

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MITCHELL HIGGINS,)
individually and on behalf of the class)
members described herein,)
)
Plaintiff,)
)
-vs-)
)
YAMAHA MOTOR)
CORPORATION, USA,)
)
Defendant.)

COMPLAINT – CLASS ACTION

1. Plaintiff Mitchell Higgins brings this action against Defendant Yamaha Motor Corporation, USA (“YMC”) to secure redress for the conduct of Defendant in selling WaveRunner personal watercraft with fuel gauges which prematurely read near zero when they are actually filled to 40-50% of capacity. This triggers a loud low fuel alarm.

2. Plaintiff alleges (a) violation of YMC’s written warranty, actionable under the Magnuson Moss Consumer Products Warranty Act, (b) violation of the Consumer Fraud Act, and (c) common law fraud.

PARTIES

3. Plaintiff Mitchell Higgins is a resident of the Northern District of Illinois.

4. Defendant YMC is a corporation organized under California law with its principal office at 6555 Katella Ave., Cypress, CA 90630.

5. Among other lines of business, YMC manufactures, imports, distributes and sells personal watercraft (jet skis).

JURISDICTION AND VENUE

6. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332(d) (Class Action Fairness Act). There are over 100 proposed class members, most of whom are not

citizens of California. The claims of the proposed class members exceed the sum or value of \$5,000,000, exclusive of interest and costs.

7. Plaintiff is a citizen of Illinois, diverse from YMC. Most members of the class are of diverse citizenship from Defendant.

8. Personal jurisdiction and venue are proper because Defendant YMC intentionally markets and sells its products within the state of Illinois.

FACTS

9. On May 14, 2022, Plaintiff took delivery of a new 2022 Yamaha FX1800F-XA Triton personal watercraft. Plaintiff purchased it from Nielsen Enterprises, an authorized Yamaha dealer, for \$23,190. It had been ordered months in advance.

10. The watercraft was manufactured or imported and placed in the stream of commerce by YMC.

11. Plaintiff purchased the watercraft for personal, family or household purposes (pleasure) and not business purposes. The watercraft is normally used for personal, family or household purposes.

12. The specifications of the watercraft state that it has a fuel capacity of 18.5 gallons (70 liters).

13. The watercraft purports to have a fuel level meter, prominently displayed on the instrument panel.

14. Plaintiff received a written warranty with the watercraft. A copy is attached as Exhibit A.

15. The written warranty provides that YMC warrants that new watercraft will be free from defects in material and workmanship for one year.

16. Upon using the watercraft Plaintiff discovered that the fuel gauge behaves erratically.

17. For example, the fuel gauge will read “full” for approximately one to two hours of riding, and then read near zero when it is still approximately 50-55% full, and then rapidly drop off

to “empty” when it is still 40-45% full, upon which the loud and obnoxious low fuel warning alarm will sound.

18. After the alarm sounds, it will briefly stop and the fuel gauge will return to “normal” when the watercraft is idling, but the fuel gauge will jump back down to empty and the alarm will sound again when the watercraft is throttled.

19. Thus, the fuel gauge will read as “empty” after one or two hours of riding, when it is still approximately 40-45% full, prompting the loud low fuel warning alarm to sound prematurely.

20. There is no way to silence the fuel alarm for the return trip back shore. Once the fuel alarm sounds, the computer software for the dash locks out the touchscreen if there is any throttle input. The low fuel warning alarm is extremely annoying and disconcerting.

21. Additionally, the trip computer screen is defective. The trip computer screen displays distance traveled and gallons of fuel consumed. Each time the watercraft is turned off for a short period of time (*e.g.* when Plaintiff is taking a snack break or going for a swim) and subsequently restarted, the gallons used resets back to zero, which makes keeping track of distance traveled and of fuel consumed following a short break in riding impossible.

22. These are defects that substantially impair the use and enjoyment of the watercraft, as it can safely be used for only about one-half its designed range.

23. The watercraft is advertised as a fuel-efficient “luxury” line craft meant for touring larger bodies of water.

24. However, it is not safe to ride any distance without an accurate fuel gauge.

25. A watercraft with a defective fuel gauge is of lesser value than one with a fuel gauge that accurately informs user of the remaining fuel.

26. Additionally, Plaintiff purchased the watercraft in order to tour larger bodies of water. Given the watercraft’s defects, Plaintiff is limited to riding around the marina, close to shore.

27. Plaintiff requested repairs from Nielsen on multiple occasions within one year after taking delivery.

28. Nielsen is YMC's agent for the purpose of performing warranty repairs.

29. Nielsen advised that it was familiar with the problem and that YMC had no solution.

30. Plaintiff also complained about the fuel gauge problem to the Better Business Bureau. YMC responded that it was "working diligently on a fix for the fuel gauge concern" and that "[o]ne of our Yamaha representatives will make contact with you to discuss your concerns more in depth." (Exhibit B).

31. Upon information and belief, Yamaha's response to Plaintiff's complaint was false and not made in good faith, given the fact that no one from Yamaha reached out to Plaintiff, and Nielsen had advised Plaintiff that it was familiar with the problem and that YMC had no solution.

32. Defendant YMC knew of the fuel gauge problem prior to the time the watercraft sold to Plaintiff was manufactured.

33. Numerous other purchasers of Yamaha personal watercraft have voiced similar complaints on the Internet. (Exhibit C).

34. Plaintiff would not have purchased a YMC watercraft, or would not have paid as much for it, had he been apprised prior to purchase of the fuel gauge problem and its inability to tour larger bodies of water.

COUNT I – MAGNUSON MOSS CONSUMER PRODUCT WARRANTY ACT

35. Plaintiff incorporates paragraphs 1-34.

36. Exhibit A is a written warranty as defined in 15 U.S.C. 2301(6), in that it is both (1) a written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, and (2) an undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking.

37. YMC is unable to repair defective fuel gauges in its watercraft.

38. YMC therefore breached the written warranty.

CLASS ALLEGATIONS

39. Plaintiff brings this claim on behalf of a class, pursuant to Fed. R. Civ. P. 23(a) and (b)(3).

40. The class consists of (a) all persons, (b) who purchased a YMC watercraft, (c) on or after a date four years prior to the filing of this action.

41. Excluded from the class are Defendant; any affiliate, parent, or subsidiary of Defendant; any YMC dealer; any entity in which Defendant has a controlling interest; any officer, director, or employee of Defendant; any successor or assign of Defendant; anyone employed by counsel for Plaintiff in this action; and any judge to whom this case is assigned, his or her spouse, and all persons within the third degree of relationship to them, as well as the spouses of such persons.

42. The class has over forty members and is so numerous that joinder of all members is not practicable.

43. There are common questions of law and fact with respect to the class, which common questions predominate over questions affecting only individual class members. These common questions include:

- a. Whether the fuel gauges in YMC watercraft are inaccurate.
- b. Whether YMC is unable to fix the problem.
- c. Whether as a result YMC breached its written warranty.

44. Plaintiff will fairly and adequately represent the class. There is no conflict of interest between the Plaintiff and the class members. Plaintiff has retained counsel competent and experienced in class action litigation, and intends to prosecute this action vigorously.

45. Plaintiff's claims are typical of those of the proposed class and have the same legal and factual basis as the claims of the class members.

46. A class action is a superior means for the fair and efficient adjudication of this dispute. While the individual injuries suffered by each proposed class member are meaningful, they are sufficiently small that individual actions are not economical. Even if class members could afford individual litigation, there is no reason to burden the courts with multiple actions seeking modest damages.

WHEREFORE, the Court should enter judgment in favor of Plaintiff and the class members and against Defendant for the following relief:

- i. Actual damages;
- ii. Attorney's fees, litigation expenses and costs (15 U.S.C. 2310);
- iii. Such other or further relief as the Court deems proper.

COUNT II – ILLINOIS CONSUMER FRAUD ACT

47. Plaintiff incorporates paragraphs 1-34.

48. It is unfair and deceptive, in violation of 815 ILCS 505/2, for YMC to promote the sale of its watercraft (a) with defective fuel gauges and trip computer screams, (b) without disclosing the material fact that its fuel gauges are inaccurate, while simultaneously (c) advertising the watercraft as a “luxury” line vehicle capable of touring large bodies of water.

49. Persons knowing of the defect would have purchased other watercraft or paid less for YMC watercraft.

CLASS ALLEGATIONS

50. Plaintiff brings this claim on behalf of a class, pursuant to Fed. R. Civ. P. 23(a) and (b)(3).

51. The class consists of (a) all persons with Illinois addresses, (b) who purchased a YMC watercraft, (c) on or after a date three years prior to the filing of this action.

52. Excluded from the class are Defendant; any affiliate, parent, or subsidiary of Defendant; any YMC dealer; any entity in which Defendant has a controlling interest; any officer, director, or employee of Defendant; any successor or assign of Defendant; anyone employed by

counsel for Plaintiff in this action; and any judge to whom this case is assigned, his or her spouse, and all persons within the third degree of relationship to them, as well as the spouses of such persons.

53. The class has over forty members and is so numerous that joinder of all members is not practicable.

54. There are common questions of law and fact with respect to the class, which common questions predominate over questions affecting only individual class members. These common questions include:

- a. Whether the fuel gauges in YMC watercraft are inaccurate.
- b. Whether Defendant engaged in deceptive practices by selling watercraft without disclosure of the fuel gauge problem.

55. Plaintiff will fairly and adequately represent the class. There is no conflict of interest between the Plaintiff and the class members. Plaintiff has retained counsel competent and experienced in class action litigation, and intends to prosecute this action vigorously.

56. Plaintiff's claims are typical of those of the proposed class and have the same legal and factual basis as the claims of the class members.

57. A class action is a superior means for the fair and efficient adjudication of this dispute. While the individual injuries suffered by each proposed class member are meaningful, they are sufficiently small that individual actions are not economical. Even if class members could afford individual litigation, there is no reason to burden the courts with multiple actions seeking modest damages.

WHEREFORE, the Court should enter judgment in favor of Plaintiff and the class members and against Defendant for the following relief:

- i. Actual damages;
- ii. Punitive damages;
- iii. Attorney's fees, litigation expenses and costs;

iv. Such other or further relief as the Court deems proper.

COUNT III – FRAUD BY MISLEADING STATEMENT OR HALF-TRUTH

58. Plaintiff incorporates paragraphs 1-34.

59. Defendant YMC committed fraud when it represented that the watercraft has a fuel level meter, by displaying it on the instrument panel, without informing the consumer that it did not work.

60. Defendant YMC committed fraud when it represented that the watercraft is a “luxury” line craft meant for touring larger bodies of water, when it is impossible to accurately gauge the watercraft’s fuel levels.

CLASS ALLEGATIONS

61. Plaintiff brings this claim on behalf of a class, pursuant to Fed. R. Civ. P. 23(a) and (b)(3).

62. The class consists of (a) all persons with addresses in the United States, (b) who purchased a YMC watercraft, (c) on or after a date five years prior to the filing of this action.

63. Excluded from the class are Defendant; any affiliate, parent, or subsidiary of Defendant; any YMC dealer; any entity in which Defendant has a controlling interest; any officer, director, or employee of Defendant; any successor or assign of Defendant; anyone employed by counsel for Plaintiff in this action; and any judge to whom this case is assigned, his or her spouse, and all persons within the third degree of relationship to them, as well as the spouses of such persons.

64. The class has over forty members and is so numerous that joinder of all members is not practicable.

65. There are common questions of law and fact with respect to the class, which common questions predominate over questions affecting only individual class members. These common questions include:

a. Whether the fuel gauges in YMC watercraft are inaccurate.

- b. Whether Defendant engaged in fraud by selling watercraft purporting to have a fuel gauge without disclosure of the fuel gauge problem.

66. Plaintiff will fairly and adequately represent the class. There is no conflict of interest between the Plaintiff and the class members. Plaintiff has retained counsel competent and experienced in class action litigation, and intends to prosecute this action vigorously.

67. Plaintiff's claims are typical of those of the proposed class and have the same legal and factual basis as the claims of the class members.

68. A class action is a superior means for the fair and efficient adjudication of this dispute. While the individual injuries suffered by each proposed class member are meaningful, they are sufficiently small that individual actions are not economical. Even if class members could afford individual litigation, there is no reason to burden the courts with multiple actions seeking modest damages.

WHEREFORE, the Court should enter judgment in favor of Plaintiff and the class members and against Defendant for the following relief:

- i. Actual damages;
- ii. Punitive damages;
- iii. Costs; and
- iv. Such other or further relief as the Court deems proper.

/s/ Daniel A. Edelman
Daniel A. Edelman

Daniel A. Edelman
Tara L. Goodwin
Matthew J. Goldstein
**EDELMAN, COMBS, LATTURNER
& GOODWIN, LLC**
20 South Clark Street, Suite 1500
Chicago, IL 60603-1824
(312) 739-4200
(312) 419-0379 (FAX)
Email address for service: courtecl@edcombs.com

JURY DEMAND

Plaintiff demands trial by jury.

/s/ Daniel A. Edelman
Daniel A. Edelman

NOTICE OF LIEN AND ASSIGNMENT

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards. All rights relating to attorney's fees have been assigned to counsel.

/s/ Daniel A. Edelman
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