
PARTIES/ATTORNEYS

Plaintiff	Oscar Tapia Cervantes Edith Manzo	Mark Romano, Esq. Timothy Whelan, Esq. Aliaksandra Valitskaya, Esq. ROMANO STANCROFF PC
Defendant	General Motors LLC	Mary Arens McBride, Esq. Kyle Roybal, Esq. Benajmin Harrison, Esq. Jonathan Caceres, Esq. ERSKINE LAW, APC

TENTATIVE RULING

For all the reasons discussed below, the court denies defendant's summary judgment/adjudication motion as to all three causes of action. Defendant is directed to submit a proposed order for signature.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara.](#))

MEMORANDUM

After the court, granted Oscar Tapi Cervantes' and Edith Manzo's (plaintiffs') motion for leave to file a first amended complaint (FAC) on July 16, 2025, plaintiffs filed a new operative pleading on the same day. General Motors, LLC (defendant) remains the only defendant. Plaintiff raises two causes of action in the FAC: (1) a violation of the federal Magnuson-Moss Warranty-Federal Trade Commission Act; and (2) a violation of Commercial Code sections 2313, et seq., in conjunction with plaintiffs' purchase of a 2021 Chevrolet Silverado 1500. The background of this lawsuit was detailed in an earlier order dated July 16, 2025, and the contents of that order will not be recounted here. Defendant filed an answer on August 8, 2025.

On calendar is defendant's summary judgment/adjudication motion to the two causes of action in the FAC. Opposition and reply have been filed. All briefing has been reviewed.

Separate Statement Defects

Defendant claims it is advancing a summary judgment motion as to both causes of action, and in the alternative a summary adjudication challenge to each cause of action separately. Defendant's separate statement, however, simply lists eight (8) issues of alleged undisputed fact in serial fashion, claiming perfunctorily that all facts are common to all issues. California Rules of Court, rule 3.1350(h), requires the moving party requesting summary adjudication to delineate individual issue statements as to each cause of action in the separate statement, which was not done here.

Plaintiff's separate statement is also defective. It details four (4) issues of disputed fact, ignoring the formatting rules pursuant to California Rules of Court, rule 3.1350(f) and (h).

The court will excuse noncompliance with the California Rules of Court formatting issues but puts counsel on notice that all future filings must comply with these rules.¹ They exist for a reason

Plaintiff's Evidentiary Objections

Plaintiff advances five (5) evidentiary objections to defendant's evidentiary proffer, with all objections going to the declarations of Bryan Jensen and Kyle Roybal. None of the objections are to evidence that is material to the court's disposition of this matter. The court therefore need not rule them. (Code Civ. Proc. § 437c(q).)

Merits

The court will examine each cause of action separately, looking to the legal standards and then applying those standards to determine whether material issues of disputed fact exist. Because the first cause of action under the Magnusson-Moss Warranty Act is dependent on the disposition of the second cause of action for breach of the express warranty, the court will consider that cause of action first.

1. Second Cause of Action – Commercial Code section 2313

¹ The court is aware that the same admonition was made to defendant's counsel in Case No. 22CV04458, but that the separate statement in this case was already on file, meaning it was too late for defendant to comply with the Rules of Court before this hearing. The admonition nevertheless stands.

Defendant asserts that this claim fails as a matter of law because plaintiffs purchased the Silverado used from a third-party, non-GM dealership.

Commercial Code section 2313(1) provides in part: “Express warranties by the seller are created as follows: [¶] (a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise. [¶] (b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the good shall conform to the description. [¶] . . . [¶] (2) It is not necessary to the creation of an express warranty that the seller use formal words such as ‘warrant’ or ‘guarantee’ or that he have a specific intention to make a warranty....”

Thus, under section 2313, an express warranty is made when a seller of consumer goods makes an affirmation of fact or description about a product to a buyer, and the statement becomes “part of the basis of the bargain.” (§ 2313, subd. (1)(a), (b).) “The Commercial Codes’ express warranty provisions are limited to warranties given by the seller directly to the buyer.” (*Ballesteros v. Ford Motor Co.* (2025) 109 Cal.app.5th 1196, 1216.) To prevail on a breach of express warranty claim under Commercial Code section 2313, a plaintiff must prove: “(1) the seller's statements constitute an affirmation of fact or promise or a description of the goods; (2) the statement was part of the basis of the bargain; and (3) the warranty was breached.” (*Weinstat v. Dentsply Internat., Inc.* (2010) 180 Cal.App.4th 1213, 1227; see *Davood v. Mercedes-Benz USA LLC* (C.D. Cal. 2025) 2025 WL 3190641, at *5.) When there is no privity of contract, California law requires a showing that a plaintiff relied on an alleged warranty. (*Duwall v. Haier US Appliance Solutions, Inc.* (N.D. Cal. 2025) 2025 WL 3014040, at *3, citing *Asghari v. Volkswagen Grp. of Am., Inc.* (C.D. Cal. 2013) 42 F.Supp.3d 1306, 1334; *Wilson v. Hyundai Motor America* (C.D. Cal. 2023) 2023 WL 3025376, at *10 [W]hen the parties are not in privity, California law requires a showing that a plaintiff relied on an alleged warranty”]; *Cho v. Hyundai Motor Company, Ltd.* (C.D. Cal. 2022) 636 F.Supp.3d 1149, 1164 [same]; *Pelayo v. Hyundai Motor America, Inc.* (C.D. Cal., 2022) 2022 WL 2200414, at *11[same]; *Nickerson v. Goodyear Tire and Rubber Corp.* (C.D. Cal.) 2020 WL 4937561, at *5 [same]; *McCarthy v. Toyota Motor Corporation* (C.D. Cal. 2018) 2018 WL 6318841, at *7 [same].) Of course, the statements at issue must be specific and measurable, and must be determined either on reliance or the basis of the bargain. (*In re Nexus 6P Products Liability Litigation* (N.D. Cal. 2018) 293 F.Supp.3d 888, 936; see *Watkins v. MGA Entertainment, Inc.* (N.D. Cal. 2021) 574 F.Supp.3d 747, 756-757.)²

² To be clear, as noted in *Watkins v. MGA Entertainment, Inc.*, the California Supreme Court in *Hauter v. Zogards* (1975) 14 Cal.3d 104, acknowledged a sea change in the law of express warranties between pre- and post- adoption of the Uniform Commercial Code. The nature of this change, opined *Watkins*, emphasizes a basis of the bargain rationale or reliance on the warranty for purposes of the Commercial Code. As the *Watkins*’ court observed: “No consensus on the question has emerged since

Under this authority, defendant seems incorrect in claiming that privity is essential to a Commercial Code section 2313 express warranty cause of action. As noted above, there is substantial case law (not addressed by defendant) that suggests those who are not in privity with a manufacturer may still advance a Commercial Code section 2313 cause of action if they can demonstrate they relied on the alleged warranty (or in the alternative the express warranty was made part of the basis of the bargain). Plaintiff would have to show in its case-in-chief that it relied on the express warranty or that the advertising and product information formed the basis of the bargain. (See, e.g., *Asghari, supra*, at p. 1335.)

In *Alves v. Mercedes-Benz USA, LLC* (C.D. Cal. 2024) 2024 WL 4406813, at *4, plaintiff advanced a claim for violation of express warranty under Commercial Code section 2313. Defendant moved for summary judgment on the basis that “the lack of privity barred the entirety of Plaintiff’s claim.” The court disagreed. “It is true that older California cases have held that privity of contract is required in an action for breach of either express or implied warranty and that there is no privity between the original seller and a subsequent purchaser who is in no way a party to the original sale.’ [Citation omitted]. But since adopting the UCC, **California no longer requires privity for a breach of express warranty claim.** See *Rojas v. Bosch Solar Energy Corp.*, 386 F. Supp. 3d 1116, 1124 (N.D. Cal. 2019) (noting that, after California adopted the UCC, it “is possible to state a claim for breach of express warranty absent privity or actual reliance on the warranty”); see also *Weinstat v. Dentsply Int’l., Inc.*, supra, 180 Cal. App. 4th 1213 [] [noting that section 2313 “creates a presumption that the seller’s affirmations go to the basis of the bargain”). As such, it would be inappropriate to enter judgment on this basis.” *The same is true here.*³ Defendant has not addressed these issues in its separate statement, and nothing therein remotely indicates that plaintiff does not have (or

Hauter. Most decisions hold that the basis-of-the bargain requirement has one of three effects: (1) eliminating the reliance requirement; (2) keeping the reliance requirement but shifting the burden to defendant to show that the bargain did not rest at all on the representations; or (3) **changing the role of reliance where the parties are in privity, but maintain the reliance requirement where the parties are not in privacy.** (*Watkins, supra*, at p 757.) The court need not determine what rule actually applies here when no privity exists (i.e., reliance on the warranty or the warranty as the basis of the bargain). It is enough to say for our immediate purposes that plaintiff is not precluded from advancing an express warranty under the Commercial Code even though he or she is not in privity with the manufacturer.

³ Nothing in *Ballesteros*, relied upon by defendant, addresses the wealth of case law cited in this order to the effect that privity is not always required to state a cause of action for violation of an express warranty without privity under Commercial Code section 2313. In fact, *Ballesteros* acknowledge that in some situations a buyer may sue a third-party manufacturer for breach of an express warranty in the absence of privity. This court is simply not willing to apply *Ballesteros*’s statements about privity, which are unadorned and unnuanced, when the appellate court failed to address the wealth of case law outlined in this order to the effect that either a “basis of the bargain” or “reliance” can create statutory liability under Commercial Code section 2313 for manufacturer when privity is absent. It is axiomatic that a case does not stand for a proposition not considered. For this reason, in the court’s view *Ballesteros* stands for the proposition that privity is generally required, but not always.

cannot obtain) evidence to advance such a claim, which is defendant's burden on summary judgment/adjudication. (See *Coelho v. Hyundai Motor America* (N.D. Cal. 2023) 2023 WL 3763812, at *5 [when defendant fails to argue any other basis for dismissal of a claim under Commercial Code § 2313 other than lack of privity between manufacturer and plaintiff, and because such allegations of privity are not required to state a claim for breach of express warranty under California's Commercial Code, a motion to dismiss is inappropriate].)

For these reasons, the court denies summary judgment/adjudication as to the second cause of action.

2. First Cause of Action for violation of the Magnusson Moss Consumer Warranty Act (15 U.S.C. § 2301, et seq.)

As noted, the Magnusson-Moss Warranty Act claim stands or falls with plaintiff's express warranty claim under state law. Accordingly, the court's disposition of the state law warranty claims determines the disposition of this cause of action. (*Colbert v. Hyundai Motor America* (C.D. Cal. 2022) 2022 WL 18397634, at *3; see also *Daughtery v. American Honda Motor* (2006) 144 Cal.App.4th 824, 833 [failure to state a warranty claim under state law necessarily constitutes a failure to state a claim under Magnusson-Moss].)

Defendant's argument is simple – because plaintiff cannot maintain an express warranty claim with regard to the first cause of action, it cannot state a cause of action here. As noted above, however, the court disagrees with defendant's premise. Defendant has not precluded the possibility that plaintiff can state an express warranty claim, as discussed above. It therefore follows that summary judgment/adjudication as to this cause of action also fails.

Accordingly, the court denies summary judgment/adjudication as to this cause of action.

Summary

The court denies defendant's summary judgment/adjudication motion as to all three causes of action. Defendant is directed to submit a proposed order for signature.