STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: August 28, 2024)

KELLY L. PEREIRA, Individually, and as Natural Parent and Next Friend of Edson O. Pereira,	:	
Plaintiff,	:	
v.	:	**C.A. No. PC-2022-00723**
DOREL JUVENILE GROUP, INC. and FUNG Y. CHAN, as TREASURER of the TOWN OF WARREN, RHODE ISLAND, and JEFFREY MILLER.	:	
***Defendants*.**	:	

DECISION

LICHT, J. Plaintiff Kelly L. Pereira (Ms. Pereira or Plaintiff), individually, and as natural parent and next friend of Edson O. Pereira (Ollie), brought this action against Defendants Dorel Juvenile Group, Inc. (Dorel), Fung Y. Chan, as Treasurer of the Town of Warren, Rhode Island, and Jeffrey Miller following an automobile accident in which Ollie, while seated forward-facing in a child car seat manufactured by Dorel, sustained severe injuries. Pursuant to Rule 56 of the Superior Court Rules of Civil Procedure, Dorel moves for summary judgment on all counts alleged against it by Plaintiff. Plaintiff objects to Dorel's motion. For the reasons stated herein, Dorel's Motion for Summary Judgment is denied.

I

Facts and Travel

On October 28, 2018, Ollie was in the back seat of the family car driven by his father, Edson A. Pereira (Mr. Pereira) in Warren, Rhode Island. Ollie, who was thirteen months old at the time, was seated in a Safety 1st Grow and Go convertible car seat[1] designed and manufactured by Dorel. The car seat instructions permitted children to be seated in a forward-facing position if they were between twenty-nine and forty-nine inches tall, weighed between twenty-two to sixty-five pounds, and were at least one year old. *See* Dorel's Mot. for Summ. J. (Def.'s Mot.) Ex. A (Safety 1st Grow and Go Instruction Manual). In October of 2018, Ollie was thirty inches tall, weighed twenty-two pounds, and was thirteen months old. *See* Pl.'s Mem. in Supp. of Obj. to Mot. for Summ. J. (Pl.'s Obj.) Ex. 23 (Ollie's Medical Record). Therefore, because Ollie met those specifications the Safety 1st Grow and Go child car seat was installed in the forward-facing position in the passenger side back seat.

Tragically, Mr. Pereira fell asleep while driving; the car swerved off the road, struck a utility pole, and then continued traveling for roughly 130 feet before colliding with a tree. *See* Def.'s Mot. Ex. F (Technology Associates Report), at 2; *see also* Def.'s Mot. Ex. D (Perreault Dep.), at 99:21-100:22, May 18, 2023. It is alleged that because Ollie was riding in the forward-facing position, his head was unsupported during the crash and was thrown forward, stretching and permanently damaging his spinal cord. *See* Pl.'s Obj. at 2. After being transported to the hospital, Ollie was diagnosed with serious traumatic brain and cervical-spine injuries. These

[1] The Safety 1st Grow and Go is designated as a convertible car seat because it can be used both in a rear-facing and forward-facing position.

injuries caused quadriparesis and affected the nerves that control his breathing, resulting in permanent hypoxic brain damage and rendering Ollie dependent on a ventilator.

On September 8, 2023, Plaintiff filed a Third Amended Complaint against Dorel, Fung Y. Chan, as Treasurer of the Town of Warren, Rhode Island, and Jeffrey Miller. *See* Def.'s Mot. Ex. B (Third Am. Compl.). Plaintiff asserted the following six claims: Negligence Cause of Action Against Dorel (Count I); Marketing Defect/Failure to Warn/Defective Product Liability Against Dorel (Count II); Design Defect Against Dorel (Count III); Violation of Rhode Island Deceptive Trade Practices Act (Count IV); Reckless And/Or Callously Indifferent Conduct Cause of Action Against Dorel (Count V); Gross Negligence Against Town of Warren and Jeffrey Miller (Count VI). The claim asserted against Defendants Fung Y. Chan, as Treasurer of the Town of Warren, and Jeffrey Miller was dismissed with prejudice on January 8, 2024. *See* Docket. Dorel filed its Motion for Summary Judgment on June 20, 2024. Plaintiff objected to its motion on July 19, 2024. Dorel filed its Reply on July 29, 2024.

II

Standard of Review

"Summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously." *Cruz v. DaimlerChrysler Motors Corp.*, 66 A.3d 446, 451 (R.I. 2013) (internal quotation omitted). "[S]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the Court determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law." *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Education*, 93 A.3d 949, 951 (R.I. 2014) (internal quotations omitted); *see* Super. R. Civ. P. 56. The moving party "bears the initial burden of establishing the absence of a genuine issue of fact."

McGovern v. Bank of America, N.A., 91 A.3d 853, 858 (R.I. 2014) (citation omitted). Then the burden shifts and, as reiterated by the Rhode Island Supreme Court recently:

> "The party opposing summary judgment bears the burden of proving, by competent evidence, the existence of facts in dispute. The opposing party will not be allowed to rely upon mere allegations or denials in the pleadings but rather, by affidavits or otherwise the opposing party has an affirmative duty to set forth specific facts showing that there is a genuine issue of material fact." *Henry v. Media General Operations, Inc.*, 254 A.3d 822, 834 (R.I. 2021) (cleaned up, citations omitted).

In deciding a motion for summary judgment, the Court "views the evidence in the light most favorable to the nonmoving party[,]" *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013), and "does not pass upon the weight or the credibility of the evidence[.]" *Palmisciano v. Burrillville Racing Association*, 603 A.2d 317, 320 (R.I. 1992).

The Rhode Island Supreme Court has held that "'[i]n Rhode Island the general rule is that negligence is a question for the jury unless the facts warrant only one conclusion.'" *Dent v. PRRC, Inc.*, 184 A.3d 649, 658 (R.I. 2018) (quoting *DeNardo v. Fairmount Foundries Cranston, Inc.*, 121 R.I. 440, 448, 399 A.2d 1229, 1234 (1979)). "However, as one reflects upon that fundamental principle, it is important not to gloss over the adjective 'general' as well as the explicit 'unless' clause in the just-quoted sentence. Stated differently, the law is clear that there can be cases (exceptional perhaps, but real nonetheless) where summary judgment is appropriate even in the context of a case of alleged negligence." *Id*.

III

Analysis

A

Negligence and Failure to Warn Claims

It is well settled that in order to establish a negligence claim, "a plaintiff must demonstrate a legally cognizable duty owed by a defendant to a plaintiff, a breach of that duty, proximate causation between the conduct and the resulting injury, and the actual loss or damage." *Oliver v. Narragansett Bay Insurance Co*., 205 A.3d 445, 450 (R.I. 2019) (internal citation omitted). Moreover, "for a plaintiff to survive summary judgment on a negligence claim, he or she 'must show that he or she is owed a legal duty by the defendant before the three other elements of his or her negligence claim will be considered.'" *Id*. (quoting *Flynn v. Nickerson Community Center*, 177 A.3d 468, 476 (R.I. 2018)). '"[W]hether a defendant is under a legal duty in a given case is a question of law."' *Id*. (quoting *Brown v. Stanley*, 84 A.3d 1157, 1162 (R.I. 2014). Nonetheless, Rhode Island courts do not have a "'set formula for finding [a] legal duty', and thus, 'such a determination must be made on a case-by-case basis.'" *Flynn*, 177 A.3d at 477 (internal quotation omitted).

In cases relating to products liability, a product is defective because of inadequate instructions or warnings "when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the instructions or warnings renders the product not reasonably safe." Restatement (Third) *Torts*: Prod. Liab. § 2(c) (1998). The Rhode Island Supreme Court has held that "'the defendant only has a duty to warn if he had reason to know about the product's dangerous propensities which caused

plaintiff's injuries.'" *Oliver*, 205 A.3d at 450 (quoting *Thomas v. Amway Corp*., 488 A.2d 716, 722 (R.I. 1985)). Thus, a plaintiff must prove that the failure to warn consumers of a product's dangers "'that are reasonably foreseeable and knowable at the time of marketing' 'render[ed] the product unreasonably dangerous in spite of all reasonable care exercised by the manufacturer.'" *Costa v. Johnson & Johnson*, No. 17-452-WES, 2023 WL 2662903, at *3 (D.R.I. Mar. 28, 2023) (quoting *Castrignano v. E.R. Squibb & Sons, Inc*., 546 A.2d 775, 779-82 (R.I. 1988).

In addressing the question of duty, Dorel cites *Buonanno v. Colmar Belting Co., Inc*. 733 A.2d 712, 715-16 (R.I. 1999) to support its proposition that it did not have a duty to warn Plaintiff of risk-avoidance measures. *See* Def.'s Mot. at 13-14. Specifically, Dorel highlights the following language articulated by the Court in *Buonanno*:

> "When a risk is obvious or generally known, the prospective addressee of a warning will or should already know of its existence. Warning of an obvious or generally known risk in most instances will not provide an effective additional measure of safety. Furthermore, warnings that deal with obvious or generally known risks may be ignored by users and consumers and may diminish the significance of warnings about non-obvious, not-generally-known risks. Thus, requiring warnings of obvious or generally known risks could reduce the efficacy of warnings generally." Restatement (Third) *Torts* § 2 cmt. j.

However, this argument misses the mark as this case presents a very different situation.

In *Buonanno*, the plaintiff was injured when his arm was crushed in the "nip point" of a conveyor-belt system. *See Buonanno*, 733 A.2d at 713. The plaintiff brought a product liability action on the theories of strict liability and negligence against the manufacturer and the distributor over a specific component of the conveyor-belt system, the "wing pulley." *See id*. at 713-14. The Rhode Island Supreme Court held "that the primary duty is owed by the designer of the assembled machine and not the supplier of the component parts in the absence of substantial participation in the integration of the component into the design of the product." *See id.* at 719. The Court

reasoned that "[a] component part supplier . . . should not be required to act as insurer for any and all accidents that may arise after [a] component part leaves the supplier's hands." *Id*. Therefore, because a component part supplier, such as the manufacturer, was not responsible "for the anticipation of every conceivable design that may be utilized by a sophisticated assembler of a conveyor belt system, it should have no duty to warn, particularly in respect to conditions that are only created after the final product is assembled." *Id*.

In this case, it is not as though a component part supplier manufactured the car seat or created the instruction manual and warnings. Dorel designs, labels, manufactures, tests, and sells child car seats, including the Safety 1st Grow and Go. The Safety 1st Grow and Go instruction manual outlined the necessary criteria for determining whether a child should be in the rear-facing or forward-facing position. The guidelines provided that for a child to be placed in the rear-facing position, the child must be between nineteen and forty inches tall and weigh between five to forty pounds, with no age restriction. *See* Safety 1st Grow and Go Instruction Manual. Whereas, for a child to be placed in a forward-facing position, the child must be between twenty-nine and forty-nine inches tall, weigh between twenty-two to sixty-five pounds, and *be at least one year old*. *See id*. (emphasis added).

At the time of the accident, Ollie was thirty inches tall, weighed twenty-two pounds, and was thirteen months old. *See* Ollie's Medical Record. Thus, Ollie satisfied the specifications for both the rear-facing and forward-facing positions. As Ms. Pereira testified, she purchased the Safety 1st Grow and Go with the recognition that "it was nice that it said it could be front facing." *See* Pl.'s Obj. Ex. 3 (Pereira Dep.), at 172:4-10, Jan. 20, 2023 ("I needed a car seat that would be bigger than the infant one because Ollie was outgrowing that, and so I think I settled on this one

for a couple of different reasons. One was – was price point; another was that it was, you know, like a recognized brand name, and it was nice that it said it could be front facing.").

Furthermore, unlike the manufacturer in *Buonanno*, Dorel could anticipate every conceivable design and potential use of the Safety 1st Grow and Go given its role as the manufacturer. Dorel's Rule 30(b)(6) of the Superior Court Rules of Civil Procedure representative, Darrin Keiser (Keiser), testified that Dorel anticipated that caregivers may adhere to the guidelines delineated in the instruction manual. When asked "based upon the manual instructions, you had every – you had every expectation that parents would put their children forward facing at one year old, correct?" he answered, "[t]hey could." Pl.'s Obj. Ex. 17 (Keiser Dep.), at 22:6-11, Aug. 8, 2023. Based on the testimony presented, it is reasonably foreseeable that a manufacturer could anticipate that a consumer, such as Plaintiff, would adhere to the guidelines outlined in the Safety 1st Grow and Go instruction manual and place a young child in the forward-facing position once they met the requisite age, height, and weight specifications.

However, the parties' arguments suggest that the core of this claim revolves around whether the warnings outlined in the Safety 1st Grow and Go instruction manual were adequate. Plaintiff takes the position that Dorel knew, or should have known, that toddlers younger than two years of age should not be placed in a forward-facing car seat because it subjects them to a greater risk of spine or brain injury.

To substantiate their argument, Plaintiff underscores Dorel's News Article published on March 22, 2011. *See* Pl.'s Obj. Ex. 6 (Dorel News Article), at 1. In the news article, Dorel announced that "it supports the American Academy of Pediatrics' [AAP] recommendation for children to ride rear facing in vehicles until age two or until they reach the maximum height and weight limits allowed by their car seat." *Id.* Dorel stated that "[a]s demonstrated by [its] advanced

testing methods, it is proven that crash forces are distributed over the entire body of a child while riding rear facing further protecting their head, neck and spine in the case of an accident." *Id*. Aside from the News Article, Plaintiff also notes that when the Safety 1st Grow and Go car seat first entered the market, the instruction manual advised parents that a child should be seated in a forward-facing position when they are between twenty-nine and forty-nine inches tall, weigh between twenty-two and sixty-five pounds, and are "[a]t *least* [*two*] *years old*." *See* Pl.'s Obj. Ex. 4 (Safety 1st Grow and Go On-Seat Label) (emphasis added).

However, after the case of *Hinson v. Dorel Juvenile Group Inc*., No. 2:15-cv-00713 (E.D. Tex. 2016), Dorel changed the age specification for placing a child in a forward-facing position from "at least two years old" to "at least one year old." *See* Pl.'s Obj. Ex. 8 (Dorel Conceals Dangers of Forward-Facing Car Seats Article). In *Hinson*, twenty-month-old Cayden sustained severe and disabling injuries while riding in a forward-facing position in a car seat manufactured by Dorel after a driver crossed the centerline and collided head-on with their vehicle. *See id*. To defend the case, Dorel hired statistician, Jeya Padmanaban (Ms. Padmanaban). *See id*.; *see also* Pl.'s Obj. Ex. 33 (Whitman Report), at 20. Ms. Padmanaban conducted research and reported that a previous article had made errors, and that data, in fact, indicated that forward-facing child seats are more effective in reducing serious injuries compared to rear-facing child seats.[2] *See* Whitman Report, at 20. After Ms. Padmanaban expressed her findings, Dorel changed its warnings and instruction manual to reflect the one year minimum for placing a child in the forward-facing position. Dorel's product safety director, Terry Emerson (Emerson), testified that Dorel "had her

[2] Despite Ms. Padmanaban's testimony, the jury found the Dorel child restraint system to be defective and Dorel grossly negligent for failing to warn of the risk associated with placing young children in forward-facing child restraint systems and awarded the plaintiff $34 million dollars. *See* Pl.'s Obj. Ex. 33 (Whitman Report), at 20-21.

report. We had our historical information" and that change occurred without computer modeling, outside medical expert analysis, or any biomechanical analysis. *See* Pl.'s Obj. Ex. 7 (Emerson Dep.), at 32:24-33:7, May 23, 2023. Accordingly, Plaintiff submits to this Court that Dorel knew about the product's dangerous propensities which caused Ollie's injuries and thus had a duty to warn.

On the other hand, Dorel asserts that it does not have a duty to warn Plaintiff about the risks associated with placing children in the forward-facing position or that there is a safety value to being rear facing until two years old. *See* Def.'s Mot. at 15. Dorel points to the Safety 1st Grow and Go instruction manual which not only provides minimum weight and height specifications but also states that "[t]he American Academy of Pediatrics recommends that children remain rear facing until they are at least 2 years old," and recommends speaking to a physician to determine what the best option would be for the child. *See* Safety 1st Grow and Go Instruction Manual, at 2. Moreover, the instruction manual highlights in red and black bold lettering: "WARNING: Verify your child's weight and height (do not guess) before choosing the child restraint's placement." *See id*. Therefore, Dorel submits that the warnings and labels are adequate, as they comply with federal regulations and advise caregivers of the recommendations provided by the AAP.

To that end, Section 2(c) of Restatement (Third) *Torts* adopts a "reasonableness" test for judging the adequacy of product warnings and instructions. There is "[n]o easy guideline . . . for courts to adopt in assessing the adequacy of product warnings and instructions. In making their assessments, courts must focus on various factors, such as content and comprehensibility, intensity of expression, and the characteristics of expected user groups." Restatement (Third) *Torts*, § 2 cmt. i. The key issue is whether the omission of proposed warnings or instructions, which could have reduced or eliminated the foreseeable risks of harm, rendered the product not reasonably safe.

Accordingly, as discussed in detail above, the testimony and evidence presented are conflicting regarding whether the warnings and labels were adequate. There is also a question as to whether the omission of sufficient warnings or labels could have reduced or eliminated foreseeable risks of harm to Ollie. Given the conflicting testimony and open questions of fact, reasonable minds could differ on such issues, making them best suited for resolution by a factfinder.

In addressing the question of duty, Dorel also relies on G.L. 1956 § 31-22-22(a)(1) which states in relevant part "[a]ll infants and toddlers under the age of two (2) years or weighing less than thirty pounds (30 lbs.) shall be restrained in a rear-facing car seat." Specifically, Dorel argues that, irrespective of the instructions provided with the Safety 1st Grow and Go, a manufacturer is not obligated to warn an individual to adhere to state law. *See* Def.'s Mot. at 12. Dorel notes that Plaintiff is a resident of Rhode Island, utilized its product in Rhode Island, and, thus, Rhode Island law governed Plaintiff's conduct. *See id*. Not only does this argument sound in causation, but also raises the question of whether a reasonable warning would highlight the laws of different states or alternatively advise the purchaser to check state law, which is an issue for the factfinder to determine.

Looking at the evidence in the light most favorable to Plaintiff, there is a genuine issue of material fact as to whether Dorel's warnings were adequate; thus, this Court denies Dorel's Motion for Summary Judgment as to the Negligence and Failure to Warn Claims.

B

Rhode Island Deceptive Trade Practices Act

The Deceptive Trade Practices Act (DTPA) states that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are . . . unlawful." G.L. 1956 § 6-13.1-2. The DTPA provides a private right of action to recover actual and punitive

damages and equitable relief for violations of its provisions. *See id*. However, private actions are precluded when the complained of activity is subject to regulation by a government agency. Specifically, the DTPA provides the following exemption: "Nothing in this chapter shall apply to actions or transactions permitted under laws administered by the department of business regulation or other regulatory body or officer acting under statutory authority of this state or the United States." Section 6-13.1-4

The seminal case that provides an analytical framework for the above exception is *State v. Piedmont Funding Corp*., 119 R.I. 695, 382 A.2d 819 (1978). In that case, the state brought an action against the defendant under the DTPA for allegedly employing deceptive practices to sell insurance and mutual funds. To determine whether the action fell within the statutory exception, the Rhode Island Supreme Court engaged in a two-step analysis. *See id*. at 700, 382 A.2d at 822. The Court first considered whether the activities at issue were subject to the monitoring and regulation of regulatory agencies or officers. *See id*. Then, "[w]hen the party claiming exemption from the Act shows that the general activity in question is regulated by a 'regulatory body or officer' within the meaning of § 6-13.1-4, the opposing party, in this case [Plaintiff], then has the burden of showing that the specific acts at issue are not covered by the exemption." *Id*. at 700, 382 A.2d at 822.

In this case, the National Highway Traffic Safety Administration (NHTSA) regulates the use of child car seats. The NHTSA developed Federal Motor Vehicle Safety Standard 213 (FMVSS 213), which "specifies requirements for child restraint systems used in motor vehicles and aircraft" to "reduce the number of children killed or injured in motor vehicle crashes and in aircraft." 49 C.F.R. § 571.213 (S1), (S2). Since child car seats are subject to a regulation by a governmental agency, the question becomes whether Plaintiff can establish that the specific act at

issue is not covered by the exemption. *See Piedmont Funding Corp*., 119 R.I. at 700, 382 A.2d at 822.

Plaintiff asserts that FMVSS 213 "does [not] prohibit car seat manufacturers from inducing consumers to violate state laws." *See* Pl.'s Obj. at 25. Plaintiff argues that "Dorel's deceptive trade practice" is the "fact that Dorel's instructions . . . encourage Rhode Island consumers and users to violate Rhode Island law[.]" *Id*. Thus, Plaintiff contends that "the specific acts at issue, the inducement of car seat consumers and users to violate state law, is not covered by any state or federal regulation so the exemption does not apply." *Id*. at 26. Conversely, Dorel argues that FMVSS 213 sets out specific warning language that must be included on car seats and "[t]here is no dispute that the Grow and Go complied with FMVSS 213." Def.'s Obj. at 17. Dorel points to Section 5.5 of FMVSS 213 in support of its argument.

For child restraint systems manufactured before December 5, 2024, FMVSS 213 provides four labeling options that manufacturers must incorporate to comply with the regulations. *See* 49 C.F.R. § 571.213 (S5.5.2(f)). The standard requires, in relevant part, the following: "[o]ne of the following statements,[3] as appropriate, inserting the manufacturer's recommendations for the

[3] "(i) Use only with children who weigh ___ pounds (___ kg) or less and whose height is (insert values in English and metric units; use of word "mass" in label is optional) or less; or
(ii) Use only with children who weigh between ___ and ___ pounds (insert appropriate English and metric values; use of word "mass" is optional) and whose height is (insert appropriate values in English and metric units) or less and who are capable of sitting upright alone; or
(iii) Use only with children who weigh between ___ and ___ pounds (insert appropriate English and metric values; use of word "mass" is optional) and whose height is (insert appropriate values in English and metric units) or less.
(iv) Use only with children who weigh between ___ and ___ pounds (insert appropriate English and metric values; use of word "mass" is optional) and whose height is between ___ and ___ (insert appropriate values in English and metric units)." 49 C.F.R. § 571.213 (S5.5.2(f)(1)(i)-(iv)) (emphasis omitted).

maximum mass of children who can safely occupy the system . . . For child restraint systems that can only be used as belt-positioning seats, manufacturers must include the maximum and minimum recommended height, but may delete the reference to weight[.]" *Id* at S5.5.2(f)(1). In all four scenarios, the regulation leaves the determination of weight and height to the discretion of the manufacturer and does not mandate the inclusion of an age recommendation. *See id*. at S5.5.2(f)(1)(i)-(iv).

Furthermore, FMVSS 213 does not specifically authorize or require Dorel to state that its Safety 1st Grow and Go is safe for children to be placed in the forward-facing position at the age of one year old. Instead, it merely requires a manufacturer to include a label stating its recommendation for the maximum and minimum sizes of children "who can safely occupy the system." Section 571.213 (S5.5.2(f)). In other words, while FMVSS 213 governs the labeling, design, construction, and performance of child restraint systems, it leaves it up to the individual manufacturer, such as Dorel, to determine what that specific safety recommendation should be (i.e., the appropriate height and weight at which children can safely occupy the manufacturer's car seat).[4]

[4] It is important to note that the NHTSA website provides a "recommendation" to help consumers "choose the type of car seat." On the NHTSA website, it states the following recommendations:

> "Always refer to your specific car seat manufacturer's instructions (check height and weight limits) and read the vehicle owner's manual on how to install the car seat using the seat belt or lower anchors and a tether, if available.
> "To maximize safety, keep your child in the car seat for as long as possible, as long as the child fits within the manufacturer's height and weight requirements.
> ". . .
> "Your child should remain in a rear-facing car seat until he or she reaches the top height or weight limit allowed by your car seat's manufacturer. Once your child outgrows the rear-facing car seat, your child is ready to travel in a forward-facing car seat with a

Although FMVSS 213 does not presently include age, weight, or height requirements on forward-facing versus rear-facing positions, it expressly forbids "[a]ny labels or written instructions" that may "obscure or confuse the meaning of the required information or be otherwise misleading to the consumer." *Id*. at S5.5. Thus, to the extent that Dorel's "at least one year old" label misleadingly suggested that the Safety 1st Grow and Go provided safety for children under two years old in the forward-facing position, as alleged by Plaintiff, this representation would violate FMVSS 213 rather than be authorized by it. Accordingly, this Court denies Dorel's Motion for Summary Judgment with respect to the alleged violation of DTPA.

C

Design Defect

A plaintiff must prove in a product liability action: "(1) that there was a defect in the design or construction of the product in question; (2) that the defect existed at the time the product left the hands of . . . defendant; (3) that the defect rendered the product unreasonably dangerous, and by unreasonably dangerous it is meant that there was a strong likelihood of injury to a user who was unaware of the danger in utilizing the product in a normal manner; (4) that the product was being used in a way in which it was intended at the time of the accident; and (5) that the defect was the proximate cause of the accident and plaintiff's injuries." *Raimbeault v. Takeuchi Manufacturing (U.S.), Ltd*., 772 A.2d 1056, 1063 (R.I. 2001) (internal quotation omitted). In other words, "a plaintiff in Rhode Island making a design defect claim must establish, in relevant part, that a defect in the product rendered the product unreasonably dangerous." *Guilbeault v. R.J. Reynolds Tobacco Co.*, 84 F. Supp. 2d 263, 276 (D.R.I. 2000).

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harness and tether." *See* https://www.nhtsa.gov/vehicle-safety/car-seats-and-booster-seats#find-the-right-car-seat-car-seat-recommendations (last visited Aug. 28, 2024).

It is Dorel's position that Plaintiff's design defect claim is a repackaged warnings claim that is insufficient under the law. *See* Def.'s Mot. at 18. Put differently, Dorel argues that Plaintiff has not alleged any defect in the design of the Safety 1st Grow and Go and has not contended that a different design would have protected Ollie from his injuries. *See id*. at 19. Dorel submits that Plaintiff's design defect claim has "nothing to do with Grow and Go's choice of materials, harness straps, or shape." *See id*. Rather, Dorel submits that Plaintiff's only argument in relation to the design defect claim is that the Safety 1st Grow and Go should have been labeled differently. *See id*.

In support of its argument, Dorel cites to Restatement (Third) *Torts* § 2(b), which provides that a product is defective when a reasonable alternative design would have reduced the foreseeable risks of harm posed by the product and, if so, whether the omission of the alternative design by the manufacturer rendered the product unreasonably safe. *See id*. cmt. d. However, in *Guilbeault*, the United States District Court of Rhode Island discusses the intricacies of a design defect claim and its interpretation of the *Buonanno* holding. The court expressed that "the Rhode Island Supreme Court did not 'adopt' Section 2(b) of the Third Restatement [in *Buonanno*], nor did it truly give an indication that it would do so when faced with the difficult question of whether it is prudent to adopt a policy foreclosing liability solely due to the absence of evidence suggesting a reasonable alternative design for a . . . product." *Id*. at 278. The court indicated that, even if the Rhode Island Supreme Court were to adopt Restatement (Third) *Torts* § 2(b), an allegation of a defect in the product would constitute a design defect claim, as a plaintiff could potentially demonstrate that a safer, feasible alternative design would fix the problem. *See id*. at 280.

Paramount to this case is Plaintiff's contention that if Ollie was seated in the rear-facing position during this tragic accident, it would have prevented the spinal injuries he endured. *See*

Pl.'s Obj. at 26. In other words, Plaintiff contends that the *label* on the Safety 1st Grow and Go should have either warned consumers about the risks associated with placing children under the age of two in the forward-facing position or recommended that a child be placed in the forward-facing position when the child is at least two years old. *See id*. To support this proposition, Plaintiff cites the following testimony. Benjamin Hoffman, M.D. testified that "if Ollie had been rear-facing at the time of the crash that it would be very – very unlikely that he would have suffered the injuries to the extent that he did." *See* Def.'s Mot. Ex. K (Hoffman Dep.), at 34:24-35:3, Feb. 13, 2024. Terry Emerson also testified that "generally, you know, as we talked, biomechanically, rear facing is safer." *See* Pl.'s Obj. Ex. 11 (Emerson Dep.), at 46:14-16, May 23, 2023. Furthermore, Plaintiff's expert mechanical engineer, Gary Whitman (Whitman), offered his opinion "that infants and children are afforded significantly superior crash protection when restrained in a rear-facing [child restraint system] compared to a forward-facing [child restraint system] or any other type of restraint system." Pl.'s Obj. Ex. 33 (Whitman Report), at 18. Whitman further opined the following:

> "The occupant crash protection provided by the subject forward-facing child restraint system to a child of Ollie's size is significantly inferior to that provided by a properly designed rear-facing [child restraint system]. The general design of a forward-facing child restraint system, when used with a child of Ollie's age and size, fails to optimize the crash protection as defined by accepted sound engineering principles for effective crash protection to younger and smaller children." *Id*. at 25.

He further went on to state that it is "accepted worldwide by experts in the field of child occupant crash protection, child advocate organizations dedicated to the protection of children, and NHTSA that during crashes children are safest when secured in a rear-facing [child restraint system] and that they should remain in a rear-facing [child restraint system] for as long as possible, which would be at least 2 years of age or older." *Id*. at 23.

In addition to the previously discussed testimony, Plaintiff highlights the omission of state specific legal requirements or recommendations for children in car seats in the instruction manual and labels. Specifically, Plaintiff points out that Keiser testified that the instruction manual fails to mention the NHTSA recommendation for keeping children rear-facing for as long as possible, which is allegedly widely recognized as the safest position. *See* Pl.'s Obj. Ex. 12 (Keiser Dep.), at 42:13-21, Aug. 8, 2023. Furthermore, Plaintiff notes that Keiser indicated that neither the car seat itself, the packaging, nor the point-of-purchase (POP) materials address relevant state laws, because "the laws were varying from state to state, so we didn't really necessarily know what to say." *See* Pl.'s Obj. Ex. 17 (Keiser Dep.), at 17:9-19:2, Aug. 8, 2023. He went on to testify that "if we tell [consumers] to obey one law in one state that's different from another, then the states could potentially ask us why we're doing that. So we – at that point we were just staying out of it." "We don't feel it's our responsibility to tell every parent every state law." *Id*. at 19:2-6, 22:22-24.

This Court recognizes that the evidence related to the failure to warn claim intersects with the design defect claim. However, courts have acknowledged that "[a] failure to warn claim, in significant part, overlaps with the defective design claim." *Donlon v. Gluck Group LLC*, No. 09-5379 JEI, 2011 WL 6020574, at * 5 (D.N.J. Dec. 2, 2011) (distinguished for other reasons); *Rupe v. Strato-Tower, Inc*., No. 86-2488-0, 1989 WL 136362, at * 3 (D. Kan. Oct. 6, 1989) ("Kansas courts recognize overlap between failure to warn and design defect claims."); *Warner Fruehauf Trailer Co. v. Boston*, 654 A.2d 1272, 1274 (D.C. 1995) ("[I]ssues arising in warning defect cases and design defect cases often overlap, as they do in the matter at hand."); *Wagner v. Teva Pharmaceuticals USA, Inc*., 840 F.3d 355, 358 (7th Cir. 2016) (design defect and failure-to-warn claims "rely upon the same essential grounds: 'the generic manufacturer's failure to provide

adequate information'") (internal citation omitted); *see also* 63A Am. Jur. 2d Products Liability § 818 ("A design defect claim for products liability may rest on a theory of failure to warn."). "A failure-to-warn theory of products liability for design defects rests on the premise that an inadequate warning on a product can, by itself, render the design defective, and a product may be found to be defectively designed if it lacks adequate warnings." 63A Am. Jur. 2d Products Liability § 818.

Therefore, the ultimate determination of whether the alleged defect in the Safety 1st Grow and Go child car seat rendered the product unreasonably dangerous is a fact-intensive inquiry, which involves the assessment of the parties' experts and a weighing of their testimony and other evidence. Therefore, there are genuine issues of material fact that require resolution by a factfinder, and this Court denies Dorel's Motion for Summary Judgment as to the Design Defect claim.

D

Punitive Damages

Rhode Island law has recognized punitive damages "as far back as 1890 [in] *Kenyon v. Cameron*, 17 R.I. 122, 20 A. 233 (1890)[.]" *Greater Providence Deposit Corp. v. Jenison*, 485 A.2d 1242, 1244 (R.I. 1984). Punitive damages are awarded, not to compensate a plaintiff for his or her injuries, but rather to "punish the offender and to deter future misconduct." *Id*. A party seeking punitive damages bears the burden of producing "evidence of such willfulness, recklessness or wickedness, on the part of the party at fault, as amount[s] to criminality, which for the good of society and warning to the individual, ought to be punished." *Palmisano v. Toth*, 624 A.2d 314, 318 (R.I. 1993) (internal quotations omitted). Put differently, "there must be a showing that the defendant acted with malice or in bad faith." *Id*. (citing *Morin v. Aetna Casualty and*

Surety Co., 478 A.2d 964, 967 (R.I. 1984)). Whether a party has presented such evidence and met this rigorous standard is a question of law. *See Palmisano*, 624 A.2d at 318.

Dorel argues that punitive damages are not warranted because Plaintiff "simply disagrees with" its safety decision. *See* Def.'s Mot. at 19. Instead, Dorel submits that the Safety 1st Grow and Go complies with federal regulations with respect to its designing, manufacturing, labeling, and selling, and it expends a considerable amount of effort to ensure that it does. *See id*. at 22-23. It is Dorel's position that "[h]olding a defendant manufacturer liable for punitive damages, notwithstanding the product's compliance with applicable industry safety standards, would be tantamount to a finding that both the manufacturer *and the government* committed the equivalent of an intentional criminal wrong against Plaintiff." *Id*. at 23.

This Court has previously ruled that summary judgment is not a proper vehicle for the denial of punitive damages. *See Trevino v. Davol Inc*., No. PC-2018-8437, 2022 WL 3223845, at * 16 (R.I. Super. July 26, 2022); *see also State of Rhode Island, by and through, Peter Neronha, Attorney General v. Purdue Pharma L.P.*, No. PC-2018-4555, at 58-59, Feb. 18, 2022, Licht, J. (internal citation omitted). Until this Court hears all the evidence at what is anticipated to be a four-week trial, it is not in a position to determine if Dorel's conduct rises to the level to warrant punitive damages. Consequently, the issue shall be bifurcated and if the jury returns a verdict for Plaintiff, this Court will immediately render a decision as to whether punitive damages are warranted. If the answer is yes, the issue will be presented immediately to the same jury.

Accordingly, this Court reserves ruling on the matter of punitive damages until the appropriate point at trial.

IV

Conclusion

For the foregoing reasons, the Court **DENIES** Defendant Dorel Juvenile Group's Motion for Summary Judgment and **RESERVES** on the matter of punitive damages. Counsel shall confer and submit the appropriate order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Pereira v. Dorel Juvenile Group, Inc., et al.**
CASE NO:	**PC-2022-00723**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**August 28, 2024**
JUSTICE/MAGISTRATE:	**Licht, J.**
ATTORNEYS:	
For Plaintiff:	**Mark J. Brice, Esq.** **Mark Decof, Esq.** **Jeffrey Mega, Esq.**
For Defendant:	**Robert Corrente, Esq.** **Christopher N. Dawson, Esq.**