United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

WILLIAM PHILIPS et al.,

Plaintiffs,

v.

FORD MOTOR COMPANY,

Defendant.

Case No. 14-CV-02989-LHK

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS

Plaintiffs William Philips ("Philips"), Jaime Goodman ("Goodman"), Allison Colburn and her son Ian Colburn (collectively, "California Plaintiffs") have brought a putative class action lawsuit against defendant Ford Motor Company ("Ford"), a Delaware corporation with its principal place of business in Dearborn, Michigan. ECF No. 55, Second Amended Complaint ("SAC") ¶¶ 1, 32-56. Before the Court is Ford's Motion to Dismiss the SAC's California claims.[1]

[1] In addition to California Plaintiffs, the SAC includes the same non-California Plaintiffs from the First Amended Complaint ("FAC"): Jason Wilkinson, Robert Morris, Victoria Jackson, Johnpaul Fournier, and Ryan and Rebecca Wolf (together, with California Plaintiffs, "Plaintiffs"). *See* SAC ¶¶ 189-219. In light of the fact that the 108-page FAC contained fifty-one causes of action, including nationwide class claims and class claims brought under the specific laws of six different states, the Court decided to proceed by addressing the California claims first. *See* ECF

ECF No. 58 ("Mot."). California Plaintiffs have opposed the motion, ECF No. 63 ("Opp."), and Ford has replied, ECF No. 67 ("Reply").

The Court finds this matter suitable for decision without oral argument under Civil Local Rule 7-1(b) and hereby VACATES the motion hearing set for July 9, 2015, at 1:30 p.m. The case management conference scheduled for that date and time remains as set. Having considered the submissions of the parties, the relevant law, and the record in this case, the Court hereby GRANTS IN PART and DENIES IN PART Ford's Motion to Dismiss.

I. BACKGROUND

A. Factual Allegations

California Plaintiffs are individuals seeking to represent a class of statewide consumers who purchased or leased Ford Fusion vehicles, model years 2010 through 2014, or Ford Focus vehicles, model years 2012 through 2014 (the "Vehicles"),[2] which California Plaintiffs allege are equipped with a defective Electronic Power Assisted Steering ("EPAS") system. SAC ¶ 1. The following chart summarizes California Plaintiffs' alleged purchasing information:

Plaintiff	Vehicle	Site of Purchase	Date of Purchase
Philips	2011 Ford Fusion (used)	Salinas Valley Ford (California)	March 2012
Goodman	2011 Ford Fusion (new)	Future Ford of Clovis (California)	October 13, 2010
Allison Colburn[3]	2010 Ford Fusion (new)	Galpin Ford (California)	January 12, 2010

Id. ¶¶ 32-54.

No. 46; ECF No. 54 at 6, 9, 11-12, 37. To that end, the parties stipulated that "[a]lthough the SAC may contain both California and non-California claims," Ford's second motion to dismiss "shall address only Plaintiffs' California claims." ECF No. 51. Accordingly, the Court's order is limited to the four causes of action brought by California Plaintiffs in the SAC.

[2] The SAC specifies further that the "Vehicles include the following models: 2010-2014 Ford Fusion; 2010-2014 Ford Fusion Hybrid; 2013-2014 Ford Fusion Energi; 2012-2014 Ford Focus; and 2012-2014 Ford Focus Electric." SAC ¶ 69.

[3] There is no allegation that Ian Colburn, Allison Colburn's son, purchased any of the Vehicles. *See* SAC ¶¶ 51-54. Rather, Ian Colburn was gifted the 2010 Ford Fusion by his mother. *Id.* ¶ 51.

Power steering systems supplement the torque that the driver applies to the steering wheel, thus making it easier for the driver to turn the wheel. SAC ¶ 76. Ford's EPAS system replaces the traditional hydraulic-assist power steering pump and is comprised of a power steering control motor, electronic control unit, torque sensor, and steering wheel position sensor. *Id.* ¶ 2. California Plaintiffs allege, however, that Ford's EPAS system suffers from a "systemic defect" that "renders the system prone to sudden and premature failure during ordinary and foreseeable driving situations." *Id.* This defect, California Plaintiffs claim, causes drivers of the Vehicles to "experience significantly increased steering effort and an increased risk of losing control of their vehicles when the EPAS system fails" and "defaults to manual steering." *Id.* ¶¶ 3, 101.

In support of this claim, California Plaintiffs rely on three categories of evidence: (1) their own alleged experiences with EPAS failure, SAC ¶¶ 36, 43, 53; (2) the National Highway Traffic Safety Administration's ("NHTSA") investigation into the EPAS system of the Ford Explorer, a vehicle not at issue in this putative class action, *id.* ¶¶ 82-103; and (3) complaints to the NHTSA by Ford owners about power steering failures in the Vehicles, *id.* ¶¶ 104-32.

As to the first category, California Plaintiffs allege that the EPAS system in each of their Vehicles[4] has failed. None of them, however, alleges that any accident has taken place or that they have suffered any physical injury or any property damage as a result of an EPAS failure. Specifically, Philips says he "reviewed Ford's promotional materials and other information," and that he "would not have purchased his 2011 Ford Fusion, or would not have paid the purchase price charged," if he had known of "the EPAS system defects and failures." SAC ¶ 34. Philips also says he experienced "intermittent problems with the steering system in his Fusion," which caused "difficulty steering." *Id.* ¶ 36. After lodging multiple complaints with Ford, Philips alleges he "was told that it would cost approximately $2,000 to fix the problem." *Id.* According to Philips, "Ford offered to pay 50%." *Id.*

Goodman, on the other hand, claims that prior to "purchasing her 2011 Ford Fusion," she

[4] California Plaintiffs do not allege that any of them purchased a Ford Focus.

"(a) viewed television advertisements concerning the vehicles; (b) viewed material concerning the Fusion on Ford's website; (c) reviewed the window sticker on the vehicle she would purchase; and (d) received and reviewed a brochure concerning the Fusion." *Id.* ¶ 40. "The window sticker," Goodman says, "indicated that the vehicle she would purchase was equipped with power steering." *Id.* "Nowhere in these materials did Ford disclose the EPAS system defects and failures," and had Ford done so, Goodman alleges she "would not have purchased her 2011 Ford Fusion, or would not have paid the purchase price charged." *Id.* ¶¶ 40-41. In addition, Goodman claims that "in 2014" she "began having intermittent problems with the steering system in her 2011 Ford Fusion and experienced difficulty steering." *Id.* ¶ 43. "The problems first occurred at low speeds," Goodman says, "when the steering would lock up while she was attempting to park." *Id.* After one attempt at repair, Goodman alleges that she experienced steering difficulties "while she was driving on the road, not just parking." *Id.* Ultimately, Goodman "took the vehicle to a Ford dealership and was told that it would cost $1,800 to fix the problem with the steering system." *Id.*

Prior to "purchasing her 2010 Ford Fusion," Allison Colburn claims that, just like Goodman, she "(a) viewed television advertisements concerning the vehicles; (b) viewed material concerning the Fusion on Ford's website; (c) reviewed the window sticker on the vehicle she would purchase; and (d) received and reviewed a brochure concerning the Fusion," and that "[t]he window sticker indicated that the vehicle she would purchase was equipped with power steering." SAC ¶ 47. Unlike Goodman, however, Allison Colburn alleges that the brochure she read "contained the same 'Drive smart' heading featured in the 'Technology Fact Sheets' available on Ford's website." *Id.* "Nowhere in these materials did Ford disclose the EPAS system defects and failures," and had Ford done so, Allison Colburn alleges she "would not have purchased her 2010 Ford Fusion, or would not have paid the purchase price charged." *Id.* ¶¶ 47-48. Notably, Allison Colburn does not allege she experienced any power steering failures. Instead, her son Ian Colburn alleges that "in October 2014," after his mother had given him the car, "the power steering in the

2010 Ford Fusion failed." *Id.* ¶¶ 51, 53. The Ford dealership in San Diego where Ian Colburn took the car for repairs "initially quoted the repair price as $1,756.95, but reduced the price to $990.19." *Id.* ¶ 54. Allison Colburn says she paid the $990.19 to fix the power steering. *Id.*

As to the second category of evidence, California Plaintiffs emphasize documents produced in connection with the NHTSA's Ford Explorer investigation, which began on June 19, 2012. SAC ¶ 83. In response to the NHTSA's request for information, Ford "produced a database containing 1,173 complaints" regarding loss of power steering, nine of which allegedly described "incidents that resulted in a crash." *Id.* ¶ 89. Ford also produced various internal e-mails which, California Plaintiffs allege, reveal that the Vehicles suffer from the same EPAS system defect as the Ford Explorer and that Ford knew about the defect yet never disclosed it to the public or otherwise took corrective action. *Id.* ¶¶ 90-98. According to California Plaintiffs, the NHTSA investigation found "fifteen accidents that were caused by a loss of power steering in the Explorer." *Id.* ¶ 99. However, the NHTSA's Office of Defects Investigation ("ODI"), which published a resume closing the Ford Explorer investigation, was more circumspect: "ODI identified 15 crashes with evidence indicating loss of power steering assist *may* have been a factor." ECF No. 22-4 ("ODI Resume") at 2 (emphasis added).[5] "All 15 crashes," the ODI Resume continued, "involved low-speed impacts . . . resulting in minor vehicle damage or no damage," with only one reported incident of "minor injuries to the driver that did not require medical treatment." *Id.*

As to the third category, California Plaintiffs provide a litany of testimonials by other Ford

[5] The Court GRANTS Ford's Request for Judicial Notice of the ODI Resume closing the NHTSA's investigation into the Ford Explorer's EPAS system. ECF No. 22-3. Because the SAC "necessarily relies" on this document, and because California Plaintiffs do not contest the document's authenticity or relevance, the Court considers it an appropriate subject for judicial notice under "the doctrine of incorporation by reference." *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010); *see also In re Toyota Motor Corp. Hybrid Brake Mktg., Sales, Practices & Prods. Liab. Litig.*, 890 F. Supp. 2d 1210, 1216 n.2 (C.D. Cal. 2011) (taking judicial notice of the "NHTSA's ODI resume closing its investigation into Model Year 2010 Prius braking performance").

owners complaining to the NHTSA about alleged power steering failures in the Vehicles. SAC ¶¶ 104-32. The two dozen complaints California Plaintiffs detail in the SAC are, California Plaintiffs allege, a mere sampling of the hundreds of complaints the NHTSA has received concerning EPAS failures in the Vehicles. *See id.* ¶ 104. Only two of the examples cited by California Plaintiffs, however, involved accidents:

> On December 11, 2012, a vehicle owner reported a crash in a 2010 Ford Fusion. The Defective Vehicle lost power steering, traction control, and the ability to brake upon entering a freeway on ramp. To stop the vehicle and avoid endangering other drivers, the driver was "forced to crash into the concrete wall barrier on the driver's side of the ramp." The driver and one other individual were injured.
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> . . . .
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> On October 3, 2012, a vehicle owner reported a crash in a 2011 Ford Fusion. The steering wheel seized while the owner was driving at 35 MPH, causing her to crash into a curb. After the initial accident, the steering of the vehicle continued to fail. The vehicle was taken to a Ford dealer three times, and the dealer refused to help her because the failure could not be replicated. The vehicle owner notified Ford but Ford was unwilling to offer assistance.

Id. ¶¶ 110, 112. The most recent power steering failure cited by California Plaintiffs, mentioned for the first time in the SAC, took place on March 10, 2015, "very nearly" led to a collision, and left the driver "quite shaken." *Id.* ¶ 132.

Based on this evidence, California Plaintiffs allege that Ford fraudulently concealed[6] the claimed power steering defect: "Ford actively concealed, failed to disclose, and continues to fail to disclose to consumers of the Defective Vehicles that the uniformly designed EPAS system in the Defective Vehicles is prone to premature failure during ordinary and foreseeable driving situations." SAC ¶ 4. Despite press releases and web-based "promotional materials" touting "EPAS as a reliable and beneficial product," Ford, according to California Plaintiffs, knew "as early as 2010" that the EPAS system was "prone to sudden, premature failure," and yet took no

[6] California Plaintiffs no longer allege fraud based on a theory of misrepresentation. *See* ECF No. 15 ("FAC") ¶¶ 7-8. California Plaintiffs instead rely solely on a theory of fraud by "omission[]," which they also call "fraudulent concealment." SAC ¶¶ 5, 35.

remedial action. *Id.* ¶ 11. "Ford's omissions," California Plaintiffs say, "are material to consumers because of the significant safety concerns presented as a result of the system's defects and premature failures." *Id.* ¶ 5. According to California Plaintiffs, "Ford's failure to disclose to consumers and the public at large the material fact that the EPAS system is prone to premature failure . . . recklessly risked the safety of occupants of the Defective Vehicles and the public at large." *Id.* ¶ 6.

In May 2011, and again in December 2012, Ford allegedly issued technical service bulletins indicating Ford's awareness of EPAS system failures in the Vehicles. SAC ¶¶ 13 (2012 Ford Focus), 19 (2013 Ford Fusion). California Plaintiffs claim that "Ford concealed the fact that the EPAS system is prone to sudden and premature failure from consumers so that the warranty period on the Defective Vehicles would expire before consumers become aware of the problem." *Id.* ¶ 24.[7] Had Ford disclosed the alleged defect, California Plaintiffs say they "would not have purchased . . . those vehicles, or would have paid substantially less for the vehicles than they did." *Id.* ¶ 25.

B. Procedural History

On June 27, 2014, Plaintiffs filed their initial Complaint in federal court. ECF No. 1. The Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), is the asserted basis for this Court's subject matter jurisdiction. SAC ¶ 28.

On September 8, 2014, Plaintiffs filed their FAC containing fifty-one causes of action, including forty-nine claims specific to the laws of six states (California, Ohio, Michigan, Georgia, Illinois, and Arizona) and two nationwide claims based on the laws of forty-four additional states.

[7] The Vehicles were all covered by an express New Vehicle Limited Warranty ("NVLW"), which Ford has filed with the Court. *See* ECF No. 22-2 (containing Ford's NVLWs for 2010, 2011, 2012, and 2013). Because the SAC "necessarily relies" on these documents, and because California Plaintiffs do not contest the documents' authenticity or relevance, the Court considers them an appropriate subject for judicial notice under "the doctrine of incorporation by reference." *Coto Settlement*, 593 F.3d at 1038; *see Elias v. Hewlett-Packard Co.*, 903 F. Supp. 2d 843, 850 n.1 (N.D. Cal. 2012). The NVLW covered the Vehicles for the first three years or 36,000 miles driven, whichever came first. *See, e.g.*, ECF No. 22-2 at 14.

See FAC ¶¶ 145-645. On October 24, 2014, Ford moved to dismiss the FAC. ECF No. 22. Concurrently with that motion, Ford filed a Request for Judicial Notice, ECF No. 22-3, which the Court has granted, *see supra* note 5. Plaintiffs opposed the motion on December 16, 2014, ECF No. 35, and Ford replied on January 16, 2015, ECF No. 36. At a hearing held on February 12, 2015, the Court granted Ford's Motion to Dismiss with leave to amend. ECF Nos. 46, 48.

In light of the unwieldy nature of the FAC, the parties stipulated at a February 18, 2015 case management conference to proceed with the California claims only for Ford's second round Motion to Dismiss. ECF No. 51. If any of the California claims survived the second round Motion to Dismiss, the parties would continue to litigate those claims to resolution before this Court. ECF No. 54 at 9. If, however, none of the California claims survived, then the Court would confer with the parties regarding how to proceed with the non-California claims, including possibly transferring the case to a more appropriate jurisdiction. *Id.*

With that understanding, California Plaintiffs filed the SAC on March 27, 2015. The SAC asserts four causes of action under California law: (1) violation of the unlawful and unfair prongs of the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.*, SAC ¶¶ 141-49; (2) violation of the fraudulent prong of the UCL, *id.* ¶¶ 150-59; (3) violation of the Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 *et seq.*, *id.* ¶¶ 160-71; and (4) common law fraudulent concealment, *id.* ¶¶ 172-85. Notably, California Plaintiffs have abandoned their claims under the False Advertising Law ("FAL"), Cal. Civil Code § 17500, *et seq.*, and Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790 *et seq.* *See* FAC ¶¶ 181-220.

In the SAC, California Plaintiffs seek to represent the following statewide class of consumers:

> All current and former owners and lessees of a Defective Vehicle (as defined herein) in California

SAC ¶ 133. Excluded from the class definitions are, inter alia, "any individuals who experienced physical injuries as a result of the defects at issue in this litigation." *Id.* ¶ 134.

On April 30, 2015, Ford filed the instant Motion to Dismiss. Mot. at 26. Pursuant to a stipulation approved by the Court, *see* ECF No. 60, California Plaintiffs opposed the motion on May 28, 2015, Opp. at 26. Ford replied on June 15, 2015. Reply at 16.

II. LEGAL STANDARDS

A. Rule 12(b)(6) Motion to Dismiss

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a complaint to include "a short and plain statement of the claim showing that the pleader is entitled to relief." A complaint that fails to meet this standard may be dismissed pursuant to Rule 12(b)(6). Rule 8(a) requires a plaintiff to plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "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." *Id.* (internal quotation marks omitted). For purposes of ruling on a Rule 12(b)(6) motion, the Court "accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the nonmoving party." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

The Court, however, need not accept as true allegations contradicted by judicially noticeable facts, *see Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000), and it "may look beyond the plaintiff's complaint to matters of public record" without converting the Rule 12(b)(6) motion into a motion for summary judgment, *Shaw v. Hahn*, 56 F.3d 1128, 1129 n.1 (9th Cir. 1995). Nor must the Court "assume the truth of legal conclusions merely because they are cast in the form of factual allegations." *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (per curiam) (internal quotation marks omitted). Mere "conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss." *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004).

B. Rule 9(b) Pleading Requirements

Claims sounding in fraud are subject to the heightened pleading requirements of Rule 9(b) of the Federal Rules of Civil Procedure, which requires that a plaintiff alleging fraud "must state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b); *see Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009). To satisfy the heightened standard under Rule 9(b), the allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985). Thus, claims sounding in fraud must allege "an account of 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) (per curiam) (internal quotation marks omitted); *see also Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) ("Averments of fraud must be accompanied by the who, what, when, where, and how of the misconduct charged." (internal quotation marks omitted)). The plaintiff must also set forth "what is false or misleading about a statement, and why it is false." *Ebeid ex rel. U.S. v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010) (internal quotation marks omitted).

III. DISCUSSION

Ford offers several bases in support of its Motion to Dismiss. First, Ford argues that California Plaintiffs have waived or abandoned various claims. Mot. at 7-9. Second, Ford contends that California Plaintiffs' claims are barred by the applicable statutes of limitations. *Id.* at 9-10. Third, Ford says that California Plaintiffs have failed to adequately plead their fraud-based claims. *Id.* at 11-21. Fourth, Ford argues that California Plaintiffs' CLRA claims must fail because they have failed to allege a "transaction" under the meaning of the statute. *Id.* at 21-23. Fifth, Ford contends that California Plaintiffs' equitable claims—i.e., UCL claims and CLRA claims for injunctive relief—must be dismissed because California Plaintiffs have an adequate remedy at law. *Id.* at 23-24. Finally, Ford asks the Court to strike references to "nationwide" claims from the SAC. *Id.* at 25. For the reasons stated below, the Court GRANTS IN PART and

DENIES IN PART Ford's Motion to Dismiss.

A. Waived or Abandoned Claims

Ford first argues that California Plaintiffs have waived their warranty and FAL claims by failing to replead these claims in the SAC. Mot. at 7. The Court agrees. The warranty and FAL claims were dismissed with leave to amend, and California Plaintiffs have waived the claims by failing to replead them. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) ("For claims dismissed with prejudice and without leave to amend, we will not require that they be repled in a subsequent amended complaint to preserve them for appeal. But for any claims voluntarily dismissed, we will consider those claims to be waived if not repled."). Accordingly, California Plaintiffs are precluded from reasserting California warranty or FAL claims against Ford.

B. Standing to Assert Claims for Vehicles Not Purchased

Ford argues that California Plaintiffs lack standing to assert claims based on Vehicles that California Plaintiffs did not purchase—i.e., the 2012-2014 Ford Fusion; 2010-2014 Ford Fusion Hybrid; 2013-2014 Ford Fusion Energi; 2012-2014 Ford Focus; and 2012-2014 Ford Focus Electric. Specifically, Ford argues that California Plaintiffs fail to adequately allege facts showing substantial similarity between the EPAS systems in the 2010-11 Ford Fusions and those in the other Vehicles. Mot. at 7-8. For the reasons stated below, the Court finds that California Plaintiffs have adequately pleaded standing to assert claims against products they did not personally purchase.[8]

Article III of the U.S. Constitution requires that a plaintiff plead and prove he or she has suffered sufficient injury to satisfy the "case and controversy" requirement. *See Clapper v. Amnesty Int'l*, 133 S. Ct. 1138, 1146 (2013) ("One element of the case-or-controversy requirement is that plaintiffs 'must establish that they have standing to sue.'" (quoting *Raines v. Byrd*, 521 U.S.

[8] The Court's ruling is without prejudice to Ford later moving to dismiss for lack of standing should a sufficient factual record be developed showing that the products are not substantially similar.

811, 818 (1997))). The U.S. Supreme Court has further clarified that standing means a plaintiff must plead and prove (1) injury-in-fact that is concrete and particularized, as well as actual or imminent; (2) that this injury is fairly traceable to the challenged action of the defendant; and (3) that this injury is redressable by a favorable ruling from the court. *Monsanto Co. v. Geertson Seed Farms*, 130 S. Ct. 2743, 2752 (2010).

In food misbranding cases, courts in this district have held that "a plaintiff may have standing to assert claims for unnamed class members based on products he or she did not purchase so long as the products and alleged misrepresentations are *substantially similar*." *E.g.*, *Miller v. Ghirardelli Chocolate Co.*, 912 F. Supp. 2d 861, 869 (N.D. Cal. 2012) (emphasis added). In this particular case, the Court finds that California Plaintiffs have adequately alleged that the supposedly defective EPAS system is substantially similar across the Vehicles. California Plaintiffs cite evidence in the form of internal communications between Ford employees where the power steering systems in different vehicles were commonly referred to as "the EPAS," without any indication that the EPAS system varied across vehicles. SAC ¶¶ 14-15. Specifically, a Product Development Engineer wrote that she "[t]alked to the tech below and this loss of assist [in the Explorer] would always occur in low speed parking lot maneuvers similar to the Focus issue." *Id.* ¶ 14. Later, an EPAS Steering Engineering employee wrote "Can you tell if the EPAS ribbon cable concern of the Fusion is linked to the Explorer[?] This concern I believe was resolved at the end of Nov. 2011 for the Fusion vehicle line." *Id.* ¶ 15. Plaintiffs contend that these emails show that Ford equated the Focus's EPAS system to the Ford Explorer EPAS system, and the Fusion's EPAS system to the Explorer EPAS system. At the motion to dismiss stage, the Court must "construe the pleadings in the light most favorable to the nonmoving party." *Manzarek*, 519 F.3d at 1031.

Moreover, California Plaintiffs allege repeatedly that the EPAS systems in all the vehicles are "uniform," *id.* ¶¶ 1, 4, 21-22, 69, 186, and that the steering defect manifested in similar manners across different models of vehicles, *id.* ¶¶ 107-29. As the Court must "accept factual

allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party" when ruling on a motion to dismiss, the Court finds these allegations sufficient in this case. *Manzarek*, 519 F.3d at 1031. In addition, California Plaintiff have only limited technical information available in the pre-discovery stage. *See Armstrong v. Davis*, 275 F.3d 849, 867 (9th Cir. 2001) (holding that plaintiffs are not required to engage in hyper-technical inquiries during the pleading stage), *abrogated on other grounds as recognized by Nordstrom v. Ryan*, 762 F.3d 903 (9th Cir. 2014). The Court therefore finds that these allegations sufficiently establish substantial similarity between the purchased and unpurchased products. Accordingly, the Court DENIES Ford's Motion to Dismiss California Plaintiffs' claims as to the following models: 2012-2014 Ford Fusion; 2010-2014 Ford Fusion Hybrid; 2013-2014 Ford Fusion Energi; 2012-2014 Ford Focus; and 2012-2014 Ford Focus Electric.

C. Statutes of Limitations

Ford next moves to dismiss California Plaintiffs' claims based on the applicable statutes of limitations. The UCL contains a statute of limitations that bars claims brought more than four years after the cause of action accrued. *See* Cal. Bus. & Prof. Code § 17208. The CLRA's limitations period is three years, *see* Cal. Civ. Code § 1783, as is common law fraud's, *see* Cal. Civ. Code § 338(d). Because this action was brought in June 2014, and the limitations periods began to run when the California Plaintiffs purchased their vehicles, all UCL, CLRA, and fraudulent concealment claims asserted by California Plaintiffs would be barred except for Philips's claims and Goodman's UCL claim. In the SAC, however, California Plaintiffs invoke the discovery rule, the doctrine of fraudulent concealment, and equitable estoppel in seeking to toll the limitations period for their claims. SAC ¶¶ 57-67. For the reasons stated below, the Court finds that California Plaintiffs' UCL, CLRA, and fraudulent concealment claims are not time-barred.

As an affirmative defense, the statute of limitations promotes diligent assertion of claims and ensures defendants "the opportunity to collect evidence while still fresh, and provide[s] repose

and protection from dilatory suits once excess time has passed." *Aryeh v. Canon Bus. Solutions, Inc.*, 292 P.3d 871, 875 (Cal. 2013). Ordinarily, the statute of limitations runs from the occurrence of the last element essential to a plaintiff's claim—i.e., the "last element" accrual rule. *El Pollo Loco, Inc. v. Hashim*, 316 F.3d 1032 (9th Cir. 2003) (internal citation omitted). To align the policy goals of the limitations defense with its actual application, courts and legislatures have over time developed certain exceptions to the "last element" rule, including the discovery rule and the doctrine of fraudulent concealment. *Aryeh*, 292 P.3d at 875. The discovery rule "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." *Id.* Meanwhile, the doctrine of fraudulent concealment "tolls the statute of limitations where a defendant, through deceptive conduct, has caused a claim to grow stale." *Id.* The California Supreme Court has held that claims under the UCL are "governed by common law accrual rules," including the discovery rule. *Id.* at 878; *see Plumlee v. Pfizer, Inc.*, No. 13-CV-00414 LHK, 2014 WL 4275519, at *6 n.5 (N.D. Cal. Aug. 29, 2014). The discovery rule also applies to CLRA claims. *See Yumul v. Smart Balance, Inc.*, 733 F. Supp. 2d 1117, 1131 (C.D. Cal. 2010). The doctrine of fraudulent concealment applies to claims under the UCL and the CLRA. *Id.*

Under the discovery rule, a claim accrues and the limitations period begins to run when a plaintiff has information of "circumstances to put [him] on *inquiry* or if [he] ha[s] *the opportunity to obtain knowledge* from sources open to [his] supervision." *Fox v. Ethicon Endo-Surgery, Inc.*, 110 P.3d 914, 917 (Cal. 2005). At that point, a plaintiff must conduct a reasonable investigation about the cause of his injury and is subsequently charged with the presumptive knowledge of the information that would have been revealed by such an investigation. *Fox*, 110 P.3d at 920. In order to rebut this presumption and toll the statute of limitations through the discovery rule, a plaintiff must plead facts showing (1) the "time and manner of discovery" and (2) the "inability to have made earlier discovery despite reasonable diligence" in investigating. *Id.* at 921. The burden is on the plaintiff to show diligence, and conclusory allegations will not withstand a motion to

dismiss. *Plumlee*, 2014 WL 4275519, at *8. If the discovery rule is invoked, the statute of limitations will be tolled until a reasonable investigation would have revealed the factual basis for that cause of action. *Fox*, 110 P.3d at 917.

Even though Ford is correct that UCL and CLRA claims in consumer cases generally accrue on the date of purchase, California Plaintiffs here were not charged with a duty to reasonably investigate until the alleged steering defect manifested in their vehicles. *See Plumlee*, 2014 WL 4275519, at *7; *Fox*, 110 P.3d at 920 (plaintiffs are not charged with knowledge under the discovery rule until "information of circumstances to put [them] on inquiry or if they have the opportunity to obtain knowledge from sources open to [their] investigation." (citation omitted)). Prior to that point, California Plaintiffs had no reason to suspect wrongdoing, and there was no fact or circumstance to prompt an investigation. Only when the defect manifested in their vehicles in 2013 and 2014, *see* SAC ¶ 36 (defect in Philips' 2011 Ford Fusion manifested in "fall of 2013"); ¶ 43 (defect in Goodman's 2011 Ford Fusion manifested "in 2014"); ¶ 53 (defect in Allison Colburn's 2010 Ford Fusion manifested "in October 2014"), were California Plaintiffs charged with a duty to investigate and presumptive knowledge of the defect. *Fox*, 110 P.3d at 920. The statute of limitations began to run at that point. *Id.* California Plaintiffs, thus, timely filed this action within the limitations periods.

Although Ford relies heavily on *Plumlee*, this reliance is misplaced because that case is distinguishable from the instant one. In *Plumlee*, the plaintiff bought a drug in 2005 and used it for three years. *Plumlee*, 2014 WL 4275519, at *7. She then stopped using the drug due to its failure to improve her condition. *Id*. at *7. At this point, the plaintiff was charged with a duty to investigate and the statute of limitations began to run, since the lack of improvement in her condition was the "circumstance[]" that should have caused a reasonable person to suspect wrongdoing. *Id.* at *6. The plaintiff, however, waited for more than four years—beyond the statute of limitations period under the UCL—before bringing her claim. *Id.* at *7. In attempting to invoke the discovery rule, the plaintiff in *Plumlee* failed to plead facts showing that she was

unable to discover the cause of her injury despite her reasonable diligence within those four years. Therefore, the court held that Plumlee's UCL claim was time-barred. *Id.*

Here, in contrast to *Plumlee*, California Plaintiffs' vehicles performed as expected up until their cars' EPAS systems failed. "Plaintiffs are required to conduct a reasonable investigation *after* becoming aware of an injury," and not before. *Fox*, 110 P.3d at 920. Therefore, California Plaintiffs need not allege facts showing diligence prior to the manifestation of the defect, as there was no duty to investigate prior to that point. Because the statutes of limitation did not begin to run until 2013 and 2014, when the defect manifested, the action was timely filed within the statutory periods provided for the UCL, CLRA, and fraudulent concealment claims. The Court therefore DENIES Ford's Motion to Dismiss California Plaintiffs' claims on statute of limitations grounds.

D. Fraudulent Omission Claims

As California Plaintiffs have now abandoned their affirmative misrepresentation claims, the four claims in the SAC all concern fraudulent omissions regarding the EPAS system defect. *See* SAC ¶¶ 144-45 (UCL unfair or unlawful prong); ¶ 154 (UCL fraudulent prong); ¶¶ 162, 164 (CLRA); ¶ 174 (fraudulent concealment claim). Accordingly, the Court addresses the four claims together as the "fraudulent omission" claims.

To state a valid claim for a fraudulent omission, California Plaintiffs must allege the "omission of a fact the defendant was obliged to disclose." *Daugherty v. Am. Honda Motor Co.*, 144 Cal. App. 4th 824, 835 (2006). "California federal courts have generally interpreted *Daugherty* as holding that '[a] manufacturer's duty to consumers is limited to its warranty obligations absent either an affirmative misrepresentation or a safety issue.'" *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1141 (9th Cir. 2012) (quoting *Oestreicher v. Alienware Corp.*, 322 F. App'x 489, 493 (9th Cir. 2009)). In addition, "Plaintiffs must sufficiently allege that a defendant was aware of a defect at the time of sale to survive a motion to dismiss." *Id.* at 1145.

Ford makes three arguments in support of its Motion to Dismiss the fraudulent omission

claims: (1) California Plaintiffs fail to adequately allege Ford's knowledge of the EPAS system defect at the time of purchase; (2) Ford had no duty to disclose the EPAS system defect because it is not an unreasonable safety hazard; and (3) California Plaintiffs fail to adequately allege an omission. Ford also argues (4) that Philips's claims "necessarily fail" because his allegations in the SAC are materially indistinguishable from his allegations in the FAC; and (5) that Plaintiff Ian Colburn's claims fail for lack of reliance or injury. The Court addresses each argument in turn, and finds California Plaintiffs' (except for Ian Colburn's) allegations of fraudulent omission sufficient to survive a motion to dismiss for failure to state a claim.

1. Ford's Knowledge

Ford's first argument is that California Plaintiffs fail to allege that Ford knew of the EPAS system defect when California Plaintiffs purchased their vehicles. Mot. at 11; *Wilson*, 668 F.3d at 1145 ("[P]laintiffs must sufficiently allege that a defendant was aware of a defect at the time of sale to survive a motion to dismiss."). The first named plaintiff to purchase one of the Vehicles was Allison Colburn, who purchased her new 2010 Ford Fusion on January 12, 2010. SAC ¶ 46. Goodman purchased her 2011 Ford Fusion on October 13, 2010. *Id.* ¶ 38. Philips purchased his 2011 Ford Fusion in March 2012. *Id.* ¶ 33. Accordingly, California Plaintiffs must allege Ford's knowledge prior to January 12, 2010.

California Plaintiffs cite several sources of information supporting their allegation that "Ford has outwardly maintained its commitment to the flawed EPAS system even though it has been aware that the EPAS system installed in the Defective Vehicles is prone to sudden, premature failure since *as early as 2010*." *Id.* ¶¶ 11, 81 (emphasis added). Specifically, California Plaintiffs rely on a May 2011 technical service bulletin ("TSB") stating that "[s]ome 2012 Focus vehicles equipped with electric power assisted steering (EPAS) . . . may exhibit a lack of power steering assist on vehicle start up." SAC ¶ 13. A second TSB was issued in December 2012, stating that "[s]ome 2013 Fusion vehicles built on or before 11/30/2012 may exhibit a loss of power steering assist." *Id.* ¶ 19. California Plaintiffs also cite internal communications among Ford employees,

from June 6, 2011 and March 23, 2012. *Id.* ¶¶ 14-16; 91-94. California Plaintiffs further cite the June 2012 NHTSA investigation into the Ford Explorer vehicles as evidence of Ford's knowledge of EPAS system defects. *Id.* ¶ 83. Other internal Ford e-mails suggest Ford's awareness of the Explorer issues in January 2011. *Id.* ¶ 97. Next, California Plaintiffs cite "hundreds of complaints from owners and lessees about steering problems with the Fusion line." *Id.* ¶¶ 17, 104-32. Some of these complaints are dated from 2010, but most are dated from 2012-2014. *Id.*

Ford contends that these allegations are insufficient, especially to show Ford's knowledge in January 2010, the time of Allison Colburn's purchase. Mot. at 11-12. Although the Court agrees that California Plaintiffs have not proved Ford's knowledge, they need not do so at the pleading stage. Rather, California Plaintiffs need only have plausibly alleged that Ford knew about the EPAS system defects "since as early as 2010." SAC ¶ 11. The Court finds that California Plaintiffs have done so.

The May 2011 TSB, newly alleged in the SAC, is especially relevant. As other courts have recognized, it is reasonable to infer that "the TSBs . . . were proceeded by an accretion of knowledge by Ford." *In re MyFord Touch Consumer Litig.*, 46 F. Supp. 3d 936, 958 (N.D. Cal. 2014); *see Falco v. Nissan N. Am., Inc.*, No. CV 13-00686 DDP (MANx), 2013 WL 5575065, at *6-7 (C.D. Cal. Oct. 10, 2013) (stating that, where defendant issued the first of several TSBs in July 2007 and further did a redesign in 2006 or 2007, that "permit[s] plausible inferences that [defendant] was aware of the defect at the time they sold the vehicles in 2005 and 2006"); *see also MacDonald v. Ford Motor Co.*, 37 F. Supp. 3d 1087, 1093 (N.D. Cal. 2014) (identifying "a number of facts" that support plaintiffs' knowledge allegations, including internal data, NHTSA complaints, and TSBs); *Decker v. Mazda Motor of Am., Inc.*, No. SACV 11-0873 AG MLGX, 2011 WL 5101705, at *5 (C.D. Cal. Oct. 24, 2011) (finding allegations of internal data and TSBs issued within one of year of purchase sufficient to plead knowledge). Furthermore, "[o]ne could reasonably infer that the TSB was issued in response to consumer complaints that surfaced immediately after rollout. That there were such complaints is substantiated by the NHTSA

complaints identified by Plaintiffs." *MyFord Touch*, 46 F. Supp. 3d at 958. As the Court must "accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party," the Court finds these allegations sufficient at the motion to dismiss stage. *Manzarek*, 519 F.3d at 1031.

The cases cited by Ford are distinguishable. For example, in *Wilson* the Ninth Circuit rejected allegations of the defendant's knowledge where the plaintiff relied solely on customer complaints, many of which were undated or post-dated the plaintiff's purchase. *See Wilson*, 668 F.3d at 1148 ("Plaintiffs have submitted fourteen customer complaints, but the second amended complaint does not indicate where or how the complaints were made (*e.g.*, via HP's website). Twelve of those complaints are undated. The two complaints that are dated were made over two years after Plaintiffs purchased the Laptops."); *see also Williams v. Yamaha Motor Corp., U.S.A.*, No. CV 13-05066 BRO, 2015 WL 2375906, at *10 (C.D. Cal. Apr. 29, 2015) (rejecting knowledge allegations in part because plaintiffs "failed to allege even a single complaint that predates the sale of any first-generation motor."); *Callaghan v. BMW of N. Am., LLC*, No. 13-CV-04794-JD, 2014 WL 6629254, at *4 (N.D. Cal. Nov. 21, 2014) (rejecting knowledge based on post-purchase customer complaints). Other cases cited by Ford rejected the plaintiffs' allegations of knowledge where the plaintiff did not allege knowledge that the defect caused a safety hazard. *See, e.g.*, *Marchante v. Sony Corp. of Am.*, No. 10CV795 JLS RBB, 2011 WL 6027602, at *4 (S.D. Cal. Dec. 5, 2011) ("[A]ll of Plaintiffs allegations regarding Sony's knowledge of the alleged defect pertain to Sony's knowledge that the defect causes excess heat that results in the deterioration of the television display, not that the defect poses any safety hazard.").

Here, California Plaintiffs' allegations, which include internal testing, dated internal communications, dated customer complaints, and dated TSBs, are sufficient to plausibly allege that Ford had knowledge of the EPAS system defect at the time California Plaintiffs purchased their vehicles. Indeed, other courts have allowed plaintiffs to proceed past the motion to dismiss on much thinner allegations. *See, e.g.*, *Mui Ho v. Toyota Motor Corp.*, 931 F. Supp. 2d 987, 998

(N.D. Cal. 2013) ("Plaintiffs claim that Defendants had non-public, internal data about the Class Vehicles' headlamp problems, including 'pre-release testing data, early consumer complaints about the defect to Defendants' dealers who are their agents for vehicle repairs, dealership repair orders, testing conducted in response to those complaints, and other internal sources.'"). Accordingly, the Court will not dismiss the fraudulent omission claims for failure to adequately allege Ford's knowledge.

2. Ford's Duty to Disclose

Ford's next argument is that Ford did not have a duty to disclose the EPAS system defect, and therefore California Plaintiffs cannot state a fraudulent omission claim under *Daugherty*. *See* 144 Cal. App. 4th at 835 (plaintiffs must allege the "omission of a fact the defendant was obliged to disclose."). California Plaintiffs argue that Ford was required to disclose the EPAS system defect because the defect constituted a material safety hazard. *Wilson*, 668 F.3d at 1141; *Smith v. Ford Motor Co.*, 749 F.Supp.2d 980, 987–88 (N.D. Cal. 2010). Ford argues that California Plaintiffs' allegations fail because the risk of EPAS system failure is at most a "safety hazard" and not an "*unreasonable* safety hazard." Mot. at 19 (emphasis in original); Reply at 12. Ford's argument is unconvincing. Whether the alleged defects are an unreasonable safety hazard is a question of fact, and based on the allegations in the SAC, the Court cannot say that California Plaintiffs' allegations in that regard are deficient as a matter of law.

In the SAC, California Plaintiffs allege that the EPAS system failure causes "increased risk of losing control of their vehicles when the EPAS system fails." SAC ¶ 3. California Plaintiffs also allege that "[w]hen the EPAS system fails while a Defective Vehicle is on the road and the driver's ability to turn the vehicle is greatly reduced, occupants of the Defective Vehicles, occupants of surrounding vehicles, and pedestrians are exposed to the risk of collisions and grave bodily harm." *Id.* ¶ 5. The SAC continues in this vein:

> 101. The marked increase in the difficulty of steering that arises when the EPAS system fails and the steering system in the Defective Vehicles defaults to manual steering creates an unreasonable safety risk (both in the Ford Explorer and in the Defective Vehicles).

> 102. Although failure of the EPAS system always compromises safety, this is particularly true when a vehicle is traveling at high speeds or on unlevel terrain. The sudden shock of needing to immediately exert great effort to control the vehicle makes the Defective Vehicles extremely susceptible to accidents when the EPAS system fails.
>
> 103. The danger created by sudden and unexpected failure of the EPAS system is clear from complaints reported to NHTSA about loss of control as a result of failure of the EPAS system. Moreover, certain complaints made to NHTSA suggest that failure of the EPAS system also may disable the braking system. One West Virginia owner reported that she rolled down a hill into a wooded area after the EPAS of her vehicle failed. In addition to losing the ability to steer the vehicle, the braking system failed to engage and the owner "lost complete control of the vehicle."

SAC ¶¶ 101-03. As California Plaintiffs' allegations explain, even if the EPAS only failed "in low speed parking lot maneuvers," *id.* ¶ 14, such a failure could still amount to a material safety hazard.

California Plaintiffs also tie the steering incidents they experienced to the EPAS system's alleged defects. *See, e.g.*, SAC ¶ 80 (listing five alleged defects in the EPAS system and explaining how each could lead to failure). These allegations distinguish the instant case from *Wilson*, where the plaintiffs' claim was dismissed for failure to link the defect to the safety risk, and not, as Ford argues, *see* Mot. at 21, because a burning laptop is not a safety hazard, *see Wilson* at 1144-45 ("As Plaintiffs do not plead any facts indicating how the alleged design defect, *i.e.*, the loss of the connection between the power jack and the motherboard, causes the Laptops to burst into flames, the District Court did not err in finding that Plaintiffs failed to plausibly allege the existence of an unreasonable safety defect.").

Ford's attempt to further parse this argument in its Reply is just as unconvincing. Ford argues:

> the risk of injury posed by any vehicle defect would (all else being equal) be greatest when driving at high speed. But at high speed, a driver rarely if ever *needs* power-assisted steering; in fact, dramatic steering motions at high speed would likely pose a risk of injury themselves. Power-assisted steering is very helpful at low speeds, by contrast, such as when trying to park, but the risk of injury is correspondingly low.

Reply at 12-13 (emphasis in original). Ford's argument is not persuasive at the motion to dismiss stage, as the materiality of Ford's alleged nondisclosure is a factual question for the jury to decide.

See, e.g., *MyFord Touch*, 46 F. Supp. 3d at 957 (materiality is generally a question of fact); *Blaue v. Kissinger*, 2006 WL 2092380, *9 n.6 (N.D. Ill. July 24, 2006) ("[T]he question of whether a defendant's product is unreasonably dangerous for failure to incorporate certain safety devices is a question to be decided by a jury."). At the very least, it is plausible that a total failure in a vehicle's power steering—at high or low speeds—constitutes an unreasonable safety hazard. *See* SAC ¶¶ 101-03. Accordingly, the Court finds that, for purposes of a motion to dismiss, California Plaintiffs have alleged a material safety defect that Ford had a duty to disclose.

3. Ford's Alleged Omissions

Ford argues that California Plaintiffs' fraudulent omissions claims do not meet Rule 9(b)'s pleading standard. In *Kearns*, the Ninth Circuit explained that "nondisclosure is a claim for misrepresentation in a cause of action for fraud, [which] (as any other fraud claim) must be pleaded with particularity under Rule 9(b)." 567 F.3d at 1127. In *Kearns*, the nondisclosure claims failed because they "were couched in general pleadings alleging Ford's intent to conceal from customers that [certified pre-owned] vehicles were essentially the same as ordinary used vehicles. Such general pleadings do not satisfy the heightened pleading requirements of Rule 9(b)." *Id.* Ford argues here that California Plaintiffs' claims fail for similar reasons. Mot. at 12-13.

Ford relies in part on *Marolda v. Symantec Corp.*, 672 F. Supp. 2d 992, 1002 (N.D. Cal. 2009), which required the plaintiff to identify "where the omitted information should or could have been revealed, as well as provide representative samples of advertisements, offers, or other representations that plaintiff relied on to make her purchase and that failed to include the allegedly omitted information." *Marolda* involved an alleged fraudulent omission within a particular advertisement produced by the defendant. The plaintiff there claimed to know about the advertisement but failed to produce or describe it to the court. *See id.* at 1001. As other courts have recognized, however, "the *Marolda* requirements are not necessarily appropriate for all cases alleging a fraudulent omission." *Velasco v. Chrysler Grp. LLC*, No. CV 13-08080 DDP VBKX,

2014 WL 4187796, at *4 (C.D. Cal. Aug. 22, 2014) (quoting *Overton v. Bird Brain, Inc.*, 2012 WL 909295 (C.D. Cal. Mar. 15, 2012). In *MacDonald*, moreover, the court found that the plaintiffs satisfied Rule 9(b):

> Plaintiffs adequately allege the "who what when and how," given the inherent limitations of an omission claim. In short, the "who" is Ford, the "what" is its knowledge of a defect, the "when" is prior to the sale of Class Vehicles, and the "where" is the various channels of information through which Ford sold Class Vehicles.

MacDonald, 37 F. Supp. 3d at 1096.

This Court finds *MacDonald* more on point than *Marolda*. California Plaintiffs allege that Ford's "television advertisements concerning the vehicles," "material concerning the Fusion on Ford's website," "window sticker[s]," and "brochure concerning the Fusion" did not include relevant information about the EPAS system and its possible failures. SAC ¶ 40. Ford, not surprisingly, does not argue that it disclosed the EPAS system's alleged failures.

As Judge Pregerson recently explained, in applying the reasoning from *MacDonald*:

> Plaintiff has identified the "who" (Chrysler); the "what" (knowing about yet failing to disclose to customers, at the point of sale or otherwise, that the TIPM 7 installed in Plaintiffs' vehicles was defective and posed a safety hazard); the "when" (from the time of the sale of the first Class Vehicle until the present day); and the "where" (the various channels through which Chrysler sold the vehicles, including the authorized dealers where Plaintiffs'[sic] purchased their vehicles). The court therefore concludes that Plaintiffs' factual averments are sufficient to allow Chrysler to prepare an adequate answer from the allegations.

Velasco, 2014 WL 4187796, at *5 (citations omitted). The same analysis applies here: California Plaintiffs have identified the "who" (Ford); the "what" (knowing about yet failing to disclose to customers, at the point of sale or otherwise, that the EPAS system installed in California Plaintiffs vehicles was defective and posed a material safety hazard); the "when" (from the time of the sale of the first vehicle until the present day); and the "where" (the various channels through which Ford sold the vehicles, including the authorized dealers where California Plaintiffs' purchased their vehicles). Accordingly, the Court finds that California Plaintiffs have sufficiently alleged

that Ford fraudulently omitted information about the EPAS system in the Vehicles.[9]

For all these reasons, the Court finds that California Plaintiffs have alleged a fraudulent omission and will not dismiss the SAC on that basis.

4. Plaintiff Philips's Allegations

Ford also argues that Philips's claims "necessarily fail" because his allegations in the SAC are materially indistinguishable from his allegations in the FAC. Mot. at 8-9. The Court does not find this argument persuasive. The Court's prior ruling focused on the inadequacy of Plaintiffs' affirmative misrepresentation allegations, which California Plaintiffs do not replead. ECF No. 48 at 9:1-23 (explaining that Plaintiffs' affirmative misrepresentation allegations were vague and conclusory). Considering that the only theory put forth in the SAC is a fraudulent omission theory, the Court finds the allegations relating to Philips sufficient to survive a motion to dismiss. The SAC adds specificity with regard to Ford's allegedly misleading marketing tactics and presents new allegations related to Ford's alleged knowledge of the EPAS system defect. *See* SAC ¶¶ 9-10 (allegations relating to marketing materials); ¶¶ 81-132 (allegations relating to knowledge). Accordingly, the Court finds the allegations relating to Philips sufficient at this stage of the litigation.

5. Plaintiff Ian Colburn Fails to Allege Reliance or Injury

Ford moves to dismiss the fraudulent omission claims brought by Ian Colburn due to his failure to allege reliance and injury, which are required elements of his claims. For the reasons stated below, the Court finds that Ian Colburn fails to allege actual reliance or injury for all four of his claims and thus dismissed his claims with prejudice.

This Court held in *Bruton* that claims brought under the unlawful or unfair prong of the UCL, like claims brought under the UCL's fraud prong, must allege actual reliance and injury, especially if they are based on a defendant's misrepresentations. *See Bruton v. Berber Products*

[9] The Court's analysis applies to Allison Colburn, Goodman, and Philips. As explained in Part III.D.5 *infra*, Ian Colburn's claims fail for lack of reliance and lack of injury. Those omissions apply to all the named plaintiffs except, as explained below, Ian Colburn.

Co., No. 12-CV-02412-LHK, 2014 WL 172111, at *6 (N.D. Cal. Jan. 15, 2014) (citing *in re Tobacco II Cases*, 46 Cal. 4th 298, 326 (2009) (holding that Proposition 64 imposes an actual reliance requirement on plaintiffs prosecuting a private enforcement action under the UCL's fraud prong)); *see also In re Actimmune Mktg. Litig.*, No. 08-CV-2376, 2010 WL 3463491, at *8 (N.D. Cal. Sept. 1, 2010) (holding "that a plaintiff must plead 'actual reliance,' even if their [sic] claim arises under the unlawful or unfair prongs, so long as the pleadings assert a cause of action grounded in misrepresentation or deception"), *aff'd*, 464 Fed. App'x 651 (9th Cir. 2011). Similarly, the CLRA also requires that a plaintiff plead reliance and injury. *See Durell v. Sharp Healthcare*, 193 Cal. App. 4th 1350, 1367 (2010); *Aron v. UHaul Co.*, 143 Cal. App. 4th 796, 802 (2006). Finally, a claim for fraudulent concealment under California law requires allegations of (1) knowing concealment or nondisclosure by the defendant (2) with the intent to defraud, which induces (3) actual reliance and (4) causes injury to the plaintiff. *625 3rd St. Assocs., L.P. v. Alliant Credit Union*, 623 F. Supp. 2d 1040, 1050 (N.D. Cal. 2009) (citing *Hoey v. Sony Elecs., Inc.*, 515 F. Supp. 2d 1099, 1104 (N.D. Cal. 2007)). It is clear from these cases that all four of Ian Colburn's claims require allegations of actual reliance and injury.

In the SAC, Ian Colburn alleges that he was given a 2010 Ford Fusion by his mother, Allison Colburn. The steering wheel in his vehicle allegedly failed, causing him to take it to a Ford dealership for repairs. SAC ¶¶ 51-54. Nowhere in the SAC does Ian Colburn allege that he viewed any promotional material or received any representation from Ford with regards to his vehicle. As in *Bruton*, a plaintiff has no standing to assert claims based on statements he did not view. *Bruton*, 2014 WL 172111, at *9 (citing *Kwikset v. Super. Ct.*, 51 Cal. 4th 310, 326 (2011)). Because Ian Colburn does not allege that he viewed any statement from Ford before he came into possession of the vehicle, any fraudulent concealment that may have occurred could not have led to justifiable reliance on his part. What's more, Ian Colburn does not allege in the SAC that he suffered any injury. Because he fails to adequately plead actual reliance or injury with respect to each of his four claims, the Court GRANTS Ford's Motion to Dismiss all of Ian Colburn's claims.

The Court does so without leave to amend because the Court, in granting Ford's prior Motion to Dismiss, told Plaintiffs that they must identify "specific materials, like car window stickers and websites, that were reviewed by plaintiffs and contained material omissions" in order to survive a motion to dismiss. ECF No. 48 at 9:7-10:17. As Plaintiff Ian Colburn has made no such allegation despite being on notice, the Court finds that allowing further amendment would be futile. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 725-26 (9th Cir. 2000) ("A district court acts within its discretion to deny leave to amend when amendment would be futile . . . ."); *see also Chodos v. West Publ'g Co.*, 292 F.3d 992, 1003 (9th Cir. 2002) ("[W]hen a district court has already granted a plaintiff leave to amend, its discretion in deciding subsequent motions to amend is particularly broad." (internal quotation marks omitted)).

E. CLRA Claim: Whether California Plaintiffs Allege a "Transaction"

The CLRA provides that a consumer who suffers damage "as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 may bring an action against that person." Cal. Civ. Code § 1780(a). Section 1770, in turn, lists certain methods, acts, or practices and declares that they are "unlawful" if "undertaken by any person in *a transaction* intended to result or which results in the sale or lease of goods or services to any consumer." *Id.* § 1770(a) (emphasis added). The statute defines "transaction" as "an agreement between a consumer and another person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement." *Id.* § 1761(e). Ford argues that although California Plaintiffs allege they purchased their vehicles, "they do not allege this occurred in any 'transaction' with Ford or one of its agents." Mot. at 22.

The Court is not convinced. California Plaintiffs all allege that they purchased their vehicles directly from Ford dealerships. *See* SAC ¶ 33 (Philips purchased 2011 Ford Fusion from Salinas Valley Ford); ¶ 38 (Goodman purchased 2011 Ford Fusion from Future Ford of Clovis); ¶ 45 (Allison Colburn purchased 2010 Ford Fusion from Galpin Ford in Granada Hills).

Allegations that vehicles were purchased from an authorized dealership are typically sufficient to state a claim against the vehicle manufacturer under the CLRA. *See, e.g., Chamberlan v. Ford Motor Co.*, No. C 03-2628 CW, 2003 WL 25751413, at *8 (N.D. Cal. Aug. 6, 2003) (finding allegations that vehicles were purchased from "authorized dealerships acting as [Ford's] agents" sufficient to state a claim against Ford under the CLRA). Indeed, a plain reading of the CLRA does not require a direct transaction between a consumer and a manufacturer. Rather, the statute broadly defines transaction as "an agreement between a consumer and *another person*." Cal. Civ. Code § 1761(e) (emphasis added). This broad definition is in keeping with the CLRA's command that the statute be "liberally construed and applied to promote its underlying purposes." *Id.* § 1760.

It comes as no surprise, then, that the vast majority of courts to address the issue have rejected Ford's argument, holding instead that a plaintiff need not allege a direct transaction with the manufacturer. *See, e.g.*, *Falco*, 2015 WL 1534800, at *6 (finding that plaintiffs need not allege a "direct" transaction between a consumer and the manufacturer in order to properly plead a CLRA claim); *Rossi v. Whirlpool Corp.*, No. 2:12-cv-00125, 2013 WL 5781673, at *10 (E.D. Cal. Oct. 25, 2013) (holding that plaintiffs adequately pled their CLRA claim because "where a manufacturer had exclusive knowledge of a defect and the consumer relied upon that defect, the CLRA's protection extends to the manufacturer as well, regardless of whether the consumer dealt directly with the manufacturer"); *Tietsworth v. Sears*, 720 F. Supp. 2d 1123, 1140 (N.D. Cal. 2010) (rejecting defendants' argument that plaintiffs were required to allege a direct transaction to state a claim under the CLRA because "when a plaintiff can demonstrate that the manufacturer had exclusive knowledge of a defect and the consumer relied upon that defect, the CLRA's protection extends to the manufacturer as well, regardless of whether the consumer dealt directly with the manufacturer"); *Keilholtz v. Superior Fireplace Co.*, 2009 WL 839076, at *3-4 (rejecting defendants' argument that a direct transaction must be alleged to state a claim under the CLRA because defendants "fail to cite any authority to support the proposition that a CLRA claim can be

asserted only against defendants who sell goods or services directly to consumers").

Ford's citations to the contrary are unpersuasive. In *Green v. Canidae Corp.*, No. CV 09-0486 GAF PLAX, 2009 WL 9421226, at *4 (C.D. Cal. June 9, 2009), the district court dismissed the plaintiffs' CLRA claim against a pet food manufacturer because "the legislation clearly contemplates consumer transactions between a consumer and a retail seller, and does not apply to commercial transactions between a retailer and its vendors to acquire a supply of goods for resale." Not only does the weight of the persuasive authority fall against *Green*, but *Green*'s analysis is itself cursory. *Green* concludes summarily that permitting consumers to directly sue the manufacturers would contradict the dual CLRA purposes of consumer protection and efficiency. But *Green* offers no reason for so concluding. On the contrary, it seems that preventing consumers from suing manufacturers under the CLRA would require them to resort to less consumer-friendly causes of action for breach of warranty or common law fraud. *See Gray v. BMW of N. Am., LLC*, No. 13-CV-3417-WJM-MF, 2014 WL 4723161, at *6 (D.N.J. Sept. 23, 2014) (rejecting *Green* for the same reasons). In addition, *Green* distinguished *Chamberlan* on grounds that, in *Chamberlan*, "the used car dealers were authorized dealerships acting as agents of Ford." 2009 WL 9421226, at *4. Here, as in *Chamberlan*, California Plaintiffs all allege that they purchased their vehicles from authorized Ford dealerships. *See* SAC ¶¶ 33, 38, 45

Ford's citations to *Cirulli v. Hyundai Motor Co.*, No. SACV 08-0854 AG, 2009 WL 4288367, at *4 (C.D. Cal. Nov. 9, 2009), and *Fulford v. Logitech*, Inc., No. C-08-2041 MMC, 2008 WL 4914416, at *1 (N.D. Cal. Nov. 14, 2008), are even less persuasive. In *Cirulli*, the district court sustained the plaintiffs' CLRA claims against Hyundai Motor America ("HMA"), with whom plaintiffs had a warranty agreement, but dismissed their CLRA claims against Hyundai Motor Company ("HMC"), HMA's parent company, because there was "no comparable transaction" with HMC. 2009 WL 4288367, at *4. Here, by contrast, there is no dispute that California Plaintiffs all had a warranty agreement with Ford. *See* ECF No. 22 at 7 (Ford's first round Motion to Dismiss acknowledging that "[e]ach of the plaintiffs' cars was covered by an

express 'bumper-to-bumper' warranty for the first three years or 36,000 miles driven"). Finally, in *Fulford*, the district court held, without analysis, that the plaintiff had "failed to allege that Logitech engaged in such acts in the course of a transaction with him." 2008 WL 4914416, at *1. In *Fulford*, unlike here and in *Chamberlan*, the products purchased in *Fulford* were not from "authorized dealerships acting as agents" of the manufacturer defendants. *Id.* at *1 n.2 (ellipsis and internal quotation marks omitted). Because California Plaintiffs purchased their vehicles from authorized Ford dealers, the instant case is therefore far more like *Chamberlan* than it is like *Green* or *Fulford*.

Accordingly, the Court DENIES Ford's Motion to Dismiss California Plaintiffs' CLRA claims for failure to allege a "transaction."

F. Equitable Relief Claims: UCL Claims and CLRA Injunctive Relief

Ford next argues that the Court should dismiss California Plaintiffs' equitable claims—to wit, their UCL claims and CLRA claims for injunctive relief. Mot. at 23-24. The Court should do so, Ford says, because California Plaintiffs have an adequate remedy at law. *Id.* For the second time, the Court agrees. *See* ECF No. 48 at 10:22-11:17 (granting Ford's first round Motion to Dismiss Plaintiffs' equitable claims due to "an adequate remedy at law").

Apart from civil penalties, which are not at issue in this case, the UCL provides only the equitable remedies of restitution and injunctive relief. *See Kor. Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1144 (2003); *Madrid v. Perot Sys. Corp.*, 130 Cal. App. 4th 440, 452 (2005). A plaintiff seeking equitable relief in California must establish that there is no adequate remedy at law available. *See Knox v. Phoenix Leasing, Inc.*, 29 Cal. App. 4th 1357, 1368 (1994). Statutory relief under the UCL "is subject to fundamental equitable principles, including inadequacy of the legal remedy." *Prudential Home Mortg. Co. v. Super. Ct.*, 66 Cal. App. 4th 1236, 1249 (1998).

As the UCL provides only equitable remedies, *see* SAC ¶¶ 149, 159 (seeking restitution), and California Plaintiffs have an adequate remedy at law in the form of their claim for fraudulent

concealment, the Court dismisses California Plaintiffs' UCL claims. *See, e.g.*, *Durkee v. Ford Motor Co.*, No. C 14-0617 PJH, 2014 WL 4352184, at *3 (N.D. Cal. Sept. 2, 2014) ("Because the UCL provides for only equitable remedies, and plaintiffs have an adequate remedy at law for the alleged Song-Beverly Act violation, plaintiff's UCL claim must be dismissed."); *Gardner v. Safeco Ins. Co. of Am.*, No. 14-CV-02024-JCS, 2014 WL 2568895, at *7 (N.D. Cal. June 6, 2014) (dismissing UCL claim where plaintiffs' "claims for breach of contract and breach of the implied covenant of good faith and fair dealing may provide an adequate remedy [at law]"); *Rhynes v. Stryker Corp.*, No. 10-5619 SC, 2011 WL 2149095, at *3-4 (N.D. Cal. May 31, 2011) (dismissing plaintiffs' UCL claims because their "products liability claims" afforded them "an adequate remedy at law to redress their alleged injuries"). California Plaintiffs do not attempt to distinguish any of these cases, nor do they argue that their claims for fraudulent concealment are an inadequate remedy at law. *See* Opp. at 21-22. Moreover, the cases cited by California Plaintiffs do not even address the issue. *See, e.g.*, *MyFord Touch*, 46 F. Supp. 3d at 952 (not addressing equitable relief). Although California Plaintiffs "must establish that there is no adequate remedy at law available," *Durkee*, 2014 WL 4352184, at *2, the SAC contains no allegation of inadequacy.

To the extent California Plaintiffs assert a claim for injunctive relief in addition to damages under the CLRA, *see* SAC ¶¶ 169-70 (discussing damages only), that too is dismissed for the same reasons, *see Durkee*, 2014 WL 4352184, at *3 (dismissing entire CLRA claim due to an adequate remedy at law where plaintiffs sought "only injunctive relief" under the CLRA). Again, California Plaintiffs provide no answer.

As a result, the Court GRANTS Ford's Motion to Dismiss California Plaintiffs' UCL claims and CLRA claims for injunctive relief. The Court does so without leave to amend because the Court has previously dismissed Plaintiffs' equitable claims due to an adequate remedy at law. *See* ECF No. 48 at 10:22-11:17. The Court therefore finds that allowing further amendment would be futile. *See Chappel*, 232 F.3d at 725-26 ("A district court acts within its discretion to

deny leave to amend when amendment would be futile . . . ."); *see also Chodos*, 292 F.3d at 1003 ("[W]hen a district court has already granted a plaintiff leave to amend, its discretion in deciding subsequent motions to amend is particularly broad." (internal quotation marks omitted)). However, as stated *supra* at Part III.D., California Plaintiffs may continue to assert their CLRA claims for damages.

G. Request to Strike Nationwide Claims

Lastly, Ford argues that the Court should strike the "nationwide" class claims that are repled in the SAC. Mot. at 25 (citing SAC at 39 n.7). Although the Court explained that Plaintiffs would need to add individuals with standing under the laws of each state in order to reassert Plaintiffs' nationwide claims, *see* ECF No. 48 at 12:3-13:7, the Court accepts Plaintiffs' representation that they have repled these claims in order to preserve tolling and to avoid a possible finding of waiver by an appellate court down the road, *see* SAC at 39 n.7. In light of Plaintiffs' representation, the Court finds it unnecessary to strike the requested matter from the SAC at the pleading stage. *See* Fed. R. Civ. P. 12(f). Accordingly, the Court hereby DENIES Ford's request to strike the nationwide claims from the SAC.

IV. CONCLUSION

For the foregoing reasons, the Court rules as follows:

- The Court GRANTS with prejudice Ford's Motion to Dismiss as to Plaintiff Ian Colburn;
- The Court DENIES Ford's Motion to Dismiss at to California Plaintiffs' claims for fraudulent concealment and CLRA claims for damages;
- The Court GRANTS with prejudice Ford's Motion to Dismiss as to California Plaintiffs' UCL claims and CLRA claims for injunctive relief; and
- The Court DENIES Ford's request to strike the nationwide claims from the SAC.

IT IS SO ORDERED.

Dated: July 7, 2015

Lucy H. Koh

LUCY H. KOH
United States District Judge