UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Jonathan Day, et al. v. Advanced Micro Devices, Inc.

Day v. Advanced Micro Devices · No. 22-cv-04305-VC · Decided March 2, 2023

SUMMARY

The United States District Court for the Northern District of California granted AMD's motion to dismiss the plaintiffs' claims, with leave to amend. The court dismissed the negligence claim under the economic loss rule, the unjust enrichment claim for pleading deficiencies, and the implied warranty claims as insufficient to show unmerchantability. The court also found that the plaintiffs had not clearly identified viable theories under the Illinois and West Virginia consumer protection statutes and allowed 21 days to amend.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Vince Chhabria
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 2, 2023
DOCKET	22-cv-04305-VC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs brought claims concerning alleged performance problems associated with AMD processors, including negligence, unjust enrichment, breach of the implied warranty of merchantability, and claims under Illinois and West Virginia consumer protection statutes. The court considered AMD's motion to dismiss.
STANDARD OF REVIEW	The court applied the pleading sufficiency standards applicable to a motion to dismiss, including the requirement that fraud-based allegations identify reliance with particularity; the opinion did not separately state a formal standard-of-review section.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Jonathan Day, et al. v. Advanced Micro Devices, Inc.

TOPICS

motions to dismiss · consumer protection · negligence · civil procedure · remedies

PRACTICE AREAS

civil procedure · consumer protection · torts · remedies · warranty

QUESTIONS PRESENTED

1. Whether the negligence claim was barred by the economic loss rule because plaintiffs failed to adequately allege physical damage to other property.
2. Whether the unjust enrichment claim was adequately pleaded where plaintiffs purported to represent a nationwide class without offering a representative state's law and did not allege that legal remedies were inadequate.
3. Whether the allegations concerning the frequency and duration of processor stuttering plausibly suggested that the CPU was unmerchantable.
4. Whether the Illinois and West Virginia consumer-protection claims were adequately pleaded when plaintiffs did not clearly identify whether they pursued fraud-based or unfair-practices theories and did not adequately plead the elements of either theory.

HOLDINGS

1. The negligence claim was dismissed because it was barred by the economic loss rule. Plaintiffs did not adequately allege physical damage to their computers sufficient to invoke the damage-to-other-property exception.
2. The unjust enrichment claim was dismissed because plaintiffs did not provide a representative state's law for their purported nationwide class and did not allege why legal remedies were inadequate. Under California law, an unjust enrichment theory must be pleaded in the alternative and accompanied by an allegation that legal remedies are inadequate.
3. The claims for breach of the implied warranty of merchantability were dismissed because the allegations about the frequency and duration of the stuttering were too abstract and insufficient to suggest that the CPU was unmerchantable.
4. The consumer-protection claims were dismissed because the complaint did not clearly identify the legal theories plaintiffs were pursuing or adequately present the governing law. If plaintiffs were pursuing fraud-based claims, the allegations of pre-sale knowledge, actionable representations, and reliance were inadequate; if they were pursuing unfair or unethical-practices theories, they had not adequately presented the relevant law or elements.

KEY QUOTATIONS

> *"The negligence claim is dismissed because it is barred by the economic loss rule."* (Section 1)

> *"The unjust enrichment claim is dismissed because, despite purporting to represent a nationwide class, the plaintiffs do not offer even one state's law as a representative sample."* (Section 2)

> *“While understandably frustrating, stuttering of this duration and frequency does not suggest that the CPU was unmerchantable.”* (Section 3)

> *“The motion to dismiss is granted with leave to amend.”* (Conclusion)

FACTUAL BACKGROUND

Plaintiffs alleged that enabling AMD's fTPM caused occasional, momentary stuttering on their computers. The complaint alleged that the named plaintiffs experienced stuttering frequently or nearly every time, while quoted complaints by unnamed users suggested episodes lasting approximately half a second three or four times per day. Plaintiffs also asserted unjust enrichment, implied-warranty, and Illinois and West Virginia consumer-protection claims on behalf of a purported nationwide class.

PROCEDURAL HISTORY

The district court granted AMD's motion to dismiss all challenged claims, with leave to amend. Plaintiffs were given 21 days to file an amended complaint, and AMD's response was due within 21 days after the amendment was filed.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. Plaintiffs may file an amended complaint within 21 days of the order, and AMD's response is due within 21 days after the amended complaint is filed.

CASES CITED

- CHMM, LLC v. Freeman Marine Equip., Inc., 791 F.3d 1059, 1061 (9th Cir. 2015)
- Kalitta Air, L.L.C. v. Cent. Tex. Airborne Sys., Inc., 315 F. App'x 603, 605 (9th Cir. 2008)
- In re NVIDIA GPU Litigation, No. 08-4312, 2009 WL 4020104, at *1-*2, *12 (N.D. Cal. Nov. 19, 2009)
- In re Lenovo Adware Litigation, No. 15-md-2624, 2016 WL 6277245, at *2 (N.D. Cal. Oct. 27, 2016)
- Sonner v. Premier Nutrition Corp., 971 F.3d 834, 844 (9th Cir. 2020)
- Cepelak v. HP Inc., No. 20-cv-2450, 2021 WL 5298022, at *2-*3 (N.D. Cal. Nov. 15, 2021)
- Astiana v. Hain, 783 F.3d 753, 762 (9th Cir. 2015)
- ESG Cap. Partners, LP v. Stratos, 828 F.3d 1023, 1038 (9th Cir. 2016)
- Knowles v. Arris, No. 17-cv-1834, 2019 WL 3934781, at *5 (N.D. Cal. Aug. 20, 2019)
- Lusson v. Apple, Inc., No. 16-0705, 2016 WL 10932723, at *2 (N.D. Cal. June 20, 2016)

OPINION

Day v. Advanced Micro Devices, Inc.
PER CURIAM.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
JONATHAN DAY, et al., Case No. 22-cv-04305-VC Plaintiffs,
ORDER GRANTING MOTION TO
v. DISMISS
ADVANCED MICRO DEVICES, INC., Re: Dkt. No. 23
Defendant. The motion to dismiss is granted with leave to amend. This order assumes the reader's familiarity with the facts of the case and the relevant law.

1. The negligence claim is dismissed because it is barred by the economic loss rule. See CHMM, LLC v. Freeman Marine Equip., Inc., 791 F.3d 1059, 1061 (9th Cir. 2015). The plaintiffs contend that the exception for damage to other property applies, but they have not adequately alleged physical damage to their computers, as required by the case law. See Kalitta Air, L.L.C. v. Cent. Tex. Airborne Sys., Inc., 315 F. App'x 603, 605 (9th Cir. 2008). At the hearing, counsel for the plaintiffs cited In re NVIDIA GPU Litigation and In re Lenovo Adware Litigation for the proposition that performance issues, such as the stuttering alleged here, constitute damage for purposes of the exception to the economic loss rule. But the allegations in those cases were meaningfully different. In NVIDIA, the plaintiffs alleged that the defective graphics processing units caused their computers to overheat, degraded the CPU and battery, and reduced the computers' lifespans. No. 08-4312, 2009 WL 4020104, at *1–2, *12 (N.D. Cal. Nov. 19, 2009). In Lenovo, the plaintiffs alleged that the defective software shortened the battery's lifespan—meaning the "number of times it could be recharged before being replaced"—as well as the duration of each individual charge. No. 15-md-2624, 2016 WL 6277245, at *2 (N.D. Cal. Oct. 27, 2016). These are reasonably characterized as allegations of physical damage. By contrast, the plaintiffs here allege only that, when enabled, the fTPM causes occasional and momentary stuttering. Moreover, the allegations suggest that, when the fTPM is disabled, the issues resolve.

2. The unjust enrichment claim is dismissed because, despite purporting to represent a nationwide class, the plaintiffs do not offer even one state's law as a representative sample. Moreover, at least under California law, an unjust enrichment claim must be pleaded in the alternative, and plaintiffs must allege why legal remedies are inadequate. See Sonner v. Premier Nutrition Corp., 971 F.3d 834, 844 (9th Cir. 2020); Cepelak v. HP Inc., No. 20-cv-2450, 2021 WL 5298022, at *2–3 (N.D. Cal. Nov. 15, 2021). The plaintiffs here have not even attempted to allege the inadequacy of legal remedies.1

3. The claims for breach of the implied warranty of merchantability are dismissed because the allegations regarding the frequency with which the stuttering occurs are at best abstract and at worst insufficient to suggest anything close to unmerchantability. See Knowles v. Arris, No. 17-cv-1834, 2019 WL 3934781, at *5 (N.D. Cal. Aug. 20, 2019) (to "render a device unmerchantable," the "defect must drastically undermine a device's operation."). While the named plaintiffs allege that they experience stuttering "frequently" or "nearly every time," these

allegations leave much to be desired in the way of specificity and concreteness. Does the stuttering occur only once or twice a day, or does it persist throughout the day? Does it last for a second at a time or for a ten-minute stretch each time? As it stands, the complaint fills in these details by way of quotes from unnamed user complaints. These user complaints suggest that the stuttering occurs for roughly half a second three or four times a day. See, e.g., Dkt. No. 13 at 35–
36. While understandably frustrating, stuttering of this duration and frequency does not suggest
1 The argument that California law does not recognize a cause of action for unjust enrichment is for all intents and purposes a nonstarter. California law recognizes, at a minimum, a quasi-contract claim based on an unjust-enrichment theory. See Astiana v. Hain, 783 F.3d 753, 762 (9th Cir. 2015); ESG Cap. Partners, LP v. Stratos, 828 F.3d 1023, 1038 (9th Cir. 2016). that the CPU was unmerchantable.

4. The Court is left not knowing what theory the plaintiffs are pursuing under the Illinois
and West Virginia consumer protection statutes. In their opposition brief, the plaintiffs disavow any fraud-based theory under either statute, arguing instead that they seek only claims for unfair or unethical practices under those statutes. At the hearing, however, counsel for the plaintiffs seemed to do an about-face, suggesting that they are indeed pursuing fraud-based claims. It is difficult to determine whether the plaintiffs have stated a claim when it is not clear what claim(s) they are pursuing. To the extent the plaintiffs are pursuing fraud-based claims, the complaint would seem to fall short: the plaintiffs allege virtually nothing regarding AMD's pre-sale knowledge, and the representations attributed to AMD in the complaint consist of classic, nonactionable puffery. See, e.g., Dkt. No. 13 at 41 (AMD's CPU is "[t]he World's Fastest PC Gaming Processor," providing "performance that immersive gaming demands."). The plaintiffs also fail to plead reliance with any particularity. See Lusson v. Apple, Inc., No. 16-0705, 2016 WL 10932723, at *2 (N.D. Cal. June 20, 2016). To the extent that the plaintiffs are instead pursuing theories of unfair or unethical practices, they have not done an adequate job of putting forth the relevant law, and so it is difficult to determine whether they have stated a claim. The parties should be better prepared next time to discuss the precise elements of these claims under each statute, as interpreted by the state courts. Any amended complaint is due within 21 days of this order, and AMD's response is due within 21 days of the filing of such an amendment. IT IS SO ORDERED. Dated: March 2, 2023 Koo.

VINCE CHHABRIA

United States District Judge