

**Medea Inc. v Honeywell Safety Prods., USA, Inc.**

2023 NY Slip Op 34091(U)

November 16, 2023

Supreme Court, New York County

Docket Number: Index No. 654517/2022

Judge: Melissa A. Crane

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a one-year period with up to two automatic renewals (Distribution Agreement, NYSCEF Doc. No. 3, “Term of Agreement”). Under the Distribution Agreement, Honeywell “appoint[ed] and designate[d] [Medea] as an authorized distributor of Products and authorize[d] [Medea] to market and sell Products in the Territory as defined in Exhibit A [to the Distribution Agreement]” (*id.*, § I.1.A). The Distribution Agreement further states that Medea shall “use its best efforts to sell and promote the sale of the Products in the Territory” and “shall maintain at all times a stock of Products sufficient to fill orders promptly” (*id.*, § I.3). Under the Distribution Agreement, the “federal or state courts located within New York, New York, USA will have exclusive jurisdiction to adjudicate any dispute arising out of or related to [the] [Distribution Agreement] and the parties hereby submit to the jurisdiction of such courts” (*id.*, § II.1.B). While the Distribution Agreement specifically states that it may be terminated “by either Party at any time during the Term without regard to cause,” termination requires a “minimum of thirty (30) days’ prior notice to the other Party” (*id.*, § I.8.A). Lastly, the parties agreed that the Distribution Agreement “constitutes the entire agreement between Honeywell and Distributor and supersedes all prior negotiations, agreements, and commitments with respect to the subject matter hereof” (*id.*, “Entire Agreement”).

The parties attached to the Distribution Agreement terms and conditions specifically related to Honeywell personal protective equipment (“Terms and Conditions”). The Terms and Conditions require that Medea “inspect Products within a reasonable period after delivery not to exceed twenty (20) calendar days” and state that products “will be presumed accepted unless [Honeywell] receives written notice of rejection explaining the basis for rejection within that period” (Terms and Conditions, NYSCEF Doc. No. 3, § 9). The Terms and Conditions also contain a “Limited Warranty” section which states that Honeywell warrants that “all components of such Product . . . shall be free from faulty workmanship and defective materials” (*id.*, § 25[a]). Pursuant

to the Terms and Conditions, if it is determined that a product is “defective due to faulty workmanship or defective materials, then such Product shall be returned to [Honeywell], it being agreed that [Honeywell] shall not bear the expense of shipping such Product to [Honeywell], except as otherwise agreed by [Honeywell]” (*id.*, § 25[b]). Upon receipt of the claimed defective products, Honeywell shall “at its expense, (1) in [Honeywell’s] sole discretion, repair or replace such Product, and (2) ship such Product to return it to its original location” (*id.*). Further, the Terms and Conditions state that “REPAIR OR REPLACEMENT (AT [Honeywell’s] OPTION) IS THE SOLE REMEDY FOR ANY SUCH DAMAGE, LOSS, OR INJURY” (*id.*, § 25[e]). Lastly, the Terms and Conditions state that they “contain the entire agreement between the parties with respect to the subject matter of the Agreement and supersede[] any prior representations or agreements, oral or written, and all other communications between the parties relating to the subject matter of the Agreement” (*id.*, p. 1).

On April 1, 2021, Medea issued a purchase order to purchase 4,000,000 DC365 Respirators<sup>1</sup> from Honeywell for a total of \$3,960,000.00 (“Purchase Order”) (Purchase Order, NYSCEF Doc. No. 4). Medea alleges in the amended complaint that it executed the Purchase Order because Honeywell’s Vice President of Sales, Brent Durham, “demanded that Medea agree to purchase the N95 Masks immediately and if it did not, Medea would lose its status as a Honeywell mask distributor” (Amended Complaint, ¶¶ 36-38). The amended complaint alleges that this constituted a “threat[] [by Durham] to breach the Distribution Agreement” that “thereby deprived Medea of its free will and bargained-for economic advantage” (*see id.*, ¶ 42). Medea further alleges that prior to Medea’s purchase of N95 Masks, Honeywell falsely advertised that the masks “had an unlimited shelf life” and that they were “one size fits all/universal” (*id.*, ¶¶ 44-53).

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<sup>1</sup> The amended complaint defines “DC365 Respirators” as “N95 Masks” (Amended Complaint, ¶ 27). Therefore, the court will refer to the items described in the purchase order as “N95 Masks.”

The amended complaint alleges that after Medea accepted the masks and began to distribute them to purchasers, those purchasers informed Medea as early as May 4, 2021 that the masks were defective, particularly due to poor fit that rendered them “not safe for medical and other frontline professionals to use” (*id.*, ¶¶ 60-64). Medea allegedly advised Honeywell in or about August 2021 that the masks were defective “and/or otherwise did not meet the standard of quality mandated by Honeywell” (*id.*, ¶ 70). After Medea advised Honeywell of these alleged defects, Medea allegedly communicated with Honeywell’s General Manager for Sales and Marketing, Kirk Heyde, multiple times about the defects before formally giving notice of defect on October 21, 2021 (*id.*, ¶¶ 71-83, 90-106, 111). However, the amended complaint alleges that Heyde “informed Medea that Honeywell was unable to give any reassurances that the defect would be or could be corrected” and also “told Medea’s representatives via email that Honeywell did not have any N95 Masks in its inventory” (*id.*, ¶¶ 114-15; *see also id.*, ¶ 119 [“On January 7, 2022, Heyde emailed Medea’s President and advised that Honeywell did not have any ‘inventory positions of significance (i.e., >1M units)’ with respect to the N95 Masks.”]). Despite negotiating potential solutions, Honeywell allegedly “never provided Medea with a reasonable sample, inspection and testing protocol or provided Medea with any reassurances that replacement N95 Masks would not also be defective,” and Medea’s “repeated requests to Honeywell that it refund it for the N95 Masks was [sic] denied” (*id.*, ¶¶ 124-25).

After the parties failed to reach an agreement, Medea first filed a complaint against Honeywell for breach of contract in the Superior Court of California County of Alameda. However, the California court then stayed that case “pending the filing and preliminary adjudication of a substantively similar matter in New York” pursuant to the Distribution Agreement’s forum selection clause (California Court Order, NYSCEF Doc. No. 32, p. 4). Medea

then filed the complaint in this action on November 29, 2022 (Original Complaint, NYSCEF Doc. No. 2). In response, Honeywell filed a motion to dismiss on February 17, 2023. Rather than continue briefing that motion to dismiss, the parties stipulated to allow Medea to amend the complaint (Stipulation to Amend, NYSCEF Doc. No. 18).

Medea filed the amended complaint on March 21, 2023. The amended complaint includes causes of action against Honeywell for (1) breach of contract, (2) breach of warranty, (3) declaratory judgment that the warranty and limitation of remedies under the Distribution Agreement “fail in their essential purpose and should be stricken,” (4) declaratory judgment that the Distribution Agreement’s jury waiver is not enforceable, (5) revocation of Medea’s acceptance of masks, (6) fraud in the inducement, (7) violation of California Business & Professions Code § 17200, *et seq.*, (8) violation of California Business & Professions Code § 22900, *et seq.*, and (9) economic duress (Amended Complaint, pp. 24-42). Honeywell then filed this motion to dismiss. For the following reasons, the court grants in part and denies in part the motion to dismiss.

### DISCUSSION

On a motion to dismiss pursuant to CPLR 3211(a)(7), the court must “accept the facts as alleged in the complaint as true, accord [plaintiff] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *see also Chapman, Spira & Carson, LLC v Helix BioPharma Corp.*, 115 AD3d 526, 527 [1st Dept 2014]). On a motion to dismiss under CPLR 3211(a)(1), “dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” (*Leon*, 84 NY2d at 88; *Chen v Romona Keveza Collection LLC*, 208 AD3d 152, 157 [1st Dept 2022]).

#### 1. Declaratory Judgment and Fraud in the Inducement

The court already dismissed the third cause of action (declaratory judgment), fourth cause of action (declaratory judgment), and sixth cause of action (fraud in the inducement) for the reasons set forth on the record on August 16, 2023.

2. Breach of Contract and Breach of Warranty

The court denies Honeywell's motion to dismiss the first cause of action for breach of contract and second cause of action for breach of warranty. In order to state a cause of action for breach of contract, a plaintiff must allege the "existence of a contract, the plaintiff's performance thereunder, the defendant[']s breach thereof, and resulting damages" (*Fawer v Shipkevich PLLC*, 213 AD3d 408, 408 [1st Dept 2023], citing *Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]); *Park v Kim*, 205 AD3d 429, 430 [1st Dept 2022]). In order to succeed on a cause of action for breach of express warranty, a plaintiff must establish that: "(1) plaintiff and defendant entered into a contract; (2) containing an express warranty by the defendant with respect to a material fact; (3) which warranty was part of the basis of the bargain; and (4) the express warranty was breached by defendant" (*PNC Bank, Nat. Assn. v Wolters Kluwer Financial Services, Inc.*, 73 F Supp 3d 358, 369 [SDNY 2014]; see also *Murrin v Ford Motor Co.*, 303 AD2d 475, 476-77 [2d Dept 2003] [finding that lower court properly dismissed cause of action for breach of express warranty because the plaintiff "failed to allege that he understood that the Ford advertisements, stating certain vehicle specifications that were not ultimately met, were part of the bargain or that he even was aware of any of these advertisements before his purchase"]).

Rather than argue that Medea's amended complaint fails to satisfy these elements, Honeywell argues that Medea cannot recover the monetary damages it is seeking because the Distribution Agreement limits remedies to repair or replacement. Contractual provisions limiting remedies generally are enforceable unless they are unconscionable (*Biotronik A.G. v Conor*

*Medsystems Ireland, Ltd.*, 22 NY3d 799, 805 n.4 [2014]). However, a limited remedy provision is occasionally not enforceable when it “fails of its essential purpose” (*Kourtides v Weather Shield Mfg., Inc.*, 132 AD3d 636, 637 [2d Dept 2015]; *see also Solomon v Canon USA, Inc.*, 31 Misc3d 30, 32 [1st Dept 2010] [holding that remedy did not fail its essential purpose because defendant “repaired the camera once to plaintiff’s satisfaction and offered to repair both the camera and lenses” again, but plaintiff refused]; *Belfont Sales Corp. v Gruen Industries, Inc.*, 112 AD2d 96, 98 [1st Dept 1985] [denying summary judgment dismissing defendants’ counterclaims, finding that defendants had “at least raised an issue of fact as to whether the limited remedy of crediting their accounts for the contract price of defective watches may be enforced”]). A remedy fails of its essential purpose “if the circumstances existing at the time of the agreement have changed so that enforcement of the limited remedy would essentially leave plaintiff with no remedy at all” (*President Container Group II, LLC v Systec Corp.*, 467 F Supp 3d 158, 168 [SDNY 2020]; *Milligan v Wigs*, 34 Misc3d 128(A), \*1 [App Term 2d Dept 2011] [holding that where a vendor “limits the purchaser’s remedies to repair or replacement of its goods, the remedy fails of its essential purpose if a delay or failure adequately to repair or replace the goods in a reasonable time deprives the plaintiff of the substantial benefit of her bargain”]).

Medea has alleged that the limitation of remedies has failed of its essential purpose. In particular, Medea alleges that Kirk Heyde, Honeywell’s General Manager for Sales and Marketing, emailed Medea’s President on January 7, 2022 and “advised that Honeywell did not have any ‘inventory positions of significance (i.e., >1M units)’ with respect to the N95 Masks” (Amended Complaint, ¶ 119) and that Heyde emailed again on January 28, 2022 stating that they had “sold through the inventory [they] had built up” (*id.*, ¶ 126). Medea also alleges that Heyde “informed Medea that Honeywell was unable to give any reassurances that the defect would be or could be

corrected” (*id.*, ¶ 114). The amended complaint, that Medea’s Chief Executive Officer verified, further alleges that Honeywell advised Medea that “it did not know how to correct the N95 Mask defects even if it could provide Medea with replacement N95 Masks, and that Honeywell could provide a different product to replace, rather than correct or repair, the 4 million defective N95 Masks that it sold to Medea” (*id.*, ¶ 173).

Thus, Medea has alleged facts which, if true, would establish that it did not receive the benefit of its bargain. The Terms and Conditions state that if it is “determined that any component of such product . . . is defective due to faulty workmanship or defective materials, then such Product shall be returned to [Honeywell]” and that upon receipt, Honeywell shall, “in [its] sole discretion, repair or replace such Product” (Terms and Conditions, § 25[b]).<sup>2</sup> Medea’s allegations that Honeywell explicitly admitted that it would not be able to replace all of the masks with other N95 masks or guarantee that the defect had been fixed, raise an issue of fact as to whether strict adherence to the remedy limitation would have left Medea with no remedy at all. That is, there is a factual issue as to whether Medea would have been left with neither adequate masks nor with the money it paid for them. Therefore, given the issue of fact as to whether the exclusive remedy provision fails of its essential purpose (*see Milligan*, 34 Misc3d 128(A), at \*\*1-2), the motion to dismiss the breach of contract and breach of warranty causes of action is denied.<sup>3</sup>

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<sup>2</sup> The court notes that under the Terms and Conditions, “[i]n order for [the] limited warranty to be effective, [Medea] [was required] to notify [Honeywell] within 20 days of discovery of a defect” (Terms and Conditions, § 25[f][1]). While Honeywell did argue in its briefing that Medea’s purported revocation was untimely (*see infra* § 3 [discussing the UCC]), Honeywell did not argue in its briefing that the breach of contract or warranty claims should be dismissed for lack of prompt notice. To the extent that Honeywell raised this argument at oral argument (August 16, 2023 Oral Argument Transcript, p. 3 [“The only way that Medea could avail themselves of the remedies in the contract are if they notified Honeywell within twenty days and returned the product, which they did not do.”]), it constituted a new argument not raised in the briefing that the court will not consider.

<sup>3</sup> The court notes that while Honeywell moved to dismiss the fraudulent inducement cause of action as duplicative of **both** the breach of contract and breach of warranty causes of action (*see Reply Brief*, NYSCEF Doc. No. 49, p. 6), Honeywell did not argue that either the breach of contract or breach of warranty causes of action should be dismissed as duplicative of each other. Therefore, the court dismisses neither.

The court rejects Honeywell's argument that Medea is not entitled to relief because Medea rejected Honeywell's offers to inspect, repair, or replace. To the extent that Honeywell relies on the amended complaint's allegations that Honeywell offered to "replace the deformed N95 Masks with other types of masks" (Amended Complaint, ¶ 127 [emphasis added]) there is, at the very least, a question of fact as to whether a different type of mask would provide Medea with the benefit of its bargain. Similarly, there is a question of fact as to whether Medea would receive the benefit of its bargain if it was required to ship to Honeywell all 4 million masks without reassurances that the alleged problem had been resolved (*see* Amended Complaint, ¶ 122; Terms and Conditions, § 25[b] [describing that, unless otherwise agreed, Honeywell would not bear the expense of shipping purportedly defective products back to Honeywell]). The court does not determine at this point if the repair or replace remedy actually failed in its essential purpose, just that Medea's allegations are sufficient to survive this motion (*see Kourtides v Weather Shield Mfg., Inc.*, 132 AD3d 636, 636-37 [2d Dept 2015] ["The issue of whether a limited remedy has failed of its essential purpose is ordinarily a question of fact for the jury and one necessarily to be resolved upon proof of the circumstances occurring after the contract is formed"] [internal quotation marks and citations omitted]).

### 3. Revocation

The court grants Honeywell's motion to dismiss the fifth cause of action for revocation. Pursuant to UCC § 2-608, a buyer "may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it." However, the buyer must revoke the acceptance "within a reasonable time after the buyer discovers . . . the ground for it" (UCC § 2-608; *Mount Vernon Mills, Inc. v Murphy Textile Mills*, 148 AD2d 389, 390 [1st Dept 1989] [granting summary judgment to plaintiff for recovery of value of goods sold and delivered,

rejecting defense that defendant revoked acceptance because the goods were “delivered . . . in October 1987 and it was not until May 1988 that defendant . . . first complained that the goods were delivered late”]; *New York Trans Harbor LLC v Derecktor Shipyards Conn., LLC*, 15 Misc3d 1140(A), \*\*11-12 [Sup Ct, Kings County May 29, 2007] [holding that “since NYWT continued to retain and use the vessels for three to four years without any unequivocal effective timely notification of its revocation of its acceptance to defendants, it cannot allege that it revoked acceptance within the ‘reasonable time’ required by UCC 2-608 (2)”]).

Here, Medea failed to revoke its acceptance of the N95 Masks within a reasonable time. Medea alleges in the amended complaint that Honeywell delivered N95 Masks to Medea on or around April 5, 2021 (Amended Complaint, ¶ 183). Medea allegedly received complaints about the quality of the masks as early as May 4, 2021 (*id.*, ¶¶ 64-65). However, Medea did not allegedly demand return and refund from Honeywell until September 15, 2021 (*id.*, ¶ 185), over four months after first receiving complaints and over five months after delivery. Further, Medea did not give formal notice of defect until October 21, 2021 (*id.*, ¶ 111). This delay is unreasonable (*see Mount Vernon Mills*, 148 AD2d at 390 [denying revocation defense as untimely where plaintiff did not complain about goods until seven months after delivery]). Therefore, the cause of action for revocation of acceptance is dismissed.

#### 4. California Statutory Claims

In addition to its New York common law claims, Medea alleges causes of action under California Business & Professions Code §§ 17200 (seventh cause of action) and 22900 (eighth cause of action). The court dismisses the eighth cause of action but denies dismissal of the seventh cause of action.

As an initial matter, contrary to Honeywell’s contentions in its briefing and at oral argument, these causes of action are not “the same claim” but are separate claims under separate statutes (*see* August 16, 2023 Oral Argument Transcript, p. 33). California Business & Professions Code §§ 17200 to 17210 together constitute California’s Unfair Competition Law (*California Medical Assn. v Aetna Health of California Inc.*, 14 Cal.5th 1075, 1085 [Cal 2023]). Under the Unfair Competition Law, a private plaintiff may pursue a claim against a defendant for injunctive relief or restitution where the plaintiff has allegedly “lost money or property as a result of [] unfair competition” by the defendant (*id.*; *see also Long Beach Memorial Medical Center v Kaiser Foundation Health Plan, Inc.*, 71 Cal.App.5th 323, 342 [Cal Ct of Appeal 2d Dist 2021] [“The unfair competition law affords two types of relief—namely, restitution and injunctive relief.”]; BPC §§ 17203-04). The law specifically defines “unfair competition” to “include any **unlawful**, unfair or fraudulent business act or practice” (*California Medical Assn.*, 14 Cal.5th at 1085 [internal quotation marks omitted]; BPC § 17200 [emphasis added]). Thus, the Unfair Competition Law effectively “borrows” rules from other laws to hold a defendant liable for “unfair competition” when they engage in acts that are “unlawful” pursuant to those other statutes (*California Medical Assn.*, 14 Cal.5th at 1085 [internal quotation marks and citation omitted]). However, the act does not **only** prohibit “unlawful” acts of unfair competition, but also acts that are “fraudulent” or “unfair” even if not technically unlawful (*see Shaeffer v Califia Farms, LLC*, 44 Cal.App.5th 1125, 1135 [Cal Ct of Appeal 2d Dist 2020] [describing “fraudulent,” “unlawful,” or “unfair” business practices as separate “prongs,” any of which “is its own independent ground for liability under the unfair competition law”]).

Honeywell is correct that Medea’s cause of action under the Unfair Competition Law relies largely on its claim that Honeywell violated the Fair Practices of Equipment Manufacturers,

Distributors, Wholesalers, and Dealers Act (“CEDA”) (*see* Amended Complaint, ¶¶ 214-19). However, Medea’s reliance on Honeywell’s alleged violation of that statute to satisfy the “unlawful” prong of the Unfair Competition Law neither renders the seventh cause of action duplicative of the eighth nor precludes Medea from proving unfair competition under the separate “fraudulent” or “unfair” prongs. Indeed, in addition to the CEDA-related allegations in the seventh cause of action, Medea alleges that Honeywell “has engaged in unfair business practices by using its economic power and market share in the healthcare industry to use economic duress and fraud to coerce its distributors, including Medea, to purchase its products Honeywell knew or should have known were defective” (Amended Complaint, ¶ 206).

The eighth cause of action, unlike the seventh cause of action, is an independent claim under CEDA, located within California Business & Professions Code §§ 22900-22927 (*see Badger Meter Inc. v Vintage Water Works Supply, Inc.*, 341 F Supp 2d 1115, 1119-20 [ND Cal 2004]). CEDA “governs agreements for the ‘retail distribution and sales of agricultural, utility, and industrial equipment’” (*id.*). The statute specifically defines “Equipment” as

“all-terrain vehicles and other machinery, equipment, implements, or attachments used for, or in connection with . . . [l]awn, garden, golf course, landscaping, or grounds maintenance[,] [p]lanting, cultivating, irrigating, harvesting, and producing agricultural or forestry products[,] [r]aising, feeding, or tending to, or harvesting products from, livestock and any other activity in connection with those activities[,] and [i]ndustrial, construction, maintenance, mining, or utility activities or applications, including, but not limited to, material handling equipment”

(BPC § 22901[j]).

Further, CEDA defines a “Dealer” as “any person primarily engaged in the retail sale of equipment as defined in subdivision (j),” and defines a “Supplier” as “any person engaged in the business of manufacturing, assembly, or wholesale distribution of equipment or repair parts” (*id.*, §§ 22901[f], [v]). It is a violation of CEDA for a supplier to, among other things, “coerce or compel

any dealer to order or accept delivery of any equipment or parts that the dealer has not voluntarily ordered” or “[t]o require any dealer to purchase goods or services as a condition of the sale by the supplier to the dealer of any equipment” (BPC § 22902).

The court dismisses the eighth cause of action for violation of California Business & Professions Code § 22900, *et seq.* Honeywell correctly argues that this statute does not apply because, at least for purposes of this motion, Medea is not a “dealer” of “equipment” under the statute. Medea is a “distribution and healthcare solutions company” (Amended Complaint, ¶ 5). While Medea is correct that the Distribution Agreement involves numerous items and not solely N95 Masks (Distribution Agreement, Ex. A), there is no dispute that the products at issue in this case are allegedly defective N95 Masks. Therefore, for Plaintiff’s claim under this section to survive this motion, Medea must allege that the N95 Masks are “equipment,” as defined under CEDA.

The court refers to *Badger Meter Inc.* (341 F Supp 2d 1115, 1120 [ND Cal 2004]). There, the U.S. District Court for the Northern District of California interpreted CEDA using the statutory canon *noscitur a sociis* that a court will “adopt a restrictive meaning of a listed term if acceptance of a more expansive meaning . . . would . . . make the item markedly dissimilar to the other terms on the list” (*id.* [internal quotation marks and citation omitted]). The court found that because CEDA refers expressly to “large motorized pieces of machinery and their related attachments” like “all-terrain vehicles” and “mining equipment,” the court should not expand the statute to include water meters, which are “markedly dissimilar” to the other items listed (*id.*). Here, the court similarly interprets CEDA narrowly because the more expansive interpretation for which Medea advocates would involve grouping masks with “large motorized pieces of machinery.” Masks are

even less similar to motorized machinery than water meters. Therefore, the court dismisses the eighth cause of action for violation of California Business & Professions Code § 22900, *et seq.*

Therefore, to the extent the seventh cause of action under California's Unfair Competition Law relies on the "unlawful" prong on the basis that Honeywell has violated CEDA, that claim is also dismissed. Further, the court dismisses the seventh cause of action to the extent that it relies on the "fraud" prong of the Unfair Competition Law. While Medea does allege as part of this cause of action that Honeywell engaged in fraud, the alleged fraud is duplicative of the cause of action for fraud in the inducement (*compare* Amended Complaint, ¶ 200 [alleging fraud in the inducement based on claim that Honeywell "knew or recklessly disregarded, the truth, that the N95 Masks that it intended to sell . . . were defective . . . and were not as represented to Medea"] *with id.*, ¶ 208 [alleging violation of the Unfair Competition Law based on the claim that Honeywell "concealed evidence of defects in its N95 Masks to induce Medea to purchase 4 million N95 Masks"]). The court has already dismissed the fraud in the inducement cause of action (*see* August 16, 2023 Oral Argument Transcript, p. 30). Therefore, to the extent Medea relies on the "fraud" prong of the Unfair Competition Law, the cause of action is dismissed for the same reasons that the court dismissed the fraud in the inducement cause of action.

However, to the extent the seventh cause of action relies on the "unfair" prong of the Unfair Competition Law, the court denies Honeywell's motion to dismiss. The California Supreme Court has defined "unfair" conduct under the Unfair Competition Law as "conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition" (*Ramin M. Roohipour, M.D., Inc. v Blue Cross Blue Shield of Illinois*, 2021 WL 5104383, \*6 [CD Cal Oct 21, 2021], *citing Cel-Tech Commc'ns, Inc. v Los*

*Angeles Cellular Tel. Co.*, 20 Cal.4th 163, 186-87 [1999]). The amended complaint alleges that Honeywell engaged in “unfair” practices through “using its economic power and market share in the healthcare industry” to coerce Medea to purchase products that Honeywell “knew or should have known were defective” (Amended Complaint, ¶ 206). In particular, the amended complaint alleges that Honeywell “demanded that Medea agree to purchase the N95 Masks immediately and if it did not, Medea would lose its status as a Honeywell mask distributor” (*id.*, ¶ 36). In its motion to dismiss the California statutory claims, Honeywell relies entirely on its arguments that the seventh and eighth causes of action are duplicative claims under the inapplicable CEDA statute. Honeywell fails to make any argument that Medea has not alleged “unfair” conduct under the Unfair Competition Law. Therefore, construing the amended complaint’s allegations in the light most favorable to the plaintiff, the allegations are sufficient to state a cause of action for violation of the Unfair Competition Law through the “unfair” prong, and the court denies dismissal of the seventh cause of action for violation of California Business & Professions Code § 17200, *et seq.*

However, the court dismisses the seventh cause of action to the extent Plaintiff seeks punitive damages (*see* Amended Complaint, ¶ 223). The Terms and Conditions state unequivocally that “Seller shall not be liable for any . . . punitive . . . damages of any kind . . . notwithstanding the failure of the essential purpose of any limited remedy” (Terms and Conditions, § 30). In any event, Plaintiff has failed to allege any basis for punitive damages (*see Errant Gene Therapeutics, LLC v Sloan-Kettering Institute for Cancer Research*, 174 AD3d 473, 475-76 [1st Dept 2019] [holding that a complaint fails to establish that Plaintiff is entitled to punitive damages “as it does

not allege that defendants' actions were aimed at the public or showed the requisite moral turpitude").<sup>4</sup>

#### 5. Economic Duress

Lastly, the court grants Honeywell's motion to dismiss the ninth cause of action for economic duress. A party may seek to void its contract under the theory of economic duress where it establishes that it was "compelled to agree to the contract terms because of a wrongful threat by the other party which precluded the exercise of its free will" (*805 Third Ave. Co. v M.W. Realty Assoc.*, 58 NY2d 447, 451 [1983]; *Beltway 7 & Properties, Ltd. v Blackrock Realty Advisers, Inc.*, 167 A.D.3d 100, 105 [1st Dept 2018]). However, a party "cannot be guilty of economic duress for refusing to do that which it is not legally required to do" (*Rochelle Assoc. v Fleet Bank of New York*, 230 AD2d 605, 606 [1st Dept 1996]). Additionally, a "mere threat by one party to breach a contract by not delivering merchandise, though wrongful, does not in itself constitute economic duress. It must also appear that the threatened party could not obtain the goods from another source and the ordinary remedy of an action for breach of contract would not be adequate" (*Gateway Overseas Inc. v Sumec Textile & Light Industry Co., Ltd.*, 193 AD3d 528 [1st Dept 2021]; *Eldon Group America, Inc. v Equiptex Indus. Products Corp.*, 236 AD2d 329, 329 [1st Dept 1997]).

The core of Medea's economic duress claim is that Honeywell's Vice President of Sales, Brent Durham, allegedly told the Chief Executive Officer of Medea, Brandon Laidlaw, that "Medea would lose its ability to distribute Honeywell masks if it did not agree to immediately purchase 2.65 million (which he increased to 4 million approximately 24 hours later) N95 Masks" (Amended Complaint, ¶ 236). Thereafter, "under duress and fear that it would potentially lose its

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<sup>4</sup> The court's analysis is limited to the seventh cause of action because that is the only cause of action seeking punitive damages that will remain following this decision. However, for the avoidance of any doubt, the Terms and Conditions preclude Plaintiff from recovery of punitive damages under any of its causes of action.

ability to fulfill future Honeywell mask orders,” Medea agreed to purchase the 4 million N95 Masks (*id.*, ¶ 239). Medea also alleges that “Medea could not have obtained Honeywell masks from any source besides Honeywell” (*id.*, ¶ 240). Further, the Distribution Agreement, effective January 1, 2021, made Medea an “authorized distributor” of a variety of Honeywell products, including N95 Masks, for a period of 1 year, subject to automatic renewal for a maximum of two years, “unless sooner terminated as set forth in the Agreement” (Distribution Agreement, Overview, Term of Agreement). While the agreement can be terminated without cause, Medea is entitled to thirty days’ prior notice (*id.*, § I.8.A).

Even assuming that Medea adequately alleges that Honeywell’s threat not to allow Medea to sell N95 Masks if it did not **immediately** place the mask order was a threat to breach its agreement with Medea, it does not state a cause of action for economic duress. In particular, Medea fails to allege that, if Honeywell did breach the agreement through not allowing Medea to distribute Honeywell masks in the future, a cause of action for breach of contract would be inadequate. Therefore, the court dismisses the cause of action for economic duress (*see Gateway Overseas Inc.*, 193 AD3d 528).

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

Accordingly, it is

**ORDERED** that the third cause of action (declaratory judgment), fourth cause of action (declaratory judgment), and sixth cause of action (fraud in the inducement) are dismissed for the reasons set forth on the record on August 16, 2023; and it is further

**ORDERED, ADJUDGED, and DECLARED** that plaintiff is not entitled to a declaratory judgment striking the limitation of remedies under the Distribution Agreement pursuant to the third

cause of action, as this declaratory judgment cause of action duplicates plaintiff’s breach of contract and warranty claims; and it is further

**ORDERED, ADJUDGED, and DECLARED** that plaintiff is not entitled to a declaratory judgment striking the jury waiver in the Distribution Agreement on the basis that it is unenforceable. The parties consented to a jury trial on the record and agreed that the fourth cause of action should be dismissed as moot; and it is further

**ORDERED** that the fifth cause of action (revocation of acceptance), eighth cause of action (violation of California Business & Professions Code § 22900, *et seq.*), and ninth cause of action (economic duress) are dismissed; and it is further

**ORDERED** that the seventh cause of action (violation of California Business & Professions Code § 17200, *et seq.*) is dismissed to the extent it alleges conduct that is unlawful or fraudulent as bases for Honeywell’s alleged violation of California’s Unfair Competition Law, and is dismissed to the extent it seeks punitive damages, but is not dismissed to the extent that plaintiff alleges that Honeywell’s violation of the Unfair Competition Law is based on “unfair” conduct; and it is further

**ORDERED** that the remainder of Honeywell’s motion to dismiss is denied.

11/16/2023  
DATE

  
MELISSA A. CRANE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE