vibrations from Vehicle, defective turbo, repeated
6 problems with fluid leaking, nauseous odors emitting from Vehicle, and repeated
7 presentation of check engine light.” (*Id.* ¶ 6.) Plaintiff further alleges Ford and its
8 representatives “have been unable to service or repair the Vehicle to conform to the
9 applicable express warranties after a reasonable number of opportunities.” (*Id.* ¶ 7.)

10 Plaintiff filed suit against Ford in the Superior Court of California, County of San
11 Diego, on February 14, 2022, alleging: (i) three violations of California’s Song-Beverly
12 Consumer Warranty Act (“Song-Beverly”), California Civil Code §§ 1790, *et seq.*; and (ii)
13 a violation of California’s Unfair Competition Law (“UCL”), Business and Professions
14 Code §§ 17200, *et seq.* (*See id.*) Ford removed the action to this Court on March 17, 2022
15 on the basis of diversity of citizenship and an amount in controversy exceeding \$75,000.
16 (Doc. 1.)

17 II. LEGAL STANDARD

18 Under Federal Rule of Civil Procedure (“Rule”) 12(b)(6), a party may move to
19 dismiss a complaint for “failure to state a claim upon which relief can be granted.” FED.
20 R. CIV. P. 12(b)(6). At the motion to dismiss stage, all material factual allegations in the
21 complaint are accepted as true and are construed in the light most favorable to the non-
22 moving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996). “A
23 complaint should not be dismissed unless a plaintiff can prove no set of facts in support of
24 his claim which would entitle him to relief.” *Id.* (citation omitted).

25 To avoid dismissal under Rule 12(b)(6), a complaint need not contain detailed
26 factual allegations; rather, the plaintiff must plead “enough facts to state a claim to relief
27 that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).
28 “A claim has facial plausibility when the plaintiff pleads factual content that allows the

1 court to draw the reasonable inference that the defendant is liable for the misconduct
2 alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556).
3 In other words, “the non-conclusory ‘factual content,’ and reasonable inferences from that
4 content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v.*
5 *U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (citing *Iqbal*, 556 U.S. at 678). “Where
6 a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops
7 short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting
8 *Twombly*, 550 U.S. at 557).

9 When a Rule 12(b)(6) motion is granted, “a district court should grant leave to amend
10 even if no request to amend the pleading was made, unless it determines that the pleading
11 could not possibly be cured by the allegation of other facts.” *Cook, Perkiss & Liehe v. N.*
12 *Cal. Collection Serv.*, 911 F.2d 242, 247 (9th Cir. 1990) (citations omitted).

13 III. DISCUSSION

14 Ford argues the Complaint should be dismissed in its entirety for failure to state a
15 claim upon which relief can be granted. The Court will address each of the claims in
16 Plaintiff’s Complaint in turn.

17 A. Violation of California Civil Code Section 1793.2(d)

18 Plaintiff first alleges Ford failed to comply with Cal. Civ. Code § 1793.2(d)(1)
19 because, after providing an express warranty for the Vehicle, Ford failed to: (1) fix non-
20 conformities after a reasonable number of opportunities; and (2) promptly replace the
21 Vehicle or make restitution to Plaintiff. (Compl. ¶¶ 4–12.) Ford argues Plaintiff fails to
22 plead an express warranty cause of action because: (1) Plaintiff asserts in conclusory
23 fashion that the Vehicle developed non-conformities; (2) Plaintiff fails to allege it
24 presented the Vehicle to a Ford-authorized facility for repair on more than one occasion;
25 and (3) Plaintiff provides no factual allegations regarding when repairs occurred and how
26 many repair opportunities were presented to Ford. (MTD at 4–5.)

27 To prevail on its claim for breach of express warranty pursuant to Cal. Civ. Code
28 § 1793.2(d)(1), Plaintiff must prove “(1) the vehicle had a nonconformity covered by the

1 express warranty that substantially impaired the use, value or safety of the vehicle (the
2 nonconformity element); (2) the vehicle was presented to an authorized representative of
3 the manufacturer of the vehicle for repair (the presentation element); and (3) the
4 manufacturer or his representative did not repair the nonconformity after a reasonable
5 number of repair attempts (the failure to repair element).” *Oregel v. Am. Isuzu Motors,*
6 *Inc.*, 90 Cal. App. 4th 1094, 1101, 109 Cal. Rptr. 2d 583, 588 (Cal. Ct. App. 2001); *see*
7 *also* CAL. CIV. CODE § 1793.2(d)(1).

8 Here, Plaintiff alleges that, during the warranty period, the Vehicle developed
9 various nonconformities, including the Vehicle transmission getting stuck in gear and the
10 Vehicle stalling while in drive. (Compl. ¶ 6.) Plaintiff also alleges that these
11 nonconformities substantially impaired the use, value, or safety of the Vehicle. (*Id.*)
12 Plaintiff’s allegations, however, fail to satisfy the three prongs of a Section 1793.2(d)(1)
13 claim. First, Plaintiff asserts in conclusory fashion that the Vehicle developed various
14 nonconformities, and that such nonconformities “substantially impair the use, value, or
15 safety of the Vehicle.” (*Id.*) The Complaint does not contain any facts about how the
16 alleged nonconformities impaired the use, value, or safety of the Vehicle; nor does Plaintiff
17 allege if the use, value, *and* safety of the Vehicle was impaired.

18 Plaintiff also asserts in conclusory fashion that “Plaintiff presented the Vehicle to
19 Defendant’s representative in this state” and “Defendant and its representatives in this state
20 have been unable to service or repair the Vehicle to conform to the applicable express
21 warranties after a reasonable number of opportunities.” (Compl. ¶¶ 7, 14.) The Complaint
22 contains no additional facts about where or when the Vehicle was presented to Ford or its
23 representative, nor does Plaintiff allege any additional facts about the number of repair
24 attempts or the continued presence of nonconformities. While Plaintiff need not prove its
25 case at the motion to dismiss stage, “[t]hreadbare recitals of the elements of a cause of
26 action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.
27 Accordingly, the Court grants Ford’s motion to dismiss Plaintiff’s first cause of action for
28 violation of Cal. Civ. Code § 1793.2(d)(1).

B. Violation of California Civil Code Section 1793.2(b)

1 Plaintiff’s second cause of action alleges Ford violated Cal. Civ. Code § 1793.2(b)
2 by failing to repair the Vehicle’s defects covered by the express warranty within thirty
3 days. (Compl. ¶¶ 13–17.) Ford argues this claim fails to plausibly allege a violation of
4 Section 1793.2(b) because Plaintiff merely recites the elements of the cause of action and
5 “does not plead any facts indicating when it brought the Subject Vehicle to a Ford
6 authorized repair facility, how long it took Ford to commence repairs, and how long it took
7 Ford to complete any repairs.” (MTD at 5–6.)

8 Section 1793.2(b) requires that when goods must be serviced or repaired “because
9 they do not conform with the applicable express warranties, service and repair shall be
10 commenced within a reasonable time by the manufacturer or its representative.” Cal. Civ.
11 Code § 1793.2(b). The statute further provides that, unless the buyer agrees in writing to
12 the contrary, “the goods shall be serviced or repaired so as to conform to the applicable
13 warranties within 30 days.” *Id.*

14 Here, Plaintiff merely alleges it “presented the Vehicle to Defendant’s representative
15 in this state, Defendant and its representative failed to commence the service or repairs
16 within a reasonable time and failed to service or repair the Vehicle so as to conform to the
17 applicable warranties within 30 days.” (Compl. ¶ 14.) The Court agrees with Ford that
18 Plaintiff has merely recited the elements of a cause of action without plausibly alleging it
19 is entitled to relief. *See Iqbal*, 556 U.S. at 678. Plaintiff has alleged no facts regarding
20 “where, when, or how [it] presented the Vehicle for service.” *Potts v. Ford Motor Co.*, No.
21 3:21-cv-00256-BEN-BGS, 2021 WL 2014796, at *6 (S.D. Cal. May 20, 2021). Because
22 the Court again finds Plaintiff provided mere “[t]hreadbare recitals of the elements of a
23 cause of action,” *Iqbal*, 556 U.S. at 678, the Court grants Ford’s motion to dismiss
24 Plaintiff’s second cause of action for violation of Cal. Civ. Code § 1793.2(b).
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C. Violation of California Civil Code Section 1791.1

26 Plaintiff’s third cause of action alleges Ford violated Cal. Civ. Code § 1791.1,
27 California’s implied warranty of merchantability. Ford again argues Plaintiff pleads no
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1 facts to support its claim and instead merely recites the elements of the cause of action.
2 (MTD at 6–7.)

3 “An implied warranty of merchantability under the Song–Beverly Act requires that
4 consumer goods “[a]re fit for the ordinary purposes for which such goods are used.”
5 *Victorino v. FCA US LLC*, 326 F.R.D. 282, 290 (S.D. Cal. 2018) (quoting CAL. CIV. CODE
6 § 1791.1(a)). “Unlike express warranties, which are basically contractual in nature, the
7 implied warranty of merchantability arises by operation of law” and “provides for a
8 minimum level of quality.” *Keegan v. Am. Honda Motor Co.*, 838 F. Supp. 2d 929, 945
9 (C.D. Cal. 2012) (quoting *American Suzuki Motor Corp. v. Superior Court*, 37 Cal. App.
10 4th 1291, 1295–96 (Cal. Ct. App. 1995). California courts “reject the notion that merely
11 because a vehicle provides transportation from point A to point B, it necessarily does not
12 violate the implied warranty of merchantability.” *Isip v. Mercedes–Benz USA, LLC*, 155
13 Cal. App. 4th 19, 27 (Cal. Ct. App. 2007). “A vehicle that smells, lurches, clanks, and
14 emits smoke over an extended period of time is not fit for its intended purpose.” *Id.* The
15 law does not require that a vehicle be inoperable. *Avedisian v. Mercedes–Benz USA, LLC*,
16 43 F. Supp. 3d 1071, 1079 (C.D. Cal. 2014).

17 In support of its claim for breach of the implied warranty of merchantability, Plaintiff
18 relies on the same list of nonconformities, including “excessive and repeated engine noise
19 from Vehicle, excessive and repeated vibrations from Vehicle, defective turbo, repeated
20 problems with fluid leaking, nauseous odors emitting from Vehicle, and repeated
21 presentation of check engine light.” (Compl. ¶ 6.) Plaintiff alleges “[t]he existence of each
22 of these defects constitutes a breach of the implied warranty because the Vehicle (1) does
23 not pass without objection in the trade under the contract description, (2) is not fit for the
24 ordinary purposes for which such goods are used, (3) is not adequately contained,
25 packaged, and labelled, and (4) does not conform to the promises or affirmations of fact
26 made on the container or label.” (*Id.* ¶ 21.) The Court again finds Plaintiff has not included
27 sufficient factual allegations “about how long these problems lasted or what actual effect
28 the problems had on operation of the Vehicle.” *Potts*, 2021 WL 2014796, at *6 (citation

1 omitted). Plaintiff has again merely recited the elements of the cause of action, evident by
2 Plaintiff's allegations that the Vehicle "is not adequately contained, packaged, and
3 labelled" and "does not conform to the promises or affirmations of fact made on the
4 container or label" despite this case having nothing to do with packaged or labeled
5 products. *See id.* The Court again finds Plaintiff has failed to satisfy the minimum
6 pleadings requirements. *See Iqbal*, 556 U.S. at 678. The Court grants Ford's motion to
7 dismiss Plaintiff's third cause of action for violation of Cal. Civ. Code § 1791.1.

8 **D. Violation of California Business & Professions Code Section 17200, et seq.**

9 Finally, Plaintiff alleges Ford violated California's UCL due to its statutory
10 violations of the California Civil Code for breach of express and implied warranty.
11 (Compl. ¶¶ 23–25.) Plaintiff alleges Ford violated the UCL's "unlawful" prong. (*See id.*
12 ¶ 25 ("These violations of law serve as a basis for a per se unlawful business practice under
13 B & P § 17200."))

14 "With respect to the UCL's 'unlawful' prong, the Court considers whether the
15 Plaintiff alleges an unlawful business practice, i.e., anything that can be called a business
16 practice and that is forbidden by law." *In re Outlaw Lab'y, LLP*, 463 F. Supp. 3d 1068,
17 1089 (S.D. Cal. 2020), *on reconsideration*, No. 3:18-CV-0840-GPC, 2020 WL 3840559
18 (S.D. Cal. July 8, 2020). "Any federal, state or local law can serve as a predicate for an
19 unlawful business practice action." *Id.* at 1089–90. "However, a UCL claim 'must identify
20 the particular section of the statute that was violated and must describe with reasonable
21 particularity the facts supporting the violation.'" *LegalForce RAPC Worldwide P.C. v.*
22 *UpCounsel, Inc.*, No. 18-CV-02573-YGR, 2019 WL 160335, at *13 (N.D. Cal. Jan. 10,
23 2019) (quoting *In re Anthem, Inc. Data Breach Litig.*, 162 F. Supp. 3d 953, 989 (N.D. Cal.
24 2016) (internal quotation marks omitted)).

25 Plaintiff alleges in conclusory fashion that "Defendant violated [the Song-Beverly
26 Act and the common-law duties]" and that such violations "serve as a basis for a per se
27 unlawful business practice under B & P § 17200." (Compl. ¶¶ 25.) Plaintiff fails to
28 "identify the particular section of the statute that was violated" and also fails to "describe

1 with reasonable particularity the facts supporting the violation.” *LegalForce*, 2019 WL
2 160335, at *13. Additionally, because the Court finds Plaintiff has failed to state a claim
3 for statutory violations of the California Civil Code, “[i]t follows that this claim for
4 ‘unlawful’ conduct also fails because the underlying ‘unlawful’ conduct is not adequately
5 pled.” *Potts*, 2021 WL 2014796, at *7 (citation omitted). Accordingly, the Court grants
6 Ford’s motion to dismiss Plaintiff’s fourth claim for violation of the UCL.

7 Ford also challenges the relief Plaintiff seeks in connection with its UCL claim.
8 (MTD at 8–9.) In its Complaint, Plaintiff seeks “injunctive relief and restitution, including
9 disgorgement of improper fees penalties and interest” for Ford’s alleged violation of the
10 UCL. (Compl. ¶ 25.) Ford argues: (1) Plaintiff cannot seek injunctive relief in connection
11 with its UCL claim because it has not shown there is no adequate remedy at law; and (2)
12 Plaintiff lacks standing to pursue injunctive relief because it has not sufficiently pled any
13 injury, “let alone the threat of a repeated future injury.” (MTD at 8–9.) The plaintiffs in
14 *Potts v. Ford Motor Co.* alleged “injunctive relief and restitution . . . is appropriate” for
15 violation of the UCL. 2021 WL 2014796, at *7. As the Court explained in *Potts*, “the
16 remedies for violation of the UCL are limited to injunctive relief and restitution—a plaintiff
17 may not recover monetary damages.” *Id*; see also *In re Tobacco II Cases*, 46 Cal. 4th 298,
18 312 (2009). The Court follows *Potts* in declining at this stage, given Plaintiff’s opportunity
19 to amend its Complaint, to “strike certain remedies sought in the complaint.” 2021 WL
20 2014796, at *7 n.5 (“[B]ecause the Court grants Plaintiffs leave to amend, it notes that
21 certain equitable remedies sought in the complaint may be unavailable in federal court.”)
22 (citing *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020)).¹

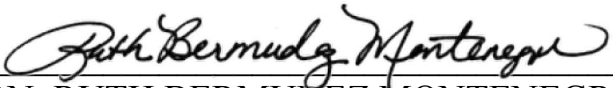
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¹ The Honorable Roger T. Benitez later dismissed with prejudice plaintiffs’ UCL claim due
to their failure to allege in their amended complaint that money damages would be an
inadequate remedy. *Potts v. Ford Motor Co.*, No. 321CV00256BENBGS, 2021 WL
3112471, at *5 (S.D. Cal. July 22, 2021); see also *Shay v. Apple Inc.*, No. 20CV1629-
GPC(BLM), 2021 WL 1733385, at *5 (S.D. Cal. May 3, 2021) (relying on *Sonner* in

1 **IV. CONCLUSION**

2 For the reasons discussed above, Ford’s MTD (Doc. 3) is **GRANTED**. Plaintiff
3 may file a First Amended Complaint within **30 days** that cures the pleading deficiencies
4 identified in this Order. If Plaintiff fails to cure the deficiencies outlined by the Court, the
5 Court may dismiss this matter with prejudice.

6 **IT IS SO ORDERED.**

7 DATE: November 21, 2022

8 
9 HON. RUTH BERMUDEZ MONTENEGRO
10 UNITED STATES DISTRICT JUDGE

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26 _____
27 granting motion to dismiss UCL claim due to plaintiff’s failure to allege inadequate remedy
28 at law).