UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WINNIE CLARK, et al.,

Plaintiffs,

v.

AMERICAN HONDA MOTOR CO., INC., et al.,

Defendants.

Case No. CV 20-03147 AB (MRWx)

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS CONSOLIDATED CLASS ACTION COMPLAINT

Before the Court is Defendant American Honda Motor Co., Inc.'s ("AHM") Motion to Dismiss Consolidated Class Action Compliant ("Motion," Dkt. No. 83). Plaintiffs Winnie Clark, *et al.* ("Plaintiffs") filed an opposition and AHM filed a reply. The Court heard oral argument on March 5, 2021. For the following reasons, the Motion is **GRANTED** in part and **DENIED** in part.

I. PLAINTIFFS' COMPLAINT

Plaintiffs in this putative class action are 26 purchasers and lessees of AHM's model years 2016 to 2020 Acura MDX ("Acura MDX") and 2019 and 2020 Acura RDX ("Acura RDX") (together, the "Vehicle(s)" or "Class Vehicle(s)"). *See* Consol. Class Action Compl. ("Compl.," Dkt. No. 40) ¶ 1. Plaintiffs allege that the Vehicles are defective because they routinely experience unintended and uncontrollable

deceleration, engine stalls, hesitation upon depressing the gas pedal, abrupt shutdowns, and shifts into neutral while driving. Compl. ¶ 53. Plaintiffs allege that these performance issues are caused by a miscommunication among the computers and software which control the engine, throttle, and transmission, and that the problem involves the Engine Control Module ("ECM") and the Transmission Control Module ("TCM"). *Id.*

Based on these allegations, Plaintiffs bring claims for violation of the California Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.* ("CLRA"); the Unfair Competition Law, Cal. Bus. & Profs. Code §§ 17200*, et seq.* ("UCL"); the Song-Beverly Consumer Warranty Act, Cal. Civ Code §1791, *et seq.*; breach of express warranty under California law; breach of the implied warranty of merchantability under California law; and common law claims for fraud and unjust enrichment, on behalf of the proposed Nationwide Class. Compl. ¶ 4. In the alternative, Plaintiffs brings claims under the consumer protection and warranty laws of 17 states (Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, New Jersey, New York, North Carolina, Texas, Utah, and Wisconsin), on behalf of proposed sub-classes comprised of persons who purchased the Vehicles in the respective states. *Id.* The Complaint asserts a total of 56 claims comprising 1,024 numbered paragraphs. However, after meeting and conferring, 7 Plaintiffs voluntarily dismissed their claims, which appears to also dismiss the claims asserted under the laws of 5 of the 17 states (Arizona, Connecticut, Kentucky, New York, and North Carolina). The Court will further describe the Complaint as necessary when addressing each aspect of the Motion. Insofar as the Motion sought dismissal of any of the now-dismissed claims, the Court need not address those arguments.

The parties have helpfully attempted to group the claims and address them together. With a few exceptions, the parties address the viability of the claims under California law, presumably because it does not differ in material ways from the laws

of the other states, at least for purposes of this Motion. The Court will follow the parties' lead, addressing all claims under California law, unless otherwise noted.

II. LEGAL STANDARD

Federal Rule of Civil Procedure ("Rule") 8 requires a plaintiff to present a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Under Rule 12(b)(6), a defendant may move to dismiss a pleading for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

To defeat a Rule 12(b)(6) motion to dismiss, the complaint must allege enough facts to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Labels, conclusions, and "a formulaic recitation of the elements of a cause of action will not do." *Id*. The complaint must also be "plausible on its face," that is, it "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly,* 550 U.S. at 570). A plaintiff's "factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678.

A complaint may be dismissed under Rule 12(b)(6) for the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). When ruling on a Rule 12(b)(6) motion, "a judge must accept as true all of the factual allegations contained in the complaint." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). But a court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678 (2009) (internal quotation marks omitted).

A court generally may not consider materials other than facts alleged in the complaint and documents that are made a part of the complaint. *Anderson v.*

Angelone, 86 F.3d 932, 934 (9th Cir. 1996). However, a court may consider materials if (1) the authenticity of the materials is not disputed and (2) the plaintiff has alleged the existence of the materials in the complaint or the complaint "necessarily relies" on the materials. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (citation omitted). The court may also take judicial notice of matters of public record outside of the pleadings and consider them for purposes of the motion to dismiss. *Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988); *Lee*, 250 F.3d at 689-90.

In federal court, "[in] alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). "Rule 9(b) requires a plaintiff averring fraud to plead the 'who, what, when, where, and how' of the alleged misconduct." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003).

III. DISCUSSION

The Court will address the parties' arguments in turn.

A. Plaintiffs Adequately Allege a Defect

AHM first argues that although all of Plaintiffs' claims rely on the existence of a defect in their Vehicles, the Complaint fails to identify that alleged defect and instead identifies various systems and components without alleging why they are defective. AHM says the Complaint fails to give them fair notice of the defect as required by Rule 8(a).

The level of factual specificity necessary to plead claims based on product defects presents a difficult question that the Ninth Circuit has not squarely addressed, and on which district courts have not reached consensus. *See, e.g., DeCoteau v. FCA US LLC*, 2015 WL 6951296, at *3 (E.D. Cal. Nov. 10, 2015) (so noting). "Faced with divergent district court holdings, the Court looks to the general guidance provided by the Ninth Circuit." *Zuehlsdorf v. FCA US LLC*, 2019 WL 2098352, at *6 (C.D. Cal. Apr. 30, 2019). Accordingly, "[a] complaint must 'contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself

effectively,' and those allegations 'must plausibly suggest an entitlement to relief[.]' " *Id.* (citing *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)).

In the context of product defect claims, district courts in the Ninth Circuit have often held that a complaint provides fair notice of the defect if it (1) identifies the particular part or system affected by the defect, and (2) describes the problems allegedly caused by the defect. *See, e.g., Zuehlsdorf*, 2019 WL 2098352, at *6 (plaintiff's "identification of the particular [vehicle transmission] affected . . . and description of the problems allegedly caused by the defect sufficient to provide fair notice and allow Defendant to mount a defense"); *Hardt v. Chrysler Grp. LLC*, No. SACV 14-10375, 2015 WL 12683965, at *5 (C.D. Cal. June 15, 2015) (an "allegation that 'the Manual Transmission contains one or more design and/or manufacturing defects,' combined with a description of the symptoms of the alleged defect . . . provides Chrysler sufficient notice of the defect at issue"). Courts have also found that plaintiffs need "not indicate how the alleged defect caused the reported symptoms," *Zuehlsdorf*, 2019 WL 2098352, at *6 (emphasis added), and are not "required to plead the mechanical details of an alleged defect in order to state a claim." *Cholakyan v. Mercedes-Benz USA, LLC*, 796 F. Supp. 2d 1220, 1237 n.60 (C.D. Cal. 2011).

Here, Plaintiffs plead that the Vehicle is defective is follows:

> The Vehicles are defective insofar as they routinely experience sudden, unintended and uncontrollable deceleration, engine stalls, hesitation upon depressing the gas pedal, abrupt shutdowns and shifts into neutral while driving, especially at highway speeds, and enter "Limp Mode" while being driven under normal circumstances. These issues are the result of a miscommunication among the computers and software which control the engine, throttle and transmission (the "Defect(s)"). Upon information and belief, the Engine Control Module ("ECM") and the Transmission Control Module ("TCM") are some of the components involved. The Defect causes unsafe driving conditions and affects Plaintiffs' and other drivers' ability to safely accelerate and maintain

speeds while on roads, highways, and freeways.

Compl. ¶ 53.

Thus, Plaintiffs have pled that due to miscommunication among certain components and systems (the engine, throttle, and transmission, and the ECM and TCM), the Vehicles routinely fail to safety accelerate and maintain speeds. AHM argues that the allegations implicate multiple systems and multiple symptoms, thereby rendering the allegations too vague and disparate. But these systems are interrelated, and Plaintiffs point to miscommunications among them via the ECM and TCM, which are the computers that direct these various interrelated systems and components. Furthermore, insofar as the alleged defect entails several systems and components, that is plausibly due to the complexity of those interrelated systems and components, and is thus not a pleading defect. The Court concludes that Plaintiffs have sufficiently identified the components and systems involved in the alleged defect, and the resulting symptoms of the defect. This is sufficient to satisfy Rule 8.

Citing *Buniatyan v. Volkswagen Grp. of Am., Inc.*, No. CV 16-336 PA (KSX), 2016 WL 6916824 (C.D. Cal. Apr. 25, 2016), AHM further argues that the alleged defect is actually consistent with the performance of certain features of the Vehicles, as reflected in excerpts of two Owner's Manuals that AHM also filed.[1] Thus, AHM argues, Plaintiffs do not plead a plausible defect as required by Rule 12. But AHM does nothing more than state this point, and fails to explain how exactly the alleged malfunctions here are actually consistent with features described in the manuals. In any event, this case is clearly distinguishable from *Buniatyan*. There, the plaintiff alleged that his vehicle's stop/start system was defective because it failed to cause the engine to restart when the driver's seat belt was unlatched. However, the Owner's Manual stated that a " '[b]asic requirement[ ] for the Start–Stop mode' is for '[t]he

[1] AHM argues that the Court can consider the Owner's Manuals because they are referenced in the Complaint. Plaintiffs do not object, and the Court agrees.

driver's seat belt *to be latched*.' " *Buniatyan*, 2016 WL 6916824 at *5 (emphasis added). Thus, the Owner's Manual showed that the vehicle's allegedly defective behavior was apparently consistent with how the start/stop feature was supposed to behave, so the court concluded that the plaintiffs failed to allege a clear defect. Here, AHM has not shown or explained how the symptoms described are actually consistent with the Owner's Manuals, and given the relative complexity of the defect here, it is not self-evident like it appeared to be in *Buniatyan*.

In sum, Plaintiffs' allegations of the defect are sufficient to overcome AHM's challenges under Rules 8(a) and 12(b)(6). This part of the Motion is **DENIED**.

B. The Express Warranty Claims

Plaintiffs' claims for breach of express warranty arise out of two sources: (1) the New Vehicle Limited Warranty ("NVLW"), and (2) other representations made in various marketing material. The Court addresses them in turn.

1. The Express Warranty Claim Under the New Vehicle Limited Warranty is Dismissed in Part.

AHM moves to dismiss the NVLW express warranty claims brought by Plaintiffs who did not present their Vehicles for repair more than once. AHM also moves to dismiss all NVLW express warranty claims to the extent they allege design defects.[2]

a. Plaintiffs Who Have Not Alleged More Than One Repair Attempt Have Not Alleged an Express Warranty Claim Under the New Vehicle Limited Warranty.

"A manufacturer's liability for breach of an express warranty derives from, and is measured by, the terms of that warranty. Accordingly, the 'requirement[s]' imposed by an express warranty claim are not 'imposed under state law,' but rather imposed by

[2] At oral argument, AHM confirmed that it abandoned its argument that the warranty claims of Louisiana Plaintiff Marcus Brown and New Jersey Plaintiff Joseph Maliniak are precluded by the laws of those states.

the warrantor." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 525 (1992). "To prevail on a breach of express warranty claim under California law, a plaintiff must prove that: (1) the seller's statements constitute an affirmation of fact or promise or a description of the goods; (2) the statement was part of the basis of the bargain; and (3) the warranty was breached." *In re ConAgra Foods, Inc.*, 90 F.Supp.3d 919, 984 (C.D. Cal. 2015). The plaintiff must allege the "exact terms of the warranty." *Nabors v. Google, Inc.*, No. 5:10-CV-03897 EJD PSG, 2011 WL 3861893, at *4 (N.D. Cal. Aug. 30, 2011) (citing *Williams v. Beechnut Nutrition Corp.*, 185 Cal.App.3d 135, 142 (1986)); *Rosales v. FitFlop USA, LLC*, 882 F.Supp.2d 1168, 1178 (S.D. Cal. 2012) ("Defendant is correct that a breach of express warranty claim must describe the exact terms of the warranty at issue.").

Plaintiffs allege that their Vehicles came with a New Vehicle Limited Warranty ("NVLW") and a Powertrain Limited Warranty under which AHM agreed to repair or replace any part that is defective in material or workmanship under normal use ("Warranty"). Compl. ¶ 52. Plaintiffs further allege that AHM violated this express Warranty by "wrongfully, uniformly, and repeatedly refusing to repair the Defect." Compl. ¶¶ 342-345. AHM argues that this claim fails for several reasons.

First, those Plaintiffs who bought their vehicle for repair only once or not at all[3] cannot maintain a breach of warranty claim. This is because unless the purchaser presents the vehicle for repair more than once, it cannot be found that the dealer "refused" to satisfy its obligations under the warrant to repair the Vehicle. *See, e.g., Cadena v. Am. Honda Motor Co.*, No. CV184007MWFPJWX, 2018 WL 8130613, at *7 (C.D. Cal. Nov. 14, 2018) (express warranty claim fails where plaintiffs alleged

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[3] These Plaintiffs presented their vehicles for repair only once: Clark (CA) *see* Compl. ¶ 98; Wahl (CA) ¶ 108; Starr (AZ) ¶ 127; DeForge (CT) ¶ 140-41; Richardson (KY) ¶ 194; Marcus Brown (LA) ¶201; Morse (MD) ¶209; Jeudy (MA) ¶222; Schneider Graham (MA) ¶ 227; and Bercow (NY) ¶ 253. These Plaintiffs never presented their vehicles for repair: Ciula (CO), Floyd (TX), Nestle (TX), and Abel (WI). Starr, DeForge, Bercow, and Richardson voluntarily dismissed their claims.

they brought their vehicles to the dealer for repair only once, and the dealer could not duplicate the issue and thus did not initiate repairs, because such facts do not establish that defendant refused to repair the defect).

Plaintiffs respond that because some of the named Plaintiffs brought their vehicles for repair more than once, AHM's knowledge of the defect and refusal to repair it as to those Plaintiffs is applicable to other Plaintiffs. This argument is unavailing because each named Plaintiff's claim must be pled individually, and will stand or fall individually. Plaintiffs also appear to argue that they are excused from presenting their vehicles for repair because the NVLW failed of its essential purpose. But no Plaintiffs allege that the NVLW failed of its essential purpose. Furthermore, a warranty fails of its essential purpose only after the vehicle has been presented for repair several times. *See, e.g.,* **CA:** *Snyder v. TAMKO Building Prods.*, No. 1:15-CV-01892-TLN-KJN, 2019 WL 4747950, *4 (E.D. Cal. Sep. 30, 2019) ("A limited warranty fails of its essential purpose only if, after multiple attempts, the warrantor fails to repair the defects in a reasonable timeframe."); **N.J.:** *Makusa USA, Inc. v. Specialty Lighting* Indus., Inc., No. A-2220-17T4, 2019 WL 5690501, *10 (D.N.J. Nov. 4, 2019) ("A remedy may fail in its essential purpose if the product does not operate free of defects after several attempts to repair …"); **TX:** *Ross Neely Sys., Inc. v. Navistar, Inc.*, No. 3:13-cv-1587, 2015 WL 12939110, *2 (N.D. Tex. May 28, 2015) (no failure of essential purpose where plaintiff did not allege that seller "willfully failed or refused to make repairs"); *and* Reply fn. 3. The cases Plaintiffs rely on (*see* Opp'n fn. 11) actually support this conclusion, because in all of them the plaintiffs brought their vehicles for repair several times.

Plaintiffs also argue that filing this action gives AHM sufficient notice of their claims for breach of warranty. However, it appears that Plaintiffs are conflating notice of the claim, with the requirement that they give AHM the opportunity to repair. The filing of this action, which gives AHM notice of their warranty claims (which AHM does not dispute), does not relieve Plaintiffs of the prior substantive requirement that

they present their vehicles for repair.

Accordingly, the Motion to Dismiss the express warranty claim based on the NVLW is **GRANTED** as to all Plaintiffs who have not presented their Vehicle for repair more than once, including Plaintiffs Clark (CA); Wahl (CA); Marcus Brown (LA); Morse (MD); Jeudy (MA); Schneider Graham (MA); Ciula (CO); Floyd (TX); Nestle (TX); and Abel (WI).

b. The Complaint Alleges a Defect Covered by the NVLW.

AHM also argues that to the extent the Complaint alleges a design defect, the express warranty claim under the NVLW fails because it covers only defects in "material and workmanship," not defects in design. But the Complaint alleges that the "Vehicles suffer from a Defect in manufacture, and/or workmanship." Compl. ¶ 57. The Court will not construe the Complaint—contrary to its express language—as alleging only a design defect requiring the dismissal of this claim. *See, e.g., Falk v. Nissan N. Am., Inc.*, No. 17-CV-04871-HSG, 2018 WL 2234303, at *2 (N.D. Cal. May 16, 2018) (manufacturing defect adequately alleged where the complaint states that the "CVTs 'are defective in design, materials, and/or workmanship[]' [,] Plaintiffs have identified a number of symptoms that may be attributable to material or workmanship defects, [and] fact that Plaintiffs allege a defect that is present in all models does not necessarily mean that the defect must be in the design."). Thus, insofar as the Motion seeks dismissal of the express warranty claim based on the NVLW because Plaintiffs plead only a design defect, it is **DENIED**.

2. Plaintiffs Fail to State Express Warranty Claims Based on the Warranty-by-Representation Theory.

To state a warranty-by-representation claim, a plaintiff must allege that the seller: "(1) made an affirmation of fact or promise or provided a description of its good; (2) the promise or description formed part of the basis of the bargain; (3) the express warranty was breached; and (4) the breach caused injury to the plaintiff." *Viggiano v. Hansen Nat. Corp.*, 944 F.Supp.2d 877, 893 (C.D. Cal. 2013) (citations

omitted). AHM argues that no individual Plaintiff alleges specifically seeing or relying on any particular representation. In response, Plaintiffs identify Compl. ¶¶ 43-49, 61 as alleging the relevant representations. These paragraphs refer to various marketing comments in brochures and other materials including that AHM "put[s] the driver first," that the vehicles have "superior performance and control," that the "go power is perfectly mated" to the transmission and "instinctively connected to your desires," that the Acura logo reflects "our unwavering commitment to precision and craft," that the vehicle is safe, that the "advanced safety and driver assistance features constantly gather information . . . to help prevent, avoid, or minimize threats," that the throttle system "gives racing-inspired pedal movement and smooth powerful response with just-right throttle sensitivity," and that "data is instantly factored in." *See* Compl. ¶¶ 43-49, 61. These allegations are not adequate to state a claim for several reasons.

First, all of the statements are non-actionable puffery and are not warranties. "Generalized, vague, and unspecified assertions constitute 'mere puffery' upon which a reasonable consumer could not rely, and hence are not actionable." *Anunziato v. eMachines, Inc.*, 402 F.Supp.2d 1139 (C.D. Cal. 2005) (citing *Glen Holly Entm't, Inc. v. Tektronix Inc.*, 343 F.3d 1000, 1005 (9th Cir. 2003). A statement must be "specific and measurable" and capable of being proven true or false in order to be actionable as a misrepresentation, *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1135, 1145 (9th Cir. 1997), or to constitute an actionable warranty. *See Azoulai v. BMW of N. Am. LLC*, No. 16-CV-00589-BLF, 2017 WL 1354781, at *8 (N.D. Cal. Apr. 13, 2017) (puffery not actionable as misrepresentation, and does not constitute an express warranty). The statements that Plaintiffs rely on (quoted above) are not "specific and measurable" and capable of being proven true or false; as such, they are mere puffery and are not actionable as an express warranty. *Accord Cadena*, 2018 WL 8130613 at *8 (finding similar statements in marketing materials to be puffery, and dismissing express warranty claims based thereon). All of the statements that Plaintiffs point to are non-actionable puffery, so all of the express warranty claims based thereon fail.

These claims fail for an additional reason: no individual Plaintiff claims to have seen or relied upon any of the alleged statements. Rather, the Complaint merely alleges that AHM made these statements in its materials. Thus, Plaintiffs have not alleged that any such statements formed the basis of the bargain, that they relied on them, or that they were injured. *Accord Cadena*, *supra*, at * 9.[4]

For the foregoing reasons, the Court **GRANTS** the Motion to Dismiss all express warranty claims based on the warranty-by-representation theory.

C. The Breach of the Implied Warranty of Merchantability Claims are Adequately Pled.

AHM argues that Plaintiffs' breach of the implied warranty claims fail because they have not alleged facts showing that the Vehicles are unfit for sale and ordinary use. It appears that most if not all of the breach of the implied warranty claims are based on state statutes adopting UCC § 2–314. UCC § 2–314 provides that "a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind" and that "[g]oods to be merchantable must be at least such as . . . are fit for the ordinary purposes for which such goods are used." UCC § 2–314. "The mere manifestation of a defect by itself does not constitute a breach . . . there must be a fundamental defect that renders the product unfit for its ordinary purpose." *Tietsworth v. Sears, Roebuck & Co.*, 720 F.Supp.2d 1123, 1142 (N.D. Cal. 2010) (quotation omitted). But, in the context of vehicle defects, courts have observed that "the ordinary purpose of a car is not just to provide transportation but rather safe, reliable transportation." *In re MyFord Touch Consumer Litig.*, 46 F.Supp.3d 936, 980 (N.D. Cal. 2014). Accordingly, "[c]ourts

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[4] AHM also moves to dismiss the breach of express warranty claim of Maryland Plaintiff Leah Morse for lack of privity between Morse and AHM. *See* Mot. 16:3-4. Plaintiffs respond that Maryland law recognizes exceptions to the privity requirement. *See* Opp'n 21-23. The Court declines to delve into this state-specific privity exception as Morse's express warranty claims fail for other reasons.

have been hesitant to dismiss cases at the pleading stage which allege potential safety risks caused by defective automotive parts—choosing instead to treat a close question of merchantability as one for the fact-finder." *Sater v. Chrysler Grp. LLC*, No. EDCV 14-00700-VAP, 2015 WL 736273, at *9 (C.D. Cal. Feb. 20, 2015). Here, Plaintiffs allege that the defect causes the Vehicles to unexpectedly and dramatically decelerate, particularly at highway speeds; puts their Vehicles in limp mode; and causes them to fail to accelerate predictably. The Court cannot say as a matter of law that Vehicles manifesting such performance issues are sufficiently safe to be merchantable.

AHM also argues that only one or two Plaintiffs have alleged that they changed their driving habits because of the alleged defect, so it follows that the Vehicles are necessarily merchantable for all other Plaintiffs. But AHM cites no authority for their argument, and this Court does not find it persuasive.

The Motion is **DENIED** as to the claims for breach of the implied warranty.

D. All Claims for Equitable Relief Must Be Dismissed.

AMH argues that Plaintiffs' claims for equitable relief fail because they have not pled that they lack adequate remedies at law. Plaintiffs have asserted numerous equitable claims, including under the CLRA (Count I), California's equity-based Unfair Competition Law (Count II), and a nationwide claim for unjust enrichment (Count LVI).[5] Plaintiffs also have requested various forms of equitable relief, including injunctive relief, restitution and disgorgement, a cease and desist order, and an order for a corrective advertising campaign. *See* Compl. Prayer for Relief.

AHM's argument is premised on the recent Ninth Circuit case *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020). There, the Ninth Circuit held that as a matter of federal, not state, law, a plaintiff may not seek equitable relief

[5] AHM separately moves to dismiss the unjust enrichment claim on additional grounds. *See* Mot. 30-32. But because the Court is dismissing the unjust enrichment claim because Plaintiffs have not pled they lack an adequate remedy at law, the Court will not address these other grounds.

unless they have alleged that they lack an adequate remedy at law. *Sonner*, 971 F.3d at 843-844. Plaintiffs respond that *Sonner* applies only later in the proceedings and does not apply at the pleading stage, and that *Sonner* applies only to remedies for past harm (damages and restitution), whereas they seek prospective injunctive relief. Plaintiffs also argue that they seek relief for future purchasers for whom damages cannot be an adequate substitute for their plea for injunctive relief.

The Court has considered *Sonner*, both parties' arguments, and numerous district court orders applying *Sonner*, and is persuaded that Plaintiffs' claims for equitable relief must be dismissed. First, Plaintiffs have not pointed to any allegation in the Complaint *pleading* that they lack an adequate remedy at law. Plaintiffs seek damages, and "[c]ourts generally hold that monetary damages are an adequate remedy for claims based on an alleged product defect, and reject the argument that injunctive relief requiring repair or replacement is appropriate." *In re MacBook Keyboard Litig.*, No. 5:18-CV-02813-EJD, 2020 WL 6047253, at *3 (N.D. Cal. Oct. 13, 2020).

Second, although it is true that in *Sonner*, this issue arose late in the case (on the eve of trial), nothing about the opinion suggests its reasoning applies *only* late in the case and not at the pleading stage. None of the district court cases the parties cite that apply *Sonner* make this distinction, and most of them are at the pleading stage. Third, that Plaintiffs seek prospective injunctive relief (as opposed to restitution for past harm) does not exempt this case from *Sonner*, and none of its reasoning suggests that it is limited to claims for restitution for past harms and not to purported future or ongoing harms. Plaintiffs' argument about future purchasers is also unavailing: nothing suggests that damages will not be adequate for future purchasers simply because they have not purchased their vehicles yet. Once those future purchasers purchase their vehicles, damages will be as adequate a remedy for them as it will be for currently-existing purchasers. Finally, this case is distinguishable from *IntegrityMessageBoards.com v. Facebook, Inc.*, No. 18-CV-05286-PJH, 2020 WL 6544411 (N.D. Cal. Nov. 6, 2020), a case Plaintiffs urge the Court to follow. There,

the Court found that the plaintiffs could seek injunctive relief because they lacked an adequate legal remedy. But, the court found that the legal remedy of damages was inadequate because it would not be possible to quantify the actual damages for future harm which arose from the defendant's "misrepresenting the accuracy of its ad targeting and failing to disclose the true accuracy rates of its targeting categories." *Id.* at *7. *IntegrityMessageBoards.com* thus dealt with a relatively abstract future harm that was inherently hard to quantify. Plaintiffs point to no such difficulty in quantifying the damages here, which arise from an allegedly defective product.

This Court therefore agrees with its colleagues that, under *Sonner*, Plaintiffs must allege that they lack an adequate remedy at law to seek injunctive relief. *See e.g.*, *Gibson v. Jaguar Land Rover N. Am., LLC*, No. CV2000769CJCGJSX, 2020 WL 5492990, at *3 (C.D. Cal. Sept. 9, 2020) (dismissing UCL claims for an injunction and restitution because *Sonner* "very recently made clear" that the requirement that plaintiff establish an inadequate remedy at law "applies to claims for equitable relief under both the UCL and CLRA"); *Teresa Adams v. Cole Haan, LLC*, No. SACV20913JVSDFMX, 2020 WL 5648605, at *2 (C.D. Cal. Sept. 3, 2020) ("The *Sonner* court derived its rule from broader principles of federal common law . . . this broad analysis of the distinction between law and equity [does not] create an exception for injunctions as opposed to other forms of equitable relief. The clear rule in *Sonner* that plaintiffs must plead the inadequacy of legal remedies before requesting equitable relief therefore applies."); *Schertz v. Ford Motor Co.*, No. CV2003221TJHPVCX, 2020 WL 5919731, at *2 (C.D. Cal. July 27, 2020) (dismissing claims for an injunction and restitution under the UCL because plaintiff failed to allege the lack of an adequate legal remedy as required under *Sonner*); *In re MacBook Keyboard Litig.*, 2020 WL 6047253, at *3 (dismissing claims for injunctive relief based on *Sonner*).

The Motion is therefore **GRANTED** as to all of Plaintiffs' claims and requests for equitable relief.

E. Plaintiffs' Fraud and Statutory Fraud Claims are Dismissed in Part.

Plaintiffs assert claims under the consumer fraud or deceptive trade practices acts of 17 states (Compl. ¶ 5), and a common law fraud claim in Count LV. In their opposition, Plaintiffs clarify that their claims are for fraudulent omissions (not for fraudulent misrepresentations).

A claim for fraud based on concealment or omission requires that: (1) the defendant must have concealed or suppressed a material fact; (2) the defendant must have been under a duty to disclose the fact to the plaintiff; (3) the defendant must have intentionally concealed or suppressed the fact with intent to defraud the plaintiff; (4) the plaintiff must have been unaware of the fact and would have acted otherwise if he had known of the concealed or suppressed fact; and (5) as a result of the concealment or suppression of the fact, the plaintiff sustained damage. *Boschma v. Home Loan Center, Inc.*,198 Cal.App.4th 230, 248 (2011).

AHM argues that the fraudulent omissions claims fail because they do not satisfy Rule 9(b) and because they are barred by the economic loss rule.

1. The Fraud Claim Satisfy Rule 9(b).

Fraud-based allegations are governed by Rule 9(b). "Rule 9(b) demands that, when averments of fraud are made, the circumstances constituting the alleged fraud be specific enough to give defendants notice of the particular misconduct so that they can defend against the charge[.]" *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal citations omitted). Under Rule 9(b), fraud allegations must include the "time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations." *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007) (citing *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004)). In other words, "[a]verments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged." *Vess*, 317 F.3d at 1106. Such averments must be specific enough to "give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny

that they have done anything wrong." *Id.* (quoting *Bly–Magee v. California*, 236 F.3d 1014, 1019 (9th Cir. 2001)).

"When a claim rests on allegations of fraudulent omission . . . the Rule 9(b) standard is somewhat relaxed because 'a plaintiff cannot plead either the specific time of [an] omission or the place, as he is not alleging an act, but a failure to act.' " *Asghari v. Volkswagen Grp. of Am., Inc.*, 42 F.Supp.3d 1306, 1325 (C.D. Cal. 2013) (quoting *Cirulli v. Hyundai Motor Co.*, No. SACV 08-0854 AG MLGX, 2009 WL 5788762, at *4 (C.D. Cal. June 12, 2009)).

AHM argues that Plaintiffs did not adequately plead the "what," (i.e., the undisclosed defect), AHM's knowledge, "how" it should have been disclosed, and Plaintiffs' reliance. The Court finds all of these matters adequately pled.

AHM complains primarily that the defect allegation does not allege a single, coherent defect and that it encompasses multiple systems and components, and is therefore both vague and overbroad, and thus not particular under Rule 9(b). The Court has discussed above whether Plaintiffs' defect allegation satisfies Rule 8(a). Based on the same analysis, the Court further finds that the defect allegation is specific enough to satisfy Rule 9(b).

AHM also argues that Plaintiffs do not plead its knowledge of the defect with particularity. However, "[m]alice intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b), so AHM's argument rests on the incorrect pleading standard for knowledge, and the Court rejects it. Regardless, the Complaint includes numerous allegations that AHM had knowledge of the defect, including, for example, from its pre-sale and pre-production durability testing on vehicle components, and testing at highway speeds (Compl. ¶¶ 63, 64, 80), from numerous reports and customer complaints made to AHM and its network of authorized dealerships, and on numerous internet forums (*id.* ¶¶ 65, 66, 76, 281-287), and based on AHM's issuance of two technical service bulletins ("TSBs") beginning in July 2015 concerning software issues and resulting symptoms like those alleged to

comprise the Defect (*id.* ¶¶69-70). *See also* Opp'n 32:27-33:19 (reciting all of the allegations of AHM's knowledge). Plaintiffs allege AHM's knowledge sufficiently.

AHM also argues that Plaintiffs do not plead with sufficient specificity how the alleged defect should have been disclosed, or their reliance on the omission. In an omissions case, the Ninth Circuit has held that where the plaintiffs contended that they purchased or leased their vehicles from an authorized dealer, that contact with an authorized dealer is sufficient to show that the plaintiff would have been aware of a disclosure had it been made by the defendant's authorized dealer. *See Daniel v. Ford Motor Co.*, 806 F.3d 1217, 1226 (9th Cir. 2015) (reversing summary judgment for defendant where "Plaintiffs presented evidence that they interacted with and received information from sales representatives at authorized Ford dealerships prior to purchasing their Focuses. This is sufficient to sustain a factual finding that Plaintiffs would have been aware of the disclosure if it had been made through Ford's authorized dealerships."); *see also Baranco v. Ford Motor Co.*, 294 F.Supp.3d 950, 967-68 (N.D. Cal. 2018) ("Plaintiff Nicolau alleges she purchased her vehicle from an authorized Ford dealership[.] Though she does not specifically allege that she received information or promotional information from Ford or its agents at the dealerships, the Court can plausibly draw an inference in her favor that she could have received such information had Ford publicized the defect through the dealer, as it is highly improbable that she purchased her vehicle from a dealership without any exchange of information whatsoever (or at least an opportunity for such an exchange.")).

Here, all of the Plaintiffs purchased or leased their Vehicles from an authorized dealer, which under *Daniel* is sufficient to establish "when" AHM could have disclosed the defect. Plaintiffs also plead reliance sufficiently, as each of them alleges that had AHM disclosed the defect, they would not have purchased or leased their Vehicle, or would have paid substantially less for them. *See, e.g.*, Compl. ¶ 87. Furthermore, "[t]hat one would have behaved differently can be presumed, or at least inferred, when the omission is material." *Daniel*, 806 F.3d at 1225. Alleged safety

defects that create unreasonable safety risks are considered material, *id.*, and the alleged Defect here plausibly amounts to an unreasonable safety risk. Plaintiffs have therefore sufficiently alleged reliance.

AHM's Motion to Dismiss the fraud claims as inadequately pled is **DENIED**.

2. The Economic Loss Rule Bars Plaintiffs' Fraudulent Omissions Claims Under California Common Law, But the Court Defers Ruling on Fraud Claims Under Other States' Law.

AHM argues that "in the absence of an affirmative fraudulent inducement to a contract, the economic loss doctrine bars [Plaintiffs' common law] fraudulent omission claims," and a few of the statutory fraud claims. *See* Mot. 28:18-21. AHM supports this position with a footnote citing cases from each jurisdiction. It is clear to the Court that the economic loss rule bars California common law claims for fraudulent omission like the one alleged here. *See In re Ford Motor Co. DPS6 Powershift Transmission Prod. Liab. Litig.*, 483 F. Supp. 3d 838, 847-850 (C.D. Cal. 2020) (applying economic loss rule to bar California common law fraudulent omission claim alleging that an automobile manufacturer fraudulently failed to disclose that the vehicle had a defect and that the manufacturer would likely not be able to bring the vehicle into conformance with the warranty). The Court therefore **GRANTS** the Motion as to the California common law fraud claims.

However, application of the economic loss rule and its exceptions can be nuanced and vary by state. Accordingly, the Court declines to resolve on the current briefing whether the non-California fraudulent omission claims here are barred by the economic loss rule. This part of the Motion is therefore **DENIED**.

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IV. CONCLUSION

For the above reasons, AHM's Motion to Dismiss is **GRANTED** as follows:

- The Motion to Dismiss the express warranty claim based on the New Vehicle Limited Warranty is **GRANTED** as to Plaintiffs who have not presented their Vehicle for repair more than once, including Plaintiffs Clark (CA); Wahl (CA); Marcus Brown (LA); Morse (MD); Jeudy (MA); Schneider Graham (MA); Ciula (CO); Floyd (TX); Nestle (TX); and Abel (WI).
- The Motion to Dismiss all express warranty claims based on the warranty-by-representation theory is **GRANTED**.
- The Motion to Dismiss all of Plaintiffs' claims and requests for equitable relief is **GRANTED**.
- The Motion to Dismiss the California common law fraud claim is **GRANTED**.

The Motion is otherwise **DENIED**.

Because leave to amend "shall be freely given when justice so requires," Fed. R. Civ. P. 15(a), the Court **GRANTS** Plaintiffs leave to amend their Complaint to attempt to cure the deficiencies discussed herein and in the Motion. Any such amended Complaint must be filed within 28 days of the issuance of this Order.

IT IS SO ORDERED.

Dated: March 25, 2021

HONORABLE ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT COURT JUDGE