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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 ROBERT and DANELLE BLANGERES,
10 individually and on behalf of all similarly
11 situated,

12 Plaintiffs,

13 v.

14 UNITED STATES SEAMLESS, INC.,
15 K.B.P COIL COATERS, INC., and
16 KAYCAN LIMITED,
17 Defendants.
18

No. 2:13-cv-00260-SAB

**ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

19 Before the Court is Defendants' Joint Motion for Summary Judgment, ECF
20 No. 107. A hearing on the motion was held on December 4, 2015, in Spokane,
21 Washington. Plaintiff was represented by Jonas Mann. Defendants were
22 represented by Herbert Munson, Patrick Paulich, and David Bloom. Gregory
23 Arpin and Albert Bower participated as local counsel.

24 **MOTION STANDARD**

25 Summary judgment is appropriate if the "pleadings, depositions, answers to
26 interrogatories, and admissions on file, together with the affidavits, if any, show
27 that there is no genuine issue as to any material fact and that the moving party is
28 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). There is no

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1 genuine issue for trial unless there is sufficient evidence favoring the nonmoving
2 party for a jury to return a verdict in that party's favor. *Anderson v. Liberty Lobby,*
3 *Inc.*, 477 U.S. 242, 250 (1986). The moving party had the initial burden of
4 showing the absence of a genuine issue of fact for trial. *Celotex Corp. v. Catrett*,
5 477 U.S. 317, 325 (1986). If the moving party meets its initial burden, the non-
6 moving party must go beyond the pleadings and "set forth specific facts showing
7 that there is a genuine issue for trial." *Id.* at 325; *Anderson*, 477 U.S. at 248.

8 In addition to showing that there are no questions of material fact, the
9 moving party must also show that it is entitled to judgment as a matter of law.
10 *Smith v. University of Washington Law School*, 233 F.3d 1188, 1193 (9th Cir.
11 2000). The moving party is entitled to judgment as a matter of law when the non-
12 moving party fails to make a sufficient showing on an essential element of a claim
13 on which the nonmoving party has the burden of proof. *Celotex*, 477 U.S. at 323.
14 The non-moving party cannot rely on conclusory allegations alone to create an
15 issue of material fact. *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

16 **BACKGROUND FACTS**

17 The following facts are presented in the light most favorable to Plaintiffs,
18 the non-moving party:

19 Plaintiffs purchased siding from Hadley's Siding & Windows in March,
20 1999. Hadley's was a franchisee of Defendant United States Seamless. Plaintiffs
21 chose the siding that was provided by Defendant United States Seamless after
22 hearing about it in a television ad. They liked the idea that the product did not
23 have any seams in it and there was a lifetime warranty. They met with Mr.
24 Hadley, who explained the lifetime warranty to them and they ultimately decided
25 to purchase the siding and have it installed. They paid approximately \$20,000 for
26 the siding.

27 After the siding was installed, Plaintiffs were given some documents,
28 including a single page "Lifetime Non-Prorated Transferable Limited Warranty."

1 The warranty states that:

2 United States Seamless Steel Siding is warranted by the Coil
3 manufacturer, KAYCAN, LTD (KAYCAN) to the Owner of the
4 property on which the Seamless steel siding (Siding) is installed,
5 against rusting, cracking, blistering, chipping, peeling or flaking as a
6 direct result of defects occurring in the manufacturing process, under
7 normal weathering, and subject to the terms and conditions contained
8 in this Limited Warranty. Subject to the other conditions of this
9 Limited Warranty, in the event that the siding rusts, cracks, blisters,
10 chips, peels, or flakes as a direct result of defects occurring in the
11 manufacturing process, then KAYCAN will, at its sole option, repair,
12 refinish, or replace the defective siding or, if repair, refinishing or
13 replacement is not feasible, then KAYCAN shall refund to the owner
14 the original purchase price (including pro-rated installation charges)
15 for that portion of the siding found to be defective.

16 This Limited Warranty shall be effective, upon registration, as set
17 forth below, and shall remain in effect as long as the original
18 Homeowner lives and continues to own the property upon which the
19 siding is installed.

20 The warranty contains the following paragraph with the heading

21 **ADDITIONAL EXCLUSIONS AND LIMITATIONS:**

22 THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER
23 EXPRESS OR IMPLIED WARRANTIES AND EXPRESSES THE
24 SOLE AND EXCLUSIVE LIABILITY OF KAYCAN EXCEPT AS
25 EXPRESSLY STATED HEREIN, THERE ARE NO OTHER
26 WARRANTIES OR GUARANTEES ORAL OR WRITTEN
27 EXPRESS OR IMPLIED FROM ANY COURSE OF DEALING OR
28 USAGE OF TRADE AND ALL SUCH IMPLIED WARRANTIES,
INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR
FITNESS FOR INTENDED PURPOSE ARE EXPRESSLY
DISCLAIMED.

In addition, the following paragraph is on the page with a section heading
of "MANDATORY REGISTRATION":

1 The obligations of KAYCAN under this Limited Warranty shall
2 become effective only if the original property owner or owners fully
3 and accurately complete, sign, and mail the attached registration card
4 by certified mail to United States Seamless, Inc., Box 2426, Fargo,
5 North Dakota, 58108-2426 within thirty days of the completed
6 installation. If the Warranty is not timely registered, then KAYCAN
7 shall have no obligation under this Limited Warranty.

8 The Warranty also included a CLAIMS PROCEDURE.

9 Any claims for defects under this Warranty must be submitted by
10 certified mail to United States Seamless, Inc. P.O. Box 2426, Fargo,
11 ND 58108-2426 within the Warranty period, must include a \$100
12 service and inspection fee for each incident, and shall be made within
13 30 days after discovery of the claims defect. All claims must describe
14 the defect claims, the certificate number on the original Warranty, and
15 contain a certification signed by a registered owner of the property
16 that the legal title to the property is still in his or her name.

17 Accompanying the single page warranty was a page that included an
18 Application for Warranty Transfer, an Application for Warranty Registration and
19 a United States Seamless Market Research Survey. The Application for Warranty
20 Registration section included the following instruction:

21 To effect the original registration of this warranty, the application is
22 to be completed and signed by both the United States Seamless
23 franchisee and the original owner(s) of the property within 30 days
24 after the installation has been completed and mailed to United States
25 Seamless, Inc., P.O. Box 2426, Fargo, ND 58108-2426.

26 Mr. Hadley filled out and signed the Application for Warranty
27 Registration, and it appears that he filled in Plaintiff's name and address. Plaintiff
28 did not sign the Application, nor did he send it in within 30 days after the
installation was complete. Mr. Hadley also did not send in the registration.

In 2011, portions of the siding began to blister and peel. In 2012, Plaintiffs
called U.S. Seamless Siding to inquire about the warranty. They were told over

1 the phone that because no warranty registration card had been returned, there was
2 nothing U.S. Seamless Siding could do about the warranty.

3 Defendant United States Seamless is a North Dakota corporation with its
4 principal place of business located in Fargo, North Dakota. It markets coated
5 seamless steel coil siding. It also develops and franchises businesses that sell and
6 install siding and similar products.

7 Defendant United States Seamless obtained the siding used by Mr. Hadley
8 from Defendant K.B.P. Coil Coaters, Inc. Defendant K.B.P. is incorporated in
9 Delaware and its principal place of business is Colorado. As set forth above,
10 Defendant Kaycan is the company that provided the Limited Lifetime Warranty.
11 It is incorporated in Delaware and its headquarters are in Willison, Vermont.

12 Plaintiffs filed suit on July 12, 2013. Although the action was filed as a
13 putative class action, the parties agreed an appropriate course of action would be
14 for the Court to rule on Plaintiffs' individual claims before ruling on class
15 certification. In their complaint, Plaintiffs allege (1) breach of express warranty;
16 (2) breach of implied warranty; (3) violation of the Washington Consumer
17 Protection Act; (4) breach of contract; (5) fraudulent concealment; (6) unjust
18 enrichment; (7) intentional misrepresentation; (8) negligence; and (9) declaratory
19 and injunctive relief.

20 ANALYSIS

21 A. Choice of Law

22 In their written response, Plaintiffs argued that North Dakota law should
23 apply to all their claims except the Washington Consumer Protection Act claims.
24 ECF No. 116. At oral argument, however, counsel for Plaintiffs stated that he
25 believed the outcome would be the same regardless of which law applied.

26 In diversity jurisdiction cases, federal courts apply the substantive law of
27 the forum in which the court is located, including the forum's choice of law rules.
28 *First Intercontinental Bank v. Ahn*, 798 F.3d 1149, 1153 (9th Cir. 2015). Here,

1 because Plaintiff brought this action in the Eastern District of Washington, the
2 Court will need to apply Washington choice of law rules.

3 “As a preliminary matter, when choice of law is disputed, ‘there must be an
4 actual conflict between the laws or interests of Washington and the laws or
5 interests of another state before Washington courts will engage in a conflict of
6 laws analysis.’” *Future Select Portfolio Mgmt., Inc. v. Tremont Grp. Holdings,*
7 *Inc.*, 180 Wash.2d 954, 967 (2014) (quoting *Seizer v. Sessions*, 132 Wash.2d 642,
8 648 (1997)). If the result for a particular issue “is different under the law of the
9 two states, there is a ‘real’ conflict.” *Erwin v. Cotter Health Ctrs.*, 161 Wash.2d
10 676, 694 (2007) (citations omitted). “Where laws or interests of concerned states
11 do not conflict, the situation presents “a ‘false’ conflict” and “the presumptive
12 local law is applied.” *Id.*

13 In their briefing, Plaintiffs did not address whether there was an actual
14 conflict between North Dakota and Washington law. Based on their admission at
15 oral argument, and the failure to identify any conflict in their brief, the Court finds
16 there is not a “real” conflict between the laws of Washington and North Dakota,
17 and declines to engage in the conflict analysis. Consequently, Washington law
18 applies to all of Plaintiffs’ claims.¹ *See Fields v. Legacy Health Sys.*, 413 F.3d 943,
19 951 (9th Cir. 2005) (noting that if no material conflict exists, the court applies the
20 forum law).

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23 _____
24 ¹ The Court notes, however, that even if it were to complete the analysis, it is clear
25 Washington law would apply to Plaintiffs’ tort claims and contract claims.
26 Applying the respective factors set out in the Restatement (Second) of Conflict of
27 Laws §§ 145, 148, 188, Washington has the most significant relationship to the
28 dispute.

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1 **1. Plaintiffs' Contract Claims**

2 The Court grants Defendants' Motion for Summary Judgment with respect
3 to Plaintiffs' breach of express warranty claim. Plaintiffs were given unequivocal
4 information that they needed to return the warranty registration card and they
5 failed to do so, thereby excusing Defendants from performing under the written
6 warranty. No reasonable jury could find that an independent unwritten express
7 warranty was given. Any statements made were limited by the written Limited
8 Warranty document. *See* Wash. Rev. Code § 62A.2-316.²

9 Additionally, no reasonable jury could find that Defendants waived their
10 right to enforce the warranty registration requirement against Plaintiffs because
11 they honored certain claims where there was an independent verification of
12 purchase. A party to a contract may waive a contract provision, which is meant for
13 its benefit, and may imply waiver through its conduct. *Mike M. Johnson v. County*
14 *of Spokane*, 150 Wash.2d 375, 386 (2003). Waiver by conduct, however, "requires
15 unequivocal acts of conduct evidencing an intent to waive." *Id.* (citations omitted).
16 The record does not establish unequivocal waiver on the part of Defendants.

17 The Court grants Defendants' Motion for Summary Judgment with respect
18 to Plaintiffs' breach of implied warranty claim. This claim is time-barred because
19 an implied warranty can never meet the explicitness requirement for future
20 performance warranties. *See Western Recreational Vehicles, Inc. v. Swift*
21 *Adhesives, Inc.*, 23 F.3d 1547, 1550-51 (9th Cir. 1994) ("Most courts have been
22 very harsh in determining whether a warranty explicitly extends to future
23

24 ² Wash. Rev. Code § 62A.2-316 provides:

25 (1) Words or conduct relevant to the creation of an express warranty
26 and words or conduct tending to negate or limit warranty shall be
27 construed wherever reasonable as consistent with each other; but
28 subject to the provisions of this Article on parol or extrinsic evidence
(RCW 62A.2-202) negation or limitation is inoperative to the extent
that such construction is unreasonable.

1 performance. Emphasizing the word “explicitly,” they have ruled that there must
2 be specific reference to a future time in the warranty. As a result of this harsh
3 construction, most express warranties cannot meet the test and no implied
4 warranties can since, by their very nature, they never “explicitly extend to future
5 performance.”).

6 Finally, at oral argument, Plaintiffs indicated that their breach of contract
7 claim is based on the written warranty. Because the Court finds the warranty
8 registration requirement is permitted under Washington law³, and it is undisputed
9 that Plaintiffs failed to return the warranty registration, summary judgment is
10 appropriate on Plaintiff’s breach of contract claim.

11 **2. Plaintiffs’ Tort Claims**

12 The Court grants Defendants’ Motion for Summary Judgment on Plaintiffs’
13 fraudulent concealment claims. A reasonable jury could not find that Plaintiffs can
14 meet the elements of the claim.⁴ The 1993 letter that Plaintiffs rely upon does not
15 establish that Defendants knew there would be problems with peeling and
16 cracking of the siding on customers’ houses. Rather, the record establishes that the
17 first warranty claim made by a customer was made in December of 1999, which is
18

19 ³ Pursuant to Wash. Rev. Code § 62A.2-316, Washington law permits limitations
20 placed on express warranties. Warranty registration requirements that
21 unequivocally notify customers that they need to return a warranty registration
22 card are permitted under Washington law.

23 ⁴ A vendor’s duty to speak arises (1) where the residential dwelling has a
24 concealed defect; (2) the vendor has knowledge of the defect; (3) the defect
25 presents a danger to the property, health, or life of the purchaser; (4) the defect is
26 unknown to the purchaser; and (5) the defect would not be disclosed by a careful,
27 reasonable inspection by the purchaser. *Alejandre v. Bull*, 159 Wash.2d 674, 689
28 (2007).

1 after the date that Plaintiffs purchased their siding.

2 The Court grants Defendants' Motion for Summary Judgment on Plaintiffs'
3 misrepresentation claims.⁵ A reasonable jury would not find that the alleged
4 misrepresentations were material, or that Plaintiffs relied on the representations to
5 their detriment.

6 The Court grants Defendants' Motion for Summary Judgment on Plaintiffs'
7 negligence claim and unjust enrichment claims. These claims are preempted by the
8 Washington Product Liability Act. *See Macias v. Saberhagen Holdings Inc.*, 175
9 Wash.2d 402, 409 (2012).

10 **3. Plaintiffs' Washington Consumer Protection Act Claim**

11 The Court grants Defendants' Motion for Summary Judgment on Plaintiffs'
12 Washington Consumer Protection Act claim.⁶ Plaintiffs have not shown that any
13 Defendant engaged in an unfair or deceptive act.

14 _____
15 ⁵ The nine elements of intentional misrepresentation, or fraud, are: (1)
16 representation of an existing fact; (2) materiality; (3) falsity; (4) the speaker's
17 knowledge of its falsity; (5) intent of the speaker that it should be acted upon by
18 the plaintiff; (6) plaintiff's ignorance of its falsity; (7) plaintiff's reliance on the
19 truth of the representation; (8) plaintiff's right to rely upon the representation; and
20 (9) damages suffered by the plaintiff. *West. Coast, Inc. v. Snohomish Cty.*, 112
21 Wash. App. 200, 206 (2002).

22 ⁶ A private plaintiff must prove five elements in an action for violating the
23 Consumer Protection Act (CPA): (1) unfair or deceptive act or practice; (2)
24 occurring in trade or commerce; (3) impacting the public interest; (4) injuring
25 business or property; and (5) causation. *Stephens v. Omni Ins. Co.*, 138 Wash.App.
26 151, 166 (2007). To prove that a practice is deceptive, neither intent to deceive nor
27 actual deception is required. *Id.* Rather, the question is whether the conduct has
28 the capacity to deceive a substantial portion of the public. *Id.*

1 **4. Conclusion**

2 In this case, Plaintiffs' failure to return the warranty registration card
3 relieved Defendants' obligations under the express warranty. Had they returned
4 the card and followed the procedures for a claim, the record supports the
5 conclusion that Defendants would have honored the warranty. Plaintiffs have not
6 shown that Defendants engaged in deceptive acts, nor made any material
7 misrepresentations upon which they relied. Consequently, summary judgment is
8 appropriate on all of Plaintiffs' claims.

9 At the hearing, Defendants indicated that if Plaintiffs' claims are dismissed,
10 the class action must be dismissed as well, as there would be no proper class
11 representative. Plaintiffs did not dispute this premise.

12 Accordingly, **IT IS HEREBY ORDERED:**

13 1. Defendants' Joint Motion for Summary Judgment, ECF No. 107, is
14 **GRANTED.**

15 2. The District Court Executive is directed to enter judgment in favor of
16 the Defendants and against the Plaintiffs.

17 3. The above-cause of action is **dismissed.**

18 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
19 file this Order, provide copies to counsel, and close the file.

20 **DATED** this 10th day of December, 2015.



24

25 Stanley A. Bastian
26 United States District Judge
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28