

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

ELISA BLANCO, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

BRP US INC., BOMBARDIER
RECREATIONAL PRODUCTS INC., BRP
INC., and BROWARD MOTORSPORTS
OF FT LAUDERDALE, LLC,

Defendants.

Case No.

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Elisa Blanco (“Blanco”), individually and on behalf of all others similarly situated, by and through her attorneys, files this Class Action Complaint against BRP US Inc. (“BRP US”), Bombardier Recreational Products Inc. (“Bombardier”), BRP Inc. (“BRP”), and Broward Motor-sports of Ft Lauderdale, LLC (“Broward Motor”), for damages and equitable relief and, in support thereof, alleges the following:

INTRODUCTION

1. The Sea-Doo personal watercrafts (“Sea-Doos”) suffer from defects that cause the Sea-Doos to take on water and sink.

2. Defendants are aware of the defects and know that customers do not anticipate the Sea-Doos will sink under normal use. Nevertheless, Defendants have not informed current owners about these defects, have not disclosed the defects to prospective purchasers, and continue to promote the Sea-Doos as safe.

3. The Sea-Doos currently present a safety hazard and are unreasonably dangerous to consumers. When the Sea-Doos take on water due to the defects, this results in the partial or complete sinking of the Sea-Doos. Consequently, the passengers find themselves stranded in open

water and at risk of personal injury or death.

4. In addition to these safety hazards, the cost to repair the Sea-Doos' parts and any damage caused by the intake of water can cost thousands of dollars.

5. As a result of Defendants' practices, Blanco and the other members of the Class have suffered an injury in fact, including economic damages, and have lost money or property.

PARTIES

6. Blanco is an individual residing in Miami-Dade County, Florida.

7. BRP US is a foreign for-profit corporation, incorporated and existing under the laws of the State of Delaware, with its principal place of business in Sturtevant, Wisconsin. BRP US is registered and does business in Florida. BRP US is entirely owned by Bombardier.

8. Bombardier is a foreign for-profit corporation, incorporated and existing under the laws of Canada, with its principal place of business in Valcourt, Quebec. Bombardier is entirely owned by BRP.

9. BRP is a foreign for-profit corporation, incorporated and existing under the laws of Canada, with its principal place of business in Valcourt, Quebec. BRP US, Bombardier, and BRP operate as a single entity for the purposes of designing, manufacturing, marketing, distributing, warranting, servicing, repairing, and selling the Sea-Doos in Florida. Collectively, they will be referred to as "Bombardier."

10. Broward Motor is a Florida limited liability company with its principal place of business in Broward County, Florida. Broward Motor sells a diverse range of land and water motor vehicles, including the Sea-Doos. Broward Motor sold a Sea-Doo to Blanco.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this case because it is an action for damages in excess of \$30,000, exclusive of interest, attorney's fees, and costs.

12. This Court has personal jurisdiction over Defendants because Defendants operate, conduct, engage in, or carry on a business or business venture in this state.

13. Venue is proper in Broward County, Florida, because it is where the cause of action alleged herein accrued and where Defendants have or usually keep an office for the transaction of their customary business.

14. All conditions precedent to the bringing of this action have either been performed or they have been waived.

FACTUAL ALLEGATIONS

15. On or about February 24, 2018, Blanco purchased a 2018 Sea-Doo RXT-X 300 from Broward Motor, an authorized Sea-Doo seller in Fort Lauderdale, Florida. Blanco purchased the Sea-Doo for her son, Juan Junco's ("Junco") personal use.

16. In mid-2020, Junco discovered that while using the Sea-Doo, water would seep into the hull and accumulate in the bilge, causing the Sea-Doo to partially sink.

17. On or around August 8, 2020, Junco took the Sea-Doo to Broward Motor and found that the Sea-Doo's carbon seal was defective. The carbon seal encircles the driveshaft as it comes out through the hull and into the pump and is meant to provide the Sea-Doo with a waterproof seal.

18. Junco was forced to purchase a new carbon seal to replace the defective one. Junco paid around \$90 for the replacement carbon seal.

19. On September 5, 2020, Junco lent Blanco's Sea-Doo to his friend Reinier Castro ("Castro"). Castro went out to ride the Sea-Doo with other friends who also took jet-skis.

20. After spending most of the day anchored at the Haulover Sandbar in Miami Beach, the group decided to ride the jet-skis through the outer coastal waters. Castro and the group left the Haulover channel heading south, cruising along the Miami Beach waters. Castro rode with his daughter in the back seat.

21. As the group was getting close to the government-cut channel in Miami Beach, the Sea-Doo suddenly shut off. One of Castro’s friends, Rogelio Gonzalez (“Gonzalez”) approached and noticed there was something wrong on the side of the Sea-Doo.

22. Gonzalez saw that the hull had exposed fiberglass and was missing paint. As Castro and Gonzalez inspected the side of the Sea-Doo, they noticed that water was coming inside the hull and that the Sea-Doo was starting to sink.

23. Fortunately, Castro and his friends were able to tighten the Sea-Doo with ropes to another jet-ski and pull it into the Parrot Jungle Marina. Castro and his daughter rode as passengers in another jet-ski. Once at the marina, they could see that the Sea-Doo’s hull was cracked. *See Images 1 and 2, below.*

Image 1



Image 2



24. On information and belief, a defective hull caused the cracks on the body of the vessel, which in turn allowed water to flood the hull of the Sea-Doo.

25. Before purchasing the Sea-Doo, Blanco consulted Bombardier’s authorized sales representatives at Broward Motor and reviewed their sales and marketing materials. At no time did Broward Motor or Bombardier’s written materials disclose to Blanco that the Sea-Doo suffers from a defective carbon seal and/or hull. Had Defendants properly disclosed these defects, Blanco

would not have purchased the Sea-Doo for Junco.

26. On information and belief, the defective carbon seal and/or hull were present in the Sea-Doo when it left the manufacturing facility.

27. Defendants are obliged to replace the defective parts or, in the alternative, the entire Sea-Doo. Otherwise, customers like Blanco would be forced to incur out-of-pocket costs on repairs that should be covered by Defendants.

28. Defendants' sale of defective Sea-Doos deprives customers like Blanco of their ability to use a vessel for which they paid thousands of dollars.

29. Defendants' sale of defective Sea-Doos puts customers like Blanco at risk of injury, serious bodily harm, or death.

30. Absent full replacement, Blanco and the other members of the Class are entitled to the difference in value between a brand new, defect-free Sea-Doo and a repaired one.

Complaints about the Sea-Doos

31. Numerous consumer complaints concerning the defective carbon seal and/or hull in the Sea-Doos have been voiced on various internet forums as well as directly to Defendants. These complaints further reflect the manufacture defects in the Sea-Doos and Defendants' refusal to take responsibility for the defects. The complaints also demonstrate Defendants' awareness of the defects and how potentially dangerous said defective conditions are.

32. For example, one consumer complained that although his 2018 GTX 300 Sea-Doo never saw water and was stored in a heated garage since purchase, when he went to take it out, he noticed a "horrible gas odor." He found that "gas leaked down the hull on both side[s] and gas was in the footwells." When he wiped the gas off, he found the "hull was cracked horribly and stained where the gas had run from [the] gas lid area."¹

¹ <https://www.Greenhulk.net/forums/showthread.php?t=268367>

33. Another consumer complained that his 2018 Sea Doo motor blew up after only 33 hours of usage. After the dealer fixed it, he put it in the water with no cracks or holes in the hull. After just two minutes riding it, the Sea Doo started to sink. He managed to get the Sea-Doo back to a concrete ramp so it would not sink. Once on dry floor, it started to crack.²

34. Another consumer, an owner of a 2018 PX experienced numerous problems with his Sea-Doo, stating: “This thing has been nothing but an absolute nightmare and almost killed me on more than [] one occasion.” He stated that he experienced issues with everything from the hull to the mechanics just shutting off for no reason.³

35. Another consumer complained of a carbon seal failure in his brand-new Sea-Doo within a few hours of use. He was told by the dealer that “the carbon seal [was] shot, needed an alignment but had to wait for shims to be ordered.” This consumer summarized his experience as follows: “I now have a brand-new ski in the shop in pieces, waiting to be put back together again.”⁴

36. On information and belief, there are hundreds of other consumers affected by these defects in the Sea-Doos. These consumers have been damaged by receiving a watercraft valued less than what they paid for. Furthermore, they are at risk of serious bodily harm due to the unsafe, defective carbon seals and/or hulls.

Defendants’ knowledge of the problems

37. Since 2017, Bombardier has used a process in manufacturing the Sea-Doos called CM-Tech. This new process replaced the traditional gel-coat process used for years in the industry.

38. The Sea-Doo Watercraft Global Product Manager at the time explained the CM-Tech process as follows:

The main procedural difference is that instead of applying gel coat to the mold before injection, multi-layer thermoformed sheets of Acrylic and ABS are placed into the mold before the fiberglass is injected. This accelerates the process and also

² <https://www.seadooforum.com/threads/2018-seadoo-rxtx-300-problems.93606/>

³ *Id.*

⁴ <http://greenhulk.net/forums/showthread.php?t=285843>

improves quality thus reducing the number of rejects. In effect, this creates a high gloss acrylic finish on the top deck that is more resistant to chipping and cracking due to the flexible nature of the acrylic sheets. In addition, the inside of the deck is now smooth, with no protruding sharp pieces of epoxy or fiberglass matting.⁵

39. On information and belief, Bombardier's new process for manufacturing the Sea-Doos' hulls is defective and causes the Sea-Doos to stress crack, without even being ridden by consumers. Mere temperature changes can trigger expansion or contraction stress to the hull layers, causing them to crack while idle.

40. On information and belief, Bombardier has used the CM-Tech process for molding the hulls of all Sea-Doos from 2017 to the present.

41. In recent years, there have been many documented carbon seal failures in the Sea-Doos, as noted by increased service requests.⁶

42. According to a report by *The Watercraft Journal*, "a confluence of weak or porous materials used by outside suppliers and a limited sequence of units manufactured with slight engine misalignment have contributed to premature failure of carbon ring seals."⁷

43. These defects pose an unreasonable safety risk to consumers. These failures can occur without warning and result in the Sea-Doos sinking in the middle of a lake, ocean, or any body of water, stranding the rider, subjecting them to the risk of drowning, hypothermia, exposure, injury from other watercraft, and a myriad of other dangers.

44. On information and belief, Bombardier has long known the Sea-Doos contain these defects. Bombardier has exclusive access to information about defects through its dealerships, like Broward Motor, who provide pre-release testing data, warranty data, customer complaint data, and replacement part sales data, among other sources of aggregate information about the problems.

45. On the other hand, these defects were not known or reasonably discoverable by

⁵ <https://watercraftjournal.com/all-the-right-moves-2017-sea-doo-gtr-x-230/>

⁶ <https://watercraftjournal.com/debunking-myths-better-understanding-sea-doos-carbon-ring-seal/>

⁷ *Id.*

Blanco and the other members of the Class prior to purchase and without experiencing the defects firsthand and exposing themselves to an unreasonable safety risk.

46. On information and belief, Defendants have actively concealed these defects from their customers. Even when Sea-Doo owners specifically ask whether their Sea-Doo suffers from a known problem, Defendants' policy is to deny that there is a problem, continue concealing these defects, and assert that the failures must have been caused by something the owner did.

47. Defendants knew that potential Sea-Doo buyers would deem these defects to be material and that reasonable consumers who knew of the defects either would have paid less for the Sea-Doos or would not have purchased a Sea-Doo at all.

48. Defendants had a duty to disclose these defects and the associated repair costs to their customers, among other reasons, because these defects pose an unreasonable safety hazard and because Defendants have exclusive knowledge or access to material facts about the Sea-Doos and these defects that were not known or reasonably discoverable by Blanco and the other members of the Class.

49. As a result of Defendants' practices, Blanco and the other members of the Class purchased Sea-Doos they otherwise would not have purchased, paid more for those Sea-Doos than they would have paid, have incurred damages because the defects have diminished the value of the Sea-Doos, were subjected to an unreasonable risk to their safety, and unnecessarily paid, and will continue to pay, repair costs because of the defects.

CLASS ACTION ALLEGATIONS

50. Pursuant to Fla. R. Civ. P. 1.220, Plaintiff, on behalf of herself and others similarly situated, seeks certification of the following Class and Subclass:

The Sea-Doo Class: All persons who purchased a Sea-Doo in Florida from 2017 to the present.

The Broward Motor Subclass: All persons who purchased a Sea-Doo in Florida from Broward Motor from 2017 to the present.

The definitions of the Class and Subclass are subject to amendment as needed.

51. Excluded from the Class and Subclass are Defendants, their respective affiliates, subsidiaries, agents, board members, directors, officers, employees, any members of the judiciary to whom this case is assigned, their court staff, and Plaintiff's counsel.

Numerosity

52. This action satisfies the numerosity requirement of Fla. R. Civ. P. 1.220(a)(1). The Class and Subclass are sufficiently numerous that joinder of all members is impracticable as they will include hundreds or thousands of members.

Commonality and Predominance

53. This action satisfies the commonality requirement of Fla. R. Civ. P. 1.220(a)(2) and the predominance requirement of Fla. R. Civ. P. 1.220(b)(3) as there are questions of law or fact common to the Class and Subclass and such questions predominate over any questions affecting only individual members. These include, among others, the following:

- (a) Whether the Sea-Doos contain defects;
- (b) Whether the fact that the Sea-Doos suffer from defects would be considered material by a reasonable consumer;
- (c) Whether Defendants were aware of the defects;
- (d) Whether the defects constitute an unreasonable safety risk;
- (e) Whether Defendants had a duty to disclose the defective nature of the Sea-Doos to Plaintiff and the other members of the Class and Subclass;
- (f) Whether Plaintiff and the other members of the Class and Subclass are entitled to equitable relief, including a preliminary or permanent injunction;
- (g) Whether Defendants violated the Florida Deceptive and Unfair Trade Practices Act, when they sold to consumers defective Sea-Doos.

Typicality

54. This action satisfies the typicality requirement of Fla. R. Civ. P. 1.220(a)(3) as the

claims of the representative party are typical of the claims of the Class and Subclass. Plaintiff, like all class members, purchased a Sea-Doo after 2017 that was fitted with a defective carbon seal and/or was manufactured using the new CM-Tech process that caused the hull of her Sea-Doo to fail. Plaintiff, like all class members, has been damaged by Defendants' misconduct in that her Sea-Doo is worth less than it was purchased for due to the concealed defects.

Adequacy

55. This action satisfies the adequacy requirement of Fla. R. Civ. P. 1.220(a)(4). Plaintiff will fairly and adequately protect the interests of the Class and Subclass. Plaintiff is aware of her responsibilities as class representative and has no conflicts with any member of the Class or Subclass. Plaintiff has retained Ayala Law, P.A. to represent her in this matter, who is experienced in complex litigation and has the necessary skills and resources to meet the needs of this case.

Superiority

56. This action satisfies the superiority requirement of Fla. R. Civ. P. 1.220(b)(3) as a class action is superior to other available methods for fairly and efficiently adjudicating this controversy for a variety of reasons, including, without limitation, that it would be an inefficient use of judicial resources to require each member of the Class and Subclass affected by Defendants' actions to bring their own claim. Moreover, the case deals with common issues of law that may be adjudicated uniformly in one single action without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would require.

Fla. R. Civ. P. 1.220(b)(2)

57. The prerequisites for maintaining a class action under Fla. R. Civ. P. 1.220(b)(2) also exist because by placing the defective Sea-Doos into the stream of commerce, Defendants have acted or refused to act on grounds that apply generally to the Class and Subclass, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class and Subclass as a whole.

58. Specifically, Plaintiff seeks an order declaring that the Sea-Doos are unreasonably dangerous for consumer use. Plaintiff requests an injunction against Defendants preventing them from selling the defective Sea-Doos and ordering Defendants to recall those defective Sea-Doos that have already been sold.

COUNT I – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(Against BRP US, Bombardier, and BRP)

59. Plaintiff realleges paragraphs 1 through 58 above as if fully set forth herein.

60. BRP US, Bombardier, and BRP are “merchants,” as defined in the Florida Uniform Commercial Code (“UCC”). §672.104(1), Fla. Stat.

61. The Sea-Doos are “goods,” as defined in the UCC. §672.105(1), Fla. Stat.

62. BRP US, Bombardier, and BRP were in privity with Plaintiff and the other members of the Class because Plaintiff and the other members of the Class were the foreseeable and intended users of the Sea-Doos and the beneficiaries of the warranties relating to the Sea-Doos.

63. BRP US, Bombardier, and BRP impliedly warranted that the Sea-Doos were of merchantable quality, fit, safe, and in a proper condition to be used with reasonable safety, efficiency, and comfort. *See* §672.314, Fla. Stat.

64. More specifically, BRP US, Bombardier, and BRP warranted that the Sea-Doos would pass without objection in the trade; were of fair average quality; were fit for the ordinary purposes for which they were to be used; would run as vessels similar in kind, price, and quality; would be adequately contained, packaged, and labeled; and would conform to all affirmations of fact made regarding the quality and performance of the Sea-Doos.

65. The Sea-Doos, when manufactured by BRP US, Bombardier, and BRP, were in a defective condition and were unreasonably dangerous to users and consumers.

66. The Sea-Doos were not of merchantable quality and were unfit, unsafe, and unusable for the ordinary purpose for which they were intended.

67. BRP US, Bombardier, and BRP breached the implied warranty of merchantability by failing to properly design, manufacture, test, and inspect the Sea-Doos and by delivering vessels that were unfit for ordinary use.

68. As a direct and proximate result of the breach of said warranty, Plaintiff and the other members of the Class were injured and are entitled to damages.

COUNT II – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(Against Broward Motor)

69. Plaintiff realleges paragraphs 1 through 58 above as if fully set forth herein.

70. Broward Motor is a “merchant,” as defined in the Florida Uniform Commercial Code (“UCC”). §672.104(1), Fla. Stat.

71. The Sea-Doos are “goods,” as defined in the UCC. §672.105(1), Fla. Stat.

72. Broward Motor was in privity with Plaintiff and the other members of the Subclass because Plaintiff and the other members of the Subclass purchased their Sea-Doos from Broward Motor.

73. Broward Motor impliedly warranted that the Sea-Doos were of merchantable quality, fit, safe, and in a proper condition to be used with reasonable safety, efficiency, and comfort. *See* §672.314, Fla. Stat.

74. More specifically, Broward Motor warranted that the Sea-Doos would pass without objection in the trade; were of fair average quality; were fit for the ordinary purposes for which they were to be used; would run as vessels similar in kind, price, and quality; would be adequately contained, packaged, and labeled; and would conform to all affirmations of fact made regarding the quality and performance of the Sea-Doos.

75. The Sea-Doos, when sold by Broward Motor, were in a defective condition and were unreasonably dangerous to users and consumers.

76. The Sea-Doos were not of merchantable quality and were unfit, unsafe, and unusable for the ordinary purpose for which they were intended.

77. Broward Motor breached the implied warranty of merchantability by failing to properly inspect the Sea-Doos and selling vessels that were unfit for ordinary use.

78. As a direct and proximate result of the breach of said warranty, Plaintiff and the other members of the Subclass were injured and are entitled to damages.

**COUNT III – BREACH OF IMPLIED WARRANTY OF FITNESS FOR A
PARTICULAR PURPOSE**

(Against BRP US, Bombardier, and BRP)

79. Plaintiff realleges paragraphs 1 through 58 above as if fully set forth herein.

80. BRP US, Bombardier, and BRP are “merchants,” as defined in the Florida Uniform Commercial Code (“UCC”). §672.104(1), Fla. Stat.

81. The Sea-Doos are “goods,” as defined in the UCC. §672.105(1), Fla. Stat.

82. BRP US, Bombardier, and BRP were in privity with Plaintiff and the other members of the Class because Plaintiff and the other members of the Class were the foreseeable and intended users of the Sea-Doos and the beneficiaries of the warranties relating to the Sea-Doos.

83. At the time Plaintiff and the other members of the Class purchased their Sea-Doos, BRP US, Bombardier, and BRP knew or should have known that the Sea-Doos were being purchased for a particular purpose, including, but not limited to, use as a water-going vessel and that it would be necessary to operate the Sea-Doos without sinking.

84. At the time Plaintiff and the other members of the Class purchased their Sea-Doos, BRP US, Bombardier, and BRP knew or should have known that Plaintiff and the other members of the Class were relying on BRP US, Bombardier, and BRP’s skill and judgment to select, furnish and provide Sea-Doos that were fit to be used for a particular purpose, including, but not limited to, use as a water-going vessel and that it would be necessary to operate the Sea-Doos without sinking.

85. BRP US, Bombardier, and BRP impliedly warranted that the Sea-Doos were reasonably fit for Plaintiff and the other members of the Class' intended use.

86. Plaintiff and the other members of the Class relied on the skill, representations, and judgment of BRP US, Bombardier, and BRP to furnish a product fit for its intended use.

87. At the time Plaintiff and the other members of the Class purchased their Sea-Doos, defects existed in the Sea-Doos that were not discoverable by simple observation at the time of delivery. As a result of the defects, the Sea-Doos were not fit for their intended purpose.

88. BRP US, Bombardier, and BRP breached the implied warranty of fitness for a particular purpose by selecting, furnishing, and providing Sea-Doos that were not fit for their intended purpose and were otherwise unfit.

89. As a direct and proximate result of the breach of said warranty, Plaintiff and the other members of the Class were injured and are entitled to damages.

**COUNT IV – BREACH OF IMPLIED WARRANTY OF FITNESS FOR A
PARTICULAR PURPOSE**
(Against Broward Motor)

90. Plaintiff realleges paragraphs 1 through 58 above as if fully set forth herein.

91. Broward Motor is a “merchant,” as defined in the Florida Uniform Commercial Code (“UCC”). §672.104(1), Fla. Stat.

92. The Sea-Doos are “goods,” as defined in the UCC. §672.105(1), Fla. Stat.

93. Broward Motor was in privity with Plaintiff and the other members of the Subclass because Plaintiff and the other members of the Subclass purchased their Sea-Doos from Broward Motor.

94. At the time Plaintiff and the other members of the Subclass purchased their Sea-Doos, Broward Motor knew or should have known that the Sea-Doos were being purchased for a particular purpose, including, but not limited to, use as a water-going vessel and that it would be necessary to operate the Sea-Doos without sinking.

95. At the time Plaintiff and the other members of the Subclass purchased their Sea-Doos, Broward Motor knew or should have known that Plaintiff and the other members of the Subclass were relying on Broward Motor's skill and judgment to select, furnish and provide Sea-Doos that were fit to be used for a particular purpose, including, but not limited to, use as a water-going vessel and that it would be necessary to operate the Sea-Doos without sinking.

96. Broward Motor impliedly warranted that the Sea-Doos were reasonably fit for Plaintiff and the other members of the Subclass' intended use.

97. Plaintiff and the other members of the Subclass relied on the skill, representations, and judgment of Broward Motor to furnish a product fit for its intended use.

98. At the time Plaintiff and the other members of the Subclass purchased their Sea-Doos, defects existed in the Sea-Doos that were not discoverable by simple observation at the time of delivery. As a result of the defects, the Sea-Doos were not fit for their intended purpose.

99. Broward Motor breached the implied warranty of fitness for a particular purpose by selecting, furnishing, and providing Sea-Doos that were not fit for their intended purpose and were otherwise unfit.

100. As a direct and proximate result of the breach of said warranty, Plaintiff and the other members of the Subclass were injured and are entitled to damages.

COUNT V – VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT (§501.201 et seq., Fla. Stat.)

(Against BRP US, Bombardier, and BRP)

101. Plaintiff realleges paragraphs 1 through 58 above as if fully set forth herein.

102. This is an action for actual damages and injunctive relief or declaratory relief pursuant to the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA").

103. The purpose of FDUTPA is to "protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." §501.202, Fla. Stat.

104. Plaintiff and the other members of the Class were “consumers,” as defined by FDUTPA. §501.203(7), Fla. Stat.

105. BRP US, Bombardier, and BRP were engaged in “trade or commerce,” as defined by FDUTPA. §501.203(8), Fla. Stat.

106. FDUTPA imposes a duty on BRP US, Bombardier, and BRP to refrain from engaging in “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” §501.204(1), Fla. Stat.

107. The defects in the Sea-Doos were and are material and would likely affect a consumer’s purchase and repair decisions regarding the Sea-Doos. The defects cause the Sea-Doos to fail entirely. These failures can occur without warning and result in the Sea-Doos sinking in the middle of a lake, ocean, or any large body of water, thereby stranding the riders, and exposing them to risk of drowning, hypothermia, exposure, injury from other watercraft, and a myriad of other dangers. Nonetheless, BRP US, Bombardier, and BRP completely failed to warn or advise their customers, including Plaintiff and the other members of the Class of the defects.

108. Since the defects were hidden and BRP US, Bombardier, and BRP failed to disclose them, Plaintiff and the other members of the Class had no reasonable way to avoid their injuries.

109. As set forth above, despite having prior and repeated notice of the defects, BRP US, Bombardier, and BRP have engaged in a routine—albeit wrongful—course of conduct, in that they manufactured, sold, distributed, and advertised and continue to manufacture, sell, distribute, and advertise Sea-Doos that are unsafe and unfit for their intended purposes, when they knew or should have known that such was the case.

110. By engaging in the conduct described above, BRP US, Bombardier, and BRP have caused consumers, including Plaintiff and the other members of the Class, to be aggrieved and suffer ascertainable losses and damages, in that, among other things, BRP US, Bombardier, and BRP’s wrongful course of conduct systematically:

- a. Caused Plaintiff and the other members of the Class to pay premium prices for a defective product; pay a greater price for a product than they would have; or to pay for a product they entirely would not have purchased had they been warned or advised about the defects; and,
- b. Reduced the value of the Sea-Doos purchased by Plaintiff and the other members of the Class.

111. Based on the foregoing, BRP US, Bombardier, and BRP have engaged in representations, acts, practices, or omissions that are material, and that are likely to mislead consumers acting reasonably under the circumstances. Thus, BRP US, Bombardier, and BRP have engaged in deceptive acts or practices in violation of FDUTPA.

112. Moreover, based on the foregoing, BRP US, Bombardier, and BRP have committed acts or practices in the conduct of trade or commerce which offend established public policy and are unethical, oppressive, unscrupulous, or substantially injurious to consumers. BRP US, Bombardier, and BRP have committed acts or practices which have caused, or are likely to cause, consumer injury, which is substantial, not outweighed by any countervailing benefits to consumers or competition that the practice produces, and an injury that consumers themselves could not reasonably have avoided. Therefore, BRP US, Bombardier, and BRP have engaged in unfair acts or practices in violation of FDUTPA.

113. As a result of these unfair and deceptive acts, BRP US, Bombardier, and BRP have caused Plaintiff and the other members of the Class to suffer losses and incur actual damages or are entitled to injunctive relief and/or declaratory relief because of BRP US, Bombardier, and BRP's unfair or deceptive acts or practices in violation of FDUTPA.

114. "In any civil litigation resulting from an act or practice involving a violation of [FDUTPA,] the prevailing party . . . may receive his or her reasonable attorney's fees and costs from the non-prevailing party. §501.2105, Fla. Stat.

**COUNT VI – VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE
PRACTICES ACT (§501.201 et seq., Fla. Stat.)**
(Against Broward Motor)

115. Plaintiff realleges paragraphs 1 through 58 above as if fully set forth herein.

116. This is an action for actual damages and injunctive relief or declaratory relief pursuant to the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”).

117. The purpose of FDUTPA is to “protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” §501.202, Fla. Stat.

118. Plaintiff and the other members of the Subclass were “consumers,” as defined by FDUTPA. §501.203(7), Fla. Stat.

119. Broward Motor was engaged in “trade or commerce,” as defined by FDUTPA. §501.203(8), Fla. Stat.

120. FDUTPA imposes a duty on Broward Motor to refrain from engaging in “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” §501.204(1), Fla. Stat.

121. The defects in the Sea-Doos were and are material and would likely affect a consumer’s purchase and repair decisions regarding the Sea-Doos. The defects cause the Sea-Doos to fail entirely. These failures can occur without warning and result in the Sea-Doos sinking in the middle of a lake, ocean, or any large body of water, thereby stranding the riders, and exposing them to risk of drowning, hypothermia, exposure, injury from other watercraft, and a myriad of other dangers. Nonetheless, Broward Motor completely failed to warn or advise its customers, including Plaintiff and the other members of the Subclass of the defects.

122. Since the defects were hidden and Broward Motor failed to disclose them, Plaintiff and the other members of the Subclass had no reasonable way to avoid their injuries.

123. As set forth above, despite having prior and repeated notice of the defects, Broward

Motor has engaged in a routine—albeit wrongful—course of conduct, in that it sold, distributed, and advertised and continues to sell, distribute, and advertise Sea-Doos that are unsafe and unfit for their intended purposes, when it knew or should have known that such was the case.

124. By engaging in the conduct described above, Broward Motor has caused consumers, including Plaintiff and the other members of the Subclass, to be aggrieved and suffer ascertainable losses and damages, in that, among other things, Broward Motor’s wrongful course of conduct systematically:

- a. Caused Plaintiff and the other members of the Subclass to pay premium prices for a defective product; pay a greater price for a product than they would have; or to pay for a product they entirely would not have purchased had they been warned or advised about the defects; and,
- b. Reduced the value of the Sea-Doos purchased by Plaintiff and the other members of the Subclass.

125. Based on the foregoing, Broward Motor has engaged in representations, acts, practices, or omissions that are material, and that are likely to mislead consumers acting reasonably under the circumstances. Thus, Broward Motor has engaged in deceptive acts or practices in violation of FDUTPA.

126. Moreover, based on the foregoing, Broward Motor has committed acts or practices in the conduct of trade or commerce which offend established public policy and are unethical, oppressive, unscrupulous, or substantially injurious to consumers. Broward Motor has committed acts or practices which have caused, or are likely to cause, consumer injury, which is substantial, not outweighed by any countervailing benefits to consumers or competition that the practice produces, and an injury that consumers themselves could not reasonably have avoided. Therefore, Broward Motor has engaged in unfair acts or practices in violation of FDUTPA.

127. As a result of these unfair and deceptive acts, Broward Motor has caused Plaintiff

and the other members of the Subclass to suffer losses and incur actual damages or are entitled to injunctive relief and/or declaratory relief because of Broward Motor's unfair or deceptive acts or practices in violation of FDUTPA.

128. "In any civil litigation resulting from an act or practice involving a violation of [FDUTPA,] the prevailing party . . . may receive his or her reasonable attorney's fees and costs from the non-prevailing party. §501.2105, Fla. Stat.

COUNT VII – UNJUST ENRICHMENT
(Against BRP US, Bombardier, and BRP)

129. Plaintiff realleges paragraphs 1 through 58 above as if fully set forth herein.

130. As a direct and proximate result of BRP US, Bombardier, and BRP's failure to disclose known defects and material misrepresentations regarding known defects in the Sea-Doos, Plaintiff and the other members of the Class have incurred substantial costs to repair the Sea-Doos. Those repairs require the replacement of the defective parts with other parts also sold by BRP US, Bombardier, and BRP.

131. As a result of having to purchase these replacement parts due to the defects, Plaintiff and the other members of the Class have conferred an unjust substantial benefit upon BRP US, Bombardier, and BRP, which they have accepted.

132. Moreover, as a direct and proximate result of BRP US, Bombardier, and BRP's failure to disclose known defects and material misrepresentations regarding known defects in the Sea-Doos, BRP US, Bombardier, and BRP have knowingly profited to the extent that Plaintiff and the other members of the Class purchased Sea-Doos manufactured by BRP US, Bombardier, and BRP, purchased certified parts directly from BRP US, Bombardier, and BRP to repair the defects, and had to pay for repairs out of their own pockets.

133. BRP US, Bombardier, and BRP have therefore been unjustly enriched due to the known defects in the Sea-Doos by accepting funds that earned interest or otherwise added to BRP

US, Bombardier, and BRP's profits when said money should have remained with Plaintiff and the other members of the Class.

134. As a result of BRP US, Bombardier, and BRP's unjust enrichment, Plaintiff and the other members of the Class have suffered damages and/or seek restitution.

**COUNT VIII – BREACH OF THE IMPLIED COVENANT OF GOOD FAITH
AND FAIR DEALING
(Against Broward Motor)**

135. Plaintiff realleges paragraphs 1 through 58 above as if fully set forth herein.

136. In every contract there is an implied covenant of good faith and fair dealing. This implied covenant means that each party will refrain from doing anything to unfairly interfere with the right of any other party to receive the benefits of the contract. Good faith means honesty of purpose without any intention to mislead or to take unfair advantage of another.

137. Through selling the Sea-Doos to Plaintiff and the other members of the Subclass, Broward Motor has entered into contracts with them.⁸ Each of these contracts contains an implied covenant of good faith and fair dealing.

138. In carrying out its contracts with Plaintiff and the other members of the Subclass, Broward Motor failed to act in good faith or in a commercially reasonable manner, denying Plaintiff and the other members of the Subclass the benefit of the bargain originally intended by the parties by, inter alia, failing to notify Plaintiff and the other members of the Subclass of the defects in the Sea-Doos and misrepresenting the cause of the defects when the Sea-Doos are presented to Broward Motor for repairs.

139. Through the foregoing, Broward Motor breached the covenant of good faith and fair dealing, thereby causing Plaintiff and the other members of the Subclass injuries in an amount to be determined at trial.

⁸ Blanco is not in possession of a legible copy of her contract with Broward Motor. On information and belief Broward Motor has a good copy of that contract and said copy can be obtained during discovery.

COUNT IX – INJUNCTIVE RELIEF
(Against BRP US, Bombardier, and BRP)

140. Plaintiff realleges paragraphs 1 through 58 above as if fully set forth herein.

141. Plaintiff and the public at large will suffer irreparable harm if BRP US, Bombardier, and BRP are not ordered to properly repair all the defective Sea-Doos immediately and to cease and desist from marketing, advertising, and selling the defective Sea-Doos.

142. BRP US, Bombardier, and BRP are under a continuing duty to inform their customers of the nature and existence of potential defects in the Sea-Doos they manufacture.

143. Plaintiff demands that, to prevent future damages because of the defective Sea-Doos, BRP US, Bombardier, and BRP recall all defective Sea-Doos.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the above-defined Class and Subclass, requests the entry of an Order in her favor and against Defendants:

- a. certifying this case as a class action;
- b. appointing Plaintiff as class representative;
- c. appointing undersigned counsel as class counsel;
- d. enjoining Defendants from further deceptive marketing, advertising, and sales practices with respect to the defective Sea-Doos;
- e. ordering Defendants to repair and replace the defective Sea-Doo parts with suitable alternative products;
- f. ordering Defendants to recall all defective Sea-Doos;
- g. awarding damages in favor of the Class and Subclass;
- h. awarding attorney's fees in accordance with §501.2105, Fla. Stat.;
- i. awarding court costs, as well as reasonable litigation and class-related costs;
- j. awarding pre-judgment and post-judgment interest, as provided by law; and

k. such other and further relief that this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff demands trial by jury of all issues so triable.

Dated: March 22, 2021

Respectfully submitted,

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By: /s/ Eduardo A. Maura
Eduardo A. Maura
Florida Bar No. 91303

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges 'Defects' Can Cause Sea-Doo Personal Watercrafts to Take On Water, Sink](#)
