SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MELISSA A. CRANE** **PART** **60M**

Justice

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MEDEA INC.,

Plaintiff,

- v -

HONEYWELL SAFETY PRODUCTS, USA, INC.,

Defendant.

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INDEX NO. 654517/2022

MOTION DATE 03/08/2024

MOTION SEQ. NO. 008

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 008) 109, 110, 111, 112, 114, 115, 124, 125, 126, 141, 151

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

This court has already upheld Madea's claims that the remedy in its contract with Honeywell fails of its essential purpose (see Decision and Order dated 11/16/2023 [EDOC 67] at pg. 8-9]). In that decision, the court upheld plaintiff's claims for breach of contract, breach of warranty and the seventh cause of action, under the "unfair" prong of California's Unfair Competition law.

Dissatisfied with this victory, plaintiff interposed a second amended complaint (SAC) that repleads causes of action the court already sustained, as well as interposing irrelevant facts in an attempt to replead claims the court already dismissed. All the more frustrating, plaintiff failed to provide the court with a red-lined version. One wonders if this lapse, plus the litany of irrelevant allegations, is an attempt to confuse the court in the hope that something will stick.

The court held oral argument on this motion on July 24, 2024, and made several rulings on the record that the court embodied in an interim decision [EDOC 141]. In this interim decision, the Court dismissed (again) several claims that plaintiff interposed (again) in this iteration of this

complaint. Specifically, the Court dismissed the claim for fraud in the inducement (Third Cause of Action) with prejudice (July 24, 2024 Tr. pg 17); (interim decision dated 7/24/2024; EDOC 141, p.1-2). The Court also dismissed the fifth cause of action for violation of California Business & Professions Code § 22900 et seq ("CEDA") with prejudice (*id.*). Moreover, the Court again dismissed the cause of action for Economic Distress (sixth cause of action) with prejudice (July 24, 2024 Tr. pg 34). Additionally, the Court dismissed the issue of reciprocal attorney's fees (seventh cause of action) as not being ripe (July 24, 2024 Tr. pg 42). The court also dismissed punitive damages with prejudice (July 24, 2024 Tr. pg 19). To the extent the interim order failed to dismiss punitive damages, for the sake of clarity, and for the reasons stated on the July 24, 2024 transcript at page 19, the court dismisses plaintiff's claims for punitive damages WITH PREJUDICE. This is a breach of contract action between sophisticated parties where there is no public injury. Punitive damages are not appropriate. Plaintiff's attempt to clog the record with allegations that Honeywell failed to disclose testing results, well AFTER Madea placed its purchase order leading to its alleged injury, has nothing to do with the claims in this case.

The court took on submission that part of the motion to dismiss concerning new allegations in the first and second causes of action for breach of contract and breach of warranty respectively. As mentioned, the court had previously sustained these causes of action during past motions to dismiss prior iterations of this complaint. (See EDOC 67 pg 6). The court also took on submission issues concerning the California Unfair Practices Act.

1. Breach of Contract and Breach of Warranty

Despite the court having sustained these causes of action in the last round, defendant has seen fit to waste this court's time with arguments that previously failed. For instance, Honeywell

contends that Madea's breach of contract claim must be dismissed because Madea fails to identify any contractual provision that Honeywell allegedly breached (EDOC 110, p.14).

Here, Plaintiff not only attached a copy of the Agreement, Purchase Order, and Tolling agreement to the SAC, but also expressly referenced a breach of the Agreement resulting from Honeywell's failure to supply what was promised. Specifically, Madea alleged that Honeywell breached the contract by its "failure to deliver marketable, non-misrepresented and non-defective N95 Masks, and its failure to accept Madea's return of the N95 Masks and/or refusal and inability to replace the defective N95 Masks . . .." (SAC ¶ 198). Accordingly, Defendant's assertion that Plaintiff failed to identify any contractual provision that Honeywell breached is false. For these reasons and the reasons given in the Court's first decision (EDOC 67, p. 6-9), the breach of contract claim is again sustained.

Defendant's argument that the breach of warranty claim duplicates the breach of contract claim should have been raised during one of the past two motions to dismiss. Defendant does absolutely nothing to explain how the court's analysis should be different this time around on a claim the court already sustained and why allegations added to a cause of action the court has already sustained suddenly make the breach of warranty claim duplicative. Accordingly, the argument has been waived.

However, the court dismisses plaintiff's breach of warranty claim to the extent that plaintiff relies on verbal statements. The agreement between the parties explicitly states a limited and exclusive warranty. It is that the masks would be "free from faulty workmanship and defective materials." (EDOC. 3, p. 18) The agreement further states that the warranty could be modified or amended "only by a written instrument" (*id.*). Therefore, oral warranties are simply not actionable under this contract.

Finally, the parties spend a good deal of time discussing the implied covenant of good faith and fair dealing. However, plaintiff has not asserted a claim for breach of the covenant of good faith and fair dealing. Therefore, these arguments are irrelevant and the court disregards them.

2. Violation of California's UCL § 17200 (Fourth Cause of Action)

The court previously upheld this claim based on the unfairness prong noting that "[t]he amended complaint alleges that Honeywell engaged in 'unfair' practices through "using its economic power and market share in the healthcare industry" to coerce Madea to purchase products that Honeywell 'knew or should have known were defective.'" (decision and order on motion dated 11/16/23 [EDOC 67] at pg. 15).

a. The Fraud Prong

Plaintiff now claims it has added numerous allegations supportive of the UCL claim under the "fraud" prong in its SAC, including allegations that go beyond the fraud alleged in the original fraudulent inducement claim, including allegations that after the Agreement, Honeywell fraudulently concealed information related to defects (SAC ¶¶ 128, 129, 191, 245); falsified testing (SAC ¶ 48); and intentionally and willfully deceived its distributors, including Medea, into an unwitting attempt to sell and provide defective masks to government entities (SAC ¶ 252). Plaintiff claims that these allegations are sufficient to allege violations of the U.S. False Claims Act and therefore satisfy the "unlawful" prong of the UCL.

Why plaintiff chooses to blow this claim up when it had a perfectly decent claim that the court sustained under the unfairness prong is unclear. Now, the complaint contains allegations that Honeywell concealed its test results from plaintiff. This would be concerning had Honeywell not obtained these test results a year after the Agreement was signed. Plaintiff has failed to set

forth with any reasonable degree of particularity that Honeywell knew of any alleged defects at the time the Agreement was signed (see *Bardin v. DaimlerChrysler Corp.*, 136 Cal. App. 4th 1255, 1274-75 [2006] [fraud claim under the UCL dismissed where plaintiff failed to allege facts showing DCC had made a misrepresentation]).

Plaintiff also argues that defendant intentionally and willfully deceived its distributors, including Madea, into merely "attempting" to sell the defective masks. Plaintiff does not actually allege that they sold the masks, nor that members of the public were likely deceived due to Honeywell's conduct, because Madea did not actually sell the masks to them. As such, to the extent that the Unfair Competition Law claim (fourth cause of action) relies on the "fraud" prong, that claim is again dismissed.

The Unlawful Prong

Madea tries to satisfy the unlawful prong by alleging that Honeywell engaged in acts prohibited by Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act §§ 22900, et seq. ("CEDA"). However, the court already dismissed plaintiffs CEDA claim with prejudice (July 24, 2024 Tr. pg *21); (see* also order-interim dated 07/24/2024, EDOC. 141 p.3). and in so doing, again held, as it did in its previous decision [EDOC 67], that this statute does not apply to distributors of N95 masks.

Plaintiff also uses the new development that Honeywell terminated its contract in an attempt to satisfy the unlawful prong. However, as Honeywell had the right to terminate its agreement on thirty days notice, it is difficult to discern how Honeywell's termination was "unlawful" and a violation of the statute, especially given that plaintiff relies on the protections provided under CEDA. Considering that CEDA does not apply to Madea, the Agreement's termination provision allowing Honeywell to terminate the Agreement without cause, controls.

See Badger Meter Inc. V. Vintage Water Works Supply, Inc., 341 F. Supp. 2d at 1122 (If CEDA doesn't apply, then [the agreement] may [be] terminate[d] without cause" per its terms).

Lastly, Madea attempts to support its "unlawful" allegation by asserting that Honeywell violated 42 CFR Part 84 of the U.S. False Claims Act (FCA) and numerous state false claims laws. However, "[a]n FCA claim requires financial damages to the government." *See U.S. ex rel. Campie v. Gilead Scis., Inc.*, 862 F.3d 890, 902 (9th Cir. 2017) (FCA claim requires the "government to pay out money or forfeit moneys due"); (*see also Anonymous v. Anonymous*, 165 A.D.3d 19, 83 N.Y.S.3d 472 (2018).

Here, Madea alleges that it attempted to sell masks to government entities. Madea does not claim to have actually sold the defective masks to any government entity, nor does it allege that the government suffered financial damages a result of it having to pay out money or forfeit moneys due as a result of it purchasing defective masks. As such, Madea fails to satisfy the requirements necessary to establish an FCA claim and therefore cannot rely upon this claim to support its allegations under the "unlawful" prong. Therefore, to the extent that the Unfair Competition Law claim (fourth cause of action) relies on the "unlawful" prong, that claim is again dismissed.

The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED THAT, in addition to the holdings in the interim decision and order [EDOC 141], the court dismisses plaintiff's claims under the fraud and unlawful prongs of California's UCL § 17200, but sustains the claim as to the unfairness prong as well as the first cause of action (breach of contract) and second cause of action (breach of warranty); and it is further

ORDERED THAT plaintiff shall file an amended complaint that conforms to this decision and the interim decision and order [EDOC 141] by December 4, 2024; and it is further

ORDERED THAT plaintiff is precluded from filing a further amended complaint without prior conference with the judge; and it is further

ORDERED that there shall by no further motion practice of any sort without first conferring with the court.

11/14/2024
DATE

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE