UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SA CV 15-2052-DOC (KESx) Date: June 24, 2016

Title: BILLY GLENN, ET AL. V. HYUNDAI MOTOR AMERICA, ET AL.

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Deborah Goltz	Not Present
Courtroom Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:	ATTORNEYS PRESENT FOR DEFENDANT:
None Present	None Present

PROCEEDINGS (IN CHAMBERS): ORDER GRANTING IN PART DEFENDANT'S MOTION TO DISMISS AND/OR STRIKE ALLEGATIONS IN FIRST AMENDED COMPLAINT [41]

Before the Court is Defendant Hyundai Motor America's ("HMA," "Hyundai," or "Defendant")[1] Motion to Dismiss and/or Strike Allegations in First Amended Complaint ("Motion") (Dkt. 41). The Court finds this matter appropriate for resolution without oral argument. Fed. R. Civ. P. 78; L.R. 7-15. Having reviewed the moving papers and considered the parties' arguments, the Court hereby GRANTS IN PART the Motion.

I. Background

The following facts are drawn from Plaintiffs Billy Glenn, Kathy Warburton, Kim Fama, and Corrine Kane's (collectively, "Plaintiffs") Corrected First Amended Complaint ("FAC") (Dkt. 38).

The instant case involves panoramic sunroofs – larger versions of sunroofs that span almost the whole roof – installed in several models of Hyundai vehicles. FAC ¶¶ 1,

[1] The Court notes there is another Defendant in this action, Hyundai Motor Corporation. However, the Motion was only brought by HMA.

15. Plaintiffs specifically focus on the factory-installed panoramic sunroofs in the 2011–2016 Hyundai Sonata, Tuscon, and Veloster, and the 2013–2016 Hyundai Sante Fe, Sante Fe Sport, and Elantra GT (collectively, the "Class Vehicles"). *Id.* ¶ 15.

Panoramic sunroofs, introduced in the mid-2000s, are an alternative to traditional sunroofs. *Id.* ¶¶ 1, 16. Defendant Hyundai "markets the panoramic sunroofs as a luxury upgrade, since the sunroofs provide extra light and an 'open air' feeling while driving, and charges its customers several thousand dollars for the upgrade." *Id.*

HMA makes these sunroofs out of "tempered glass" – a type of glass that is processed in a way that makes it stronger than non-tempered glass. *Id.* ¶ 18. In recent years, HMA switched to using a thinner glass for its panoramic sunroofs that is difficult to temper properly, and thus, more susceptible to compromise. *See id.* ¶ 19. Indeed, the glass used by Hyundai "cannot withstand the pressures and flexing that the sunroof and vehicle demand," *id.* ¶ 23; as a result, the panoramic sunroofs are "prone to spontaneous and dangerous shattering," even under normal driving conditions, *id.* ¶¶ 23, 25. The shattering is so jarring that drivers "have compared it to the sound of a gunshot." *Id.* ¶ 2.

Plaintiffs allege HMA has "long known" of this hazard. *Id.* ¶ 25. On October 2, 2012, the National Highway Traffic and Safety Administration ("NHTSA") launched an investigation into the 2012 Hyundai Veloster after receiving numerous complaints of shattering panoramic sunroofs. *Id.* ¶ 26. In response to this investigation, Hyundai recalled the 2012 Veloster vehicles produced from July 4, 2011 through October 31, 2011. *Id.* ¶ 28. Separately, the Korean Automobile Testing & Automobile Research Institute ("KATRI"), South Korea's automotive safety government agency, began an investigation into several automotive manufacturers' sunroofs, including Hyundai. *Id.* ¶¶ 3, 29.

Despite these investigations and knowledge of this defect since at least 2012, HMA continues to conceal this information from potential consumers. *See id.* ¶ 43. HMA does not warn consumers at the point of sale, does not instruct dealerships to do so, and has made no other effort to alert Hyundai drivers about the risks of the panoramic sunroofs. *Id.*

Each of the four named Plaintiffs owned Hyundai vehicles with panoramic sunroofs that shattered. Billy Glenn ("Glenn") purchased a new 2014 Hyundai Sante Fe Sport in September 2014 from the Eastern Shore Hyundai dealership in Daphne, Alabama. *Id.* ¶ 47. Glenn researched the vehicle online, including on Hyundai's website, and spoke with dealership personnel prior to purchasing the vehicle. *Id.* In February 2015, Glenn was driving with his wife and daughter when the panoramic sunroof

shattered without warning. *Id.* ¶ 48. Glenn contacted the dealership and HMA, but both refused to cover the costs of repair. *Id.* ¶ 50. Subsequently, Glenn filed a claim with his insurance company and paid a deductible in connection with the sunroof replacement. *Id.* That new panoramic sunroof spontaneously shattered in March 2015. *Id.*

Kathy Warburton ("Warburton") purchased a new 2014 Hyundai Sante Fe in September 2014 from the Garlyn Shelton Hyundai dealership located in Bryan, Texas. *Id.* ¶ 52.[2] Prior to her purchase, Warburton conducted online research, read Consumer Reports reviews of the vehicle, and spoke with dealership personnel. *Id.* A few months after her purchase, Warburton was driving with her daughter when the sunroof shattered. *Id.* ¶ 53. HMA refused to cover the costs; Warburton then filed a claim with her insurance company and incurred rental car costs. *Id.* ¶ 54.

In October 2013, Kim Fama ("Fama") purchased a new 2013 Hyundai Elantra GT from Salem Ford Hyundai in Salem, New Hampshire. *Id.* ¶ 56. Like the other Plaintiffs, Fama conducted research prior to purchasing the car, the panoramic sunroof in her car shattered, and HMA refused to cover the cost of repair. *Id.* ¶¶ 56–57.

Corrine Kane ("Kane"), a citizen and resident of Vancouver, Washington, purchased a 2011 Hyundai Tuscon in November 2011 through a vehicle broker based in California. *Id.* ¶¶ 7, 60. Kane does not specifically allege where she purchased the vehicle. Kane's research prior her purchase of the car included visiting Hyundai's website and looking at safety reviews. *Id.* ¶ 60. After her car's panoramic sunroof shattered and HMA refused to pay for repairs, Kane incurred insurance and rental car costs. *Id.* ¶¶ 61–62. Kane subsequently sold her car "because she felt unsafe driving it." *Id.* ¶ 62.

All Plaintiffs allege that had "Hyundai adequately disclosed the panoramic sunroof defect," they would not have purchased their vehicles, or "would have paid substantially less" for them. *Id.* ¶¶ 51, 55, 59, 63.

Based on the allegations that HMA failed to disclose the panoramic sunroof defect, Plaintiffs assert the following claims against HMA: (1) all Plaintiffs allege a violation of California's Unfair Competition Law ("UCL"), California Business & Professions Code § 17200, *et seq.*, (2) Glenn individually and on behalf of the proposed nationwide class alleges a violation of the California Consumers Legal Remedies Act

[2] The Garlyn Shelton Hyundai is now called Brazos Valley Hyundai. *Id.* ¶ 52.

("CLRA"), California Civil Code § 1750, *et seq.*,[3] (3) all Plaintiffs allege unjust enrichment, and (4) Glenn alleges a violation of the Magnuson-Moss Warranty Act ("MMWA"). *See generally* FAC. "In the event California law does not apply," Plaintiffs bring claims "under the consumer protection laws of the states in which dealership or entity" selling the vehicles in question is located. *Id.* ¶ 100. In particular, Plaintiffs allege Hyundai's practices violate Alabama's Deceptive Trade Practices Act, New Hampshire's Consumer Protection Act, Texas' Deceptive Trade Practices-Consumer Protection Act, and the Washington Consumer Protection Act. ¶¶ 110–113.

Plaintiffs also bring this putative class action on behalf of "[a]ll persons who purchased or leased a Class Vehicle in the United States." *Id.* ¶ 65. In the alternative to a nationwide class, Plaintiffs seek to represent four separate state classes – an Alabama Class, a New Hampshire Class, a Texas Class, and a Washington Class – consisting of all persons who purchased or leased a Class Vehicle in those states. *Id.*

II. Legal Standard

A. Motion to Dismiss

Under Federal Rule of Civil Procedure 12(b)(6), a complaint must be dismissed when a plaintiff's allegations fail to set forth a set of facts which, if true, would entitle the complainant to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (holding that a claim must be facially plausible in order to survive a motion to dismiss). The pleadings must raise the right to relief beyond the speculative level; a plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). On a motion to dismiss, the court accepts as true a plaintiff's well-pleaded factual allegations and construes all factual inferences in the light most favorable to the plaintiff. *See Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). However, the court is not required to accept as true legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678.

For claims sounding in fraud, a complaint must be dismissed when a plaintiff fails to meet the heightened pleading requirements of Federal Rule of Civil Procedure 9(b). *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009); *see* Fed. R. Civ. P. 9(b). Rule 9(b) requires a plaintiff alleging such claims to "state with particularity the circumstances constituting fraud." *Id.* The "circumstances" required by Rule 9(b) are the

[3] On page 27 of the FAC, Plaintiffs state that "Plaintiff Billy Glenn individually and on behalf of the proposed Nationwide Class" bring the CLRA claim. However, with respect to the first claim, Plaintiffs write "[e]ach Plaintiff individually and on behalf of the proposed Nationwide Class." *See* FAC at 25.

"who, what, when, where, and how" of the fraudulent activity. *United States ex rel Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011). Further, if the plaintiff claims a statement is false or misleading, "[t]he plaintiff must set forth what is false or misleading about a statement, and why it is false." *Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (quoting *In re Glenfed, Inc. Secs. Litig.*, 42 F.3d 1541, 1548 (9th Cir. 1994)). In other words, the plaintiff "must set forth an explanation as to why the statement or omission complained of was false or misleading." *Cooper v. Pickett*, 137 F.3d 616, 625 (9th Cir. 1997). This heightened pleading standard ensures that "allegations of fraud are 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). However, "intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b); *see Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir. 1993).

Although review of a motion to dismiss is ordinarily limited to the contents of the complaint and material properly submitted with the complaint, *Van Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002), the court may also consider documents "whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by* 307 F.3d 1119, 1121 (9th Cir. 2002). The court may treat such referenced documents as "part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

In granting a motion to dismiss, dismissal with leave to amend should be freely given "when justice so requires." Fed. R. Civ. P. 15(a)(2). This policy is applied with "extreme liberality." *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (holding that dismissal with leave to amend should be granted even if no request to amend was made). Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003).

B. Motion to Strike

Federal Rule of Civil Procedure 12(f) provides that a court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Motions to strike are disfavored and "will usually be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of

the parties." *Friedman v. 24 Hour Fitness USA, Inc.*, 580 F. Supp. 2d 985, 990 (C.D. Cal. 2008) (internal quotation marks and citation omitted); *RDF Media Ltd. v. Fox Broad. Co.*, 372 F. Supp. 2d 556, 566 (C.D. Cal. 2005) ("Motions to strike are generally disfavored because of the limited importance of pleadings in federal practice and because it is usually used as a delaying tactic."). The Ninth Circuit has defined "immaterial" matter as "that which has no essential or important relationship to the claim for relief or the defenses being pleaded" and "impertinent" matter as "statements that do not pertain, and are not necessary, to the issues in question." *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993) (internal quotation marks and citation omitted), *overruled on other grounds*, 510 U.S. 517 (1994).

To certify a class action under Federal Rule of Civil Procedure 23, a plaintiff must show that: "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). In addition, the plaintiff must demonstrate that one of the requirements of Rule 23(b) is met.

Class allegations in a complaint are typically tested on a motion for class certification, not at the pleading stage. *Collins v. Gamestop Corp.*, No. C10–1210–TEH, 2010 WL 3077671, at *2 (N.D. Cal. Aug. 6, 2010). Motions to strike class allegations are generally disfavored, particularly where the arguments against the class claims would benefit from discovery or would otherwise be more appropriate in a motion for class certification. *Holt v. Globalinx Pet, LLC*, No. SACV13–0041 DOC JPRX, 2013 WL 3947169, at *3 (C.D. Cal. July 30, 2013); *Thorpe v. Abbott Labs., Inc.*, 534 F. Supp. 2d 1120, 1125 (N.D. Cal. 2008). However, "[s]ometimes the issues are plain enough from the pleadings to determine whether the interests of the absent parties are fairly encompassed within the named plaintiff's claim." *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982). Thus, courts in this Circuit have struck class allegations where it is clear from the pleadings that a class could not be certified. *See, e.g.*, *Sanders v. Apple Inc.*, 672 F. Supp. 2d 978, 990 (N.D. Cal. 2009).

III. Discussion

Defendant moves to dismiss Plaintiffs' claims on several grounds. First, Defendant argues the first two claims under "California's consumer protection laws (the UCL and CLRA) should be dismissed because, as a choice-of-law matter, Plaintiffs' claims are governed by the laws of the state where each of them purchased their cars." Mot. at 7. Second, Defendant contends Plaintiffs' fraud-based claims fail because Plaintiffs fail to

identify what they saw or relied on prior to making their purchases. *Id.* at 14. Third, HMA argues Glenn's claim under the Alabama Deceptive Trade Practice Act fails. *Id.* at 17. Fourth, Defendant seeks to dismiss Plaintiffs' unjust enrichment claim. *Id.* at 19. Fifth, HMA argues Glenn has not exhausted the informal dispute resolution process as required by the Magnuson-Moss Warranty Act. *Id.* at 20. Sixth, Defendant argues Plaintiffs lack standing to represent consumers who purchased different Hyundai models. *Id.* at 21. Seventh, and finally, Defendant urges the Court to dismiss Plaintiffs' request for a recall injunction because it is subject to primary jurisdiction and preemption. *Id.* at 23. The Court will address these arguments in turn.

A. Plaintiffs' Individual Unfair Competition Law and Consumer Legal Remedies Act Claims

Plaintiffs allege HMA violated and continues to violate California's Unfair Competition Law, which prohibits unlawful, unfair, and fraudulent business acts or practices. FAC ¶¶ 83–90. Plaintiffs separately allege Defendant has violated California's Consumer Legal Remedies Act. *See id.* ¶¶ 91–98.

Defendant moves to dismiss these two claims, generally arguing Plaintiffs are precluded from asserting claims under these California laws because they are non-California residents who were allegedly injured outside of California. *See* Mot. at 7. In making this argument, Defendant relies heavily on the Ninth Circuit's decision in *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012). *See, e.g.*, Mot. at 8–11. The Court notes that while *Mazza* was decided at the class certification stage, the decision "applies generally and is instructive when addressing a motion to dismiss." *Frezza v. Google, Inc.*, No. 5:12-cv-00237-RMW, 2013 WL 1736788, at *6 (N.D. Cal. Apr. 22, 2013) (citations omitted).

Based on the *Mazza* decision and California's choice of law principles, Defendant argues the laws of Alabama, New Hampshire, Texas, and Washington should be applied to the claims brought by Glenn, Fama, Warburton, and Kane, respectively. *Id.* at 14.

1. California Choice of Law Analysis

"A federal court sitting in diversity must look to the forum state's choice of law rules to determine the controlling substantive law." *Mazza*, 666 F.3d at 589 (quoting *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1187 (9th Cir. 2001), *opinion amended on denial of reh'g*, 273 F.3d 1266 (9th Cir. 2001)). Over the past several decades, California courts have resolved choice of law questions using the "governmental

interest" analysis. *See McCann v. Foster Wheeler LLC*, 48 Cal. 4th 68, 83 (2010). This approach involves three steps:

> First, the court determines whether the relevant law of each of the potentially affected jurisdictions with regard to the particular issue in question is the same or different. Second, if there is a difference, the court examines each jurisdiction's interest in the application of its own law under the circumstances of the particular case to determine whether a true conflict exists. Third, if the court finds that there is a true conflict, it carefully evaluates and compares the nature and strength of the interest of each jurisdiction in the application of its own law to determine which state's interest would be more impaired if its policy were subordinated to the policy of the other state . . . and then ultimately applies the law of the state whose interest would be the more impaired if its law were not applied.

Kearney v. Salomon Smith Barney, Inc., 39 Cal. 4th 95, 107–08 (2006) (internal citation and quotation marks omitted). It is the foreign law proponent's burden to satisfy the three-prong test. If the proponent fails to do so, the federal district court will apply the law of the state in which it sits. *Holt*, 2013 WL 3947169, at *7.

The Court will apply the governmental interest analysis to determine whether California law should govern Plaintiffs' claims, or whether the other states' laws should apply instead.

2. Material Differences in Laws

The first prong of the governmental interest analysis requires the Court to determine whether "the relevant law of each of the potentially affected jurisdictions is the same or different." *Kearney*, 39 Cal. 4th at 107. The fact that multiple states are involved does not necessarily indicate there is a conflict of laws. *See Mazza*, 666 F.3d at 590. Rather, a "conflict of law problem arises only if the differences in state law are material." *Davison v. Kia Motors America, Inc.*, No. SACV 15-00239-CJC(RNBx), 2015 WL 3970502, at *3 (C.D. Cal. June 29, 2015).

Here, Defendant argues, "[j]ust as in *Mazza*, there are numerous material differences between California's UCL and CLRA on the one hand, and the consumer protection statutes of the states where Plaintiffs purchased their vehicles on the other." *Id.* at 8. In particular, HMA extensively highlights differences in the states' laws with respect to scienter, the availability of class actions, the potential remedies, the statute of

limitations period, what constitutes actionable conduct, and the burden of proof for Plaintiffs' fraud-based claims. *Id.* at 8–11. Plaintiffs respond HMA has failed to establish these differences "are material under the facts alleged." Opp'n at 6.

The Court finds Defendant has identified material differences between California's consumer protection laws, and Alabama, New Hampshire, Texas, and Washington's consumer protection laws.

With respect to Alabama, material differences exist between California's consumer protection laws and the Alabama Deceptive Trade Practices Act ("DTPA"). Difference in scienter requirements are generally "material" for purposes of a choice-of-law analysis. *See Mazza*, 666 F.3d at 591 (finding differences in scienter requirements between California and other states material); *see also Gianino v. Alacer Corp.*, 846 F. Supp. 2d 1096, 1102 (C.D. Cal. 2012) ("The differences [regarding scienter] are material[.]"). Unlike under the UCL and CLRA, scienter is required in claims under the Alabama DTPA. *See* Ala. Code § 8-19-13 (claim fails if defendant "did not knowingly" commit violation); *Strickland v. Kafko Mfg., Inc.*, 512 So. 2d 714, 718 (Ala. 1987); *Sam v. Beaird*, 685 So. 2d 742, 746 (Ala. Ct. App. 1996). Based on the above, the Court finds Defendant has identified a material difference between California and Alabama consumer protection statutes. Defendant notes several other differences between the relevant California and Alabama statues, including the burden of proof for providing fraud-based claims. *See* Mot. at 8–11. Plaintiffs do not offer a direct response to these alleged differences.

For the same reason, the Court finds the difference in scienter requirements between New Hampshire's Consumer Protection Act ("New Hampshire CPA") and California consumer protection statutes "material." *See Mazza*, 666 F.3d at 591. Unlike under the UCL or CLRA, scienter is required in claims under the New Hampshire CPA. *Kelton v. Hollis Ranch, LLC*, 927 A.2d 1243, 1246 (N.H. 2007) ("unfair" or "deceptive" requires "a degree of knowledge or intent"). Additionally, Defendants contend punitive damages are not available under New Hamphsire law in contrast to California law. *See* Mot. at 4. Again, Plaintiffs do not offer a meaningful response to these differences.

With respect to Washington law, material differences exist between the available remedies under the California consumer protection statutes and the Washington Consumer Protection Act ("Washington CPA"). Generally, differences in remedies are "material" for the purpose of the choice-of-law analysis. *See Mazza*, 666 F.3d at 591; *Gianino v. Alacer Corp.*, 846 F. Supp. 2d at 1102. Unlike under the UCL, where a plaintiff can only recover restitution and injunctive relief for fraud based claims, *see* Cal. Bus. & Prof. Code § 17203; *Korea Supply v. Lockheed Martin Corp.*, 29 Cal. 4th 1134

(Cal. 2003). As Defendant notes, Washington law provides for actual damages (with no minimum), including treble damages at the court's discretion, with the limitation that the increase may not exceed $25,000. *See* Wash. Rev. Code § 19.86.090. Damages under the CLRA also differ from those permitted under the Washington CPA, as the CLRA has a minimum of $1,000 for actual damages in class actions and provides for punitive damages. Cal. Civ. Code § 1780(e). As Defendants argue, these "differences are material in that they will affect what Plaintiffs in this case will ultimately be able to recover." Mot. at 10. Further, Defendant points to differences in the relevant burdens of proof. *See* Mot. at 11 (citations omitted); *Compare Liodas v. Sahadi*, 19 Cal. 3d 278, 291 (1977) (describing the standard of proof as preponderance of evidence for fraud claims), *with Stiley v. Block*, 130 Wash. 2d 486, 505 (1996) (stating that under Washington law fraud claims must be proved by clear and convincing evidence).

Similarly, the Court finds the difference in remedies between Texas Deceptive Trade Practices-Consumer Protection Act ("DTP-CPA") and California consumer protection law to be material. *See Mazza*, 666 F.3d at 591. The Texas DTP-CPA allows "economic" damages (with no minimum), damages for "mental anguish," injunctive relief, restitution, treble damages for knowing or intentional violations, and "any other relief which the court deems proper." Tex. Bus. & Com. Code Ann. § 17.50(b). Even actual damages are allowable under the CLRA, Texas' DTP-CPA appears to encompass much broader remedies. Moreover, Texas and California consumer protection statutes differ in their statute of limitations; Texas has a two-year limit after discovery, Tex. Bus. & Com. Code Ann. § 17.565, and California having a three-year limit for the CLRA and a four-year limit for the UCL. *See* Cal. Civ. Code § 1783; Cal. Bus. & Prof. Code § 17208; *see also Gianino*, 846 F. Supp. 2d at 1102 ("The differences [regarding statute of limitations between California and Texas, among other states] are material[.]"). These statute of limitations may be relevant in this case given that Plaintiffs are "seeking to certify a class that includes vehicle model years from 2011 to 2016." Reply at 5. Finally, Defendant argues California's UCL and Texas's DTP-CPA prohibit different conduct. *See* Mot. at 10–11.

Plaintiffs' arguments to the contrary are unpersuasive. Plaintiffs first cite this Court's *Bruno* decision for the proposition that Defendant may not "substitute *Mazza*'s holding in lieu of [their] own careful analysis of choice-of-law rules." Opp'n at 6–7 (citing *Bruno v. Eckhart Corp.*, 280 F.R.D. 540, 547 (C.D. Cal. 2012)).[4] While that

[4] Plaintiffs also cite to *Forcellati v. Hyland's Inc.*, 876 F. Supp. 2d 1155 (C.D. Cal. 2012) in arguing Defendant has not met its burden demonstrating material differences in this case. *See* Opp'n at 6. However, in *Forcellati*, the court rejected defendants' argument because they did "not even discuss the differences between the consumer protection laws of New Jersey and California, let alone address whether these differences are material based on the facts and

proposition is correct, Defendant has not simply substituted *Mazza* for careful analysis; rather, it has outlined the differences in the state law in detail. *See* Mot. at 8–11. This is in stark contrast to *Bruno*, where "Defendants provide[d] no law from any jurisdiction for the Court to consider . . . ." *Bruno*, 280 F.R.D. at 549.

Plaintiffs next contend that "where Hyundai has accurately identified variations in state law, Defendant fails to establish they are material under the facts alleged." Opp'n at 6. The Court rejects this argument, as Defendant has adequately explained the import of these state law differences in the context of this case; for instance, Defendant explains that differences in scienter, the available remedies, the statute of limitations, actionable conduct, and the burden of proof would likely impact the outcome of the case. *See, e.g.*, Mot. at 10 ("These differences are material in that they will affect what Plaintiffs in this case will ultimately be able to recover."); Mot. at 10 ("These differences will materially affect the scope of any potential class under the various states."). Further, several courts have identified the types of differences at issue here as material. *See Davison*, 2015 WL 3970502, at *2 ("These differences in consumer protection law among states are not trivial because they involve essential requirements to establish a claim, types of relief and remedies available to plaintiff, and other dispositive issues."); *see also Mazza*, 666 F.3d at 591; *Gianino*, 846 F. Supp. 2d 1096 (C.D. Cal. 2012); *Davison*, 2015 WL 3970502, at *3; Frenzel, 2014 WL 7387150, at *4; *Frezza*, 2013 WL 1736788, at *6; *Waller v. Hewlett–Packard Co.*, Case No. 11-cv-0454-LAB, 2012 WL 1987397, at *1 (S.D. Cal. June 4, 2012); *In re Hitachi Television Optical Block Cases*, No. 08cv1746, 2011 WL 9403, at *6 (S.D. Cal. Jan.3, 2011).[5] It is not difficult to see how critical differences in the scienter requirement or burden of proof, for instance, would impact a case like this one.

In short, the Court finds Defendant has met its burden to show material differences between California's consumer protection laws and the consumer protection laws of Alabama, New Hampshire, Texas, and Washington. Because there are material conflicts in the laws of the states, the Court will proceed to the second step of the test.

3. Interest of Foreign Jurisdictions

The second prong of the governmental interest analysis requires the Court to determine whether there is a true conflict of law. Even if one state's law is materially

---

circumstances of *this* case." *Forcellati*, 876 F. Supp. 2d at 1160. As explained above, the circumstances are different in this case.

[5] Additionally, as discussed above, Plaintiffs have not addressed the majority of differences Defendant points to, nor have they offered sufficient arguments concerning why those differences are not material. Instead, for the most part, Plaintiffs broadly assert Defendant has not pointed to any differences, and if even they have, they are not material. *See* Opp'n at 6–7.

different from another's, there is no true conflict of law if one of the states has no interest in applying its law under the present circumstances. *See Hurtado v. Superior Court*, 11 Cal. 3d 574, 581 (1974).

Here, the Court finds Alabama, New Hampshire, Texas, and Washington have an interest in applying their own laws. As explained in *Mazza*, "each foreign state has an interest in applying its law to transactions within its borders." 666 F.3d at 593; *see id.* at 592 ("California law also acknowledges that a jurisdiction ordinarily has the predominant interest in regulating conduct that occurs within its borders.") (internal citation and quotation marks omitted); *see also Zinser v. Accufix Research Inst.*, 253 F.3d 1180, 1187 (9th Cir. 2001) (noting "every state has an interest in having its law applied to its resident claimants"). In particular, as the California Supreme Court has made clear, "each state has an interest in setting the appropriate level of liability for companies conducting business within its territory." *Mazza*, 666 F.3d at 593 (citing *McCann*, 48 Cal. 4th at 91). Based on the foregoing, the Court concludes the foreign states "obviously have an interest in having their own laws applied to the consumer transactions that took place within their borders." *Davison*, 2015 WL 3970502, at *3. Finding the second step of the governmental interest test met, the Court will turn to the final factor.

4. Which State Interest Is Most Impaired

Because both California and the foreign states have an interest in the application of their respective laws here, the Court must "evaluate the nature and strength of the interest of each jurisdiction in the application of its own law to determine which state's interest would be most impaired if its policy were subordinated to the policy of the other state." *Kearney*, 39 Cal. 4th at 108 (internal citation omitted). In applying the final prong of the governmental interest analysis, courts are not to weigh the conflicting interests and determine which of the policies is "better" or "worthier;" rather they are to determine the appropriate scope of the conflicting state policies. *McCann*, 48 Cal. 4th at 97.

California "recognizes that 'with respect to regulating or affecting conduct within its borders, the place of the wrong has the predominant interest." *Mazza*, 666 F.3d at 593 (quoting *Hernandez v. Burger*, 102 Cal. App. 3d 795, 802, *cited with approval by Abogados v. AT & T, Inc.*, 223 F.3d 932, 935 (9th Cir. 2000)). "California considers the 'place of the wrong' to be the state where the last event necessary to make the actor liable occurred." *Id.* (citing *Zinn v. Ex-Cell-O Corp.*, 148 Cal. App. 3d 56, 80 n.6 (1957) (concluding in fraud case that the place of the wrong was the state where the misrepresentations were communicated to the plaintiffs, not the state where the intention to misrepresent was formed or where the misrepresented acts took place)).

The Court concludes the foreign states have a stronger interest in the application of their laws than California has in the application of its laws. As in *Mazza*, the final alleged wrongdoing took place in Alabama, New Hampshire, Texas, and Washington – not California. Specifically, in this case, Plaintiffs' reliance on the alleged omissions took place in the foreign states. *See Mazza*, 666 F.3d at 594. Indeed, as Plaintiffs acknowledge in the FAC, Defendant's alleged concealment took place at the "point of sale" in the foreign states. *See, e.g.*, FAC ¶ 104 ("Hyundai knowingly conceals and fails to disclose *at the point of sale* and otherwise that Class Vehicles' panoramic sunroofs have a propensity to spontaneously shatter . . . .") (emphasis added). As noted above, the point of sale for each of the Plaintiffs occurred in states other than California. Therefore, the foreign states have a strong interest in the application of their laws to the present case. "Conversely, California's interest in applying its law to residents of foreign states is attenuated." *Mazza*, 666 F.3d at 594.

Plaintiffs' arguments to the contrary are unavailing. Most notably, Plaintiffs argue the place of wrong in this case is California, not the foreign states. Opp'n at 13. Plaintiffs specifically argue "Hyundai made a decision at its corporate headquarters in California to conceal the danger of sunroof shattering." *Id.* The Court first notes Plaintiffs' statement in their Opposition is inconsistent with the FAC, which as described above, states the concealment occurred at "the point of sale;" *see also* FAC ¶ 33 (noting that "as early as 2012 . . . *Hyundai dealership* and Hyundai itself were aware of the problem") (emphasis added).

Several courts, including the Ninth Circuit and this one, have squarely rejected a version of Plaintiffs' argument. As described by a court in this Circuit,

> In *Mazza*, the defendant Honda was headquartered in California and the allegedly fraudulent misrepresentations emanated from California, but the transactions (car purchases or leases) that directly caused the injury took place out of state with respect to the majority of class members. Despite the significant contacts with California, the Ninth Circuit held that each class member's consumer protection claim should be governed by the consumer protection laws of the *jurisdiction in which the transaction took place*.

Frezza, 2013 WL 1736788, at *5 (internal citation and quotations marks omitted). Similarly, in *Holt*, this Court found:

> [L]ike *Mazza*, in which Honda having its corporate headquarters and principle place of business in California did not give rise to the

> presumption that California law would necessarily apply to the Plaintiff's claim, here too, the fact that Defendant Globalinx Pet LLC has it place of business in California, and Defendant Globalinx Corporation is a California entity with its place of business in California, does not automatically give rise to the presumption that California law should apply to Plaintiff's claims.

Holt, 2013 WL 3947169, at *10. Under similar circumstances in *Frezza*, the court found North Carolina had a greater interest in the application of its law than California did. *Frezza*, 2013 WL 1736788, at *5. The *Frezza* court specifically found that even though the defendant Google was headquartered in California, and the allegedly fraudulent representations originated from California, North Carolina had a greater interest because the "*transactions* at the center of the dispute" occurred in North Carolina, not California. *Id.* The court concluded, "the factual analogy makes *Mazza*'s application of the choice-of-law rule to the facts of this case, not only relevant but controlling." *Id.*

The exact situation is present here. While it is true HMA is headquartered in California,[6] and Plaintiffs allege the fraudulent omissions originated in California, the transactions at issue took place in Alabama, New Hampshire, Texas, and Washington. Plaintiffs received advertising material, conducted research, spoke with dealership personnel, and ultimately purchased the Hyundai vehicles in those states. And Plaintiffs are residents of those states.[7]

In short, Plaintiffs' home states "have a compelling interest in protecting their consumers from in-state injuries caused by a California corporation doing business within their borders and in delineating the scope of recovery for the consumers under their own laws." *Davison*, 2015 WL 3970502, at *3; *see also Cover v. Windsor Surry Co.*, Case No. 14-cv-05262-WHO, 2016 WL 520991, at *8 (N.D. Cal. Feb. 10, 2016) ("Accordingly, Rhode Island's interest in the application of its law to transactions between its residents and corporations doing business within its state outweighs California's interest.").

Based on the governmental interest test, the Court finds each of Plaintiffs' individual claims must be governed by the consumer protection laws of their home states. The Court therefore GRANTS Defendant's Motion as to Plaintiffs' UCL and CLRA

---

[6] The Court recognizes California does have an interest in regulating HMA given that its corporate headquarters are located in the state. *See Davison*, 2015 WL 3970502, at *3. However, as the Court explains above, the foreign states' interests are simply stronger and more direct than California's interest.

[7] The Court notes the FAC is not entirely clear on what states Plaintiffs were located in when the panoramic sunroof shattered; however, the Court has no reason to believe these injuries occurred in California.

claims. Those claims are therefore DISMISSED WITHOUT PREJUDICE.[8] *See Frezza*, 2013 WL 1736788, at *7.[9]

B. Plaintiffs' Remaining Fraud-Based Claims

Defendant next contends "Plaintiffs' first four causes of action, which are all grounded in allegations of fraudulent omission, should be dismissed under Rule 8 and Rule 9(b) because Plaintiffs fail to allege they ever saw or relied on any statement by HMA, or would plausibly have seen or relied on any disclosure of the alleged omission." Mot. at 14 (citations omitted).[10] In response, Plaintiffs argue they have provided sufficient detail to support their fraudulent omission claims. Opp'n at 15.

As a preliminary matter, the Court must determine whether to apply Rule 9(b)'s heightened pleading standard to Plaintiffs' claims under the Alabama, New Hampshire, Texas, and Washington statutes.

The Court finds Rule 9(b) applies to Plaintiffs' claims under these states' consumer protection statutes. As other courts in this Circuit have concluded, "[r]egardless of whether federal courts in [other states] apply Rule 9(b) to their state consumer protections statutes, federal courts in California are bound to apply Ninth Circuit precedent" as set forth in *Kearns*. *Gold v. Lumber Liquidators, Inc.*, No. 14-CV-05373-TEH, 2015 WL 7888906, at *12 (N.D. Cal. Nov. 30, 2015); *see also Keegan v. Am. Honda Motor Co.*, 838 F. Supp. 2d 929, 957 (C.D. Cal. 2012) (applying Rule 9(b) to each of the various state consumer protection claims at issue, including New York's, despite the Second Circuit's contrary practice). "Although *Kearns* addressed only Rule 9(b)'s applicability to CLRA and UCL claims that sound in fraud, its reasoning is broad and applies to any claim that is 'grounded in fraud' or 'sound[s] in fraud.'" *Keegan*, 838 F. Supp. 2d at 957 (citation omitted). In *Kearns*, the Ninth Circuit "acknowledged that fraud is not a necessary element of claims arising under the CLRA or the UCL, but that a

---

[8] The Court dismisses these claims without prejudice because Plaintiffs, for example, may be able to more clearly explain in future filings why the differences Defendant points to are not material. As stated above, Plaintiffs did not provide an adequate response to several of the specific material differences in state laws that Defendant highlights.

[9] It is unclear on whether Defendant is separately moving to dismiss Plaintiffs' UCL and CLRA *nationwide* class claims. To the extent HMA was attempting to do so, those claims are DISMISSED WITH PREJUDICE. *See Davison*, 2015 WL 3970502, at *3. The Court first notes "there are material conflicts between California's consumer protection laws and the consumer protection laws of the other forty-nine states." *In re Hitachi Television Optical Block Cases*, No. 08cv1746, 2011 WL 9403, at *6 (S.D. Cal. Jan. 3, 2011). Further, for the reasons discussed above, the Court finds the other forty-nine states have an interest in applying their laws, and those interests outweigh California's interest in this case.

[10] Because the Court dismissed Plaintiffs' UCL and CLRA claims directly above, the Court will consider Defendants' argument with respect to Plaintiffs' claims under the various state consumer protection statutes in this section.

plaintiff could assert claims based on fraudulent conduct under either statute," and held that "in circumstances where plaintiffs allege 'a unified course of fraudulent conduct and rely entirely on that conduct' as the basis of the claim, Rule 9(b) applies." *Id.* (quoting *Kearns*, 567 F.3d at 1125).

Because all of Plaintiffs' claims are based on the same allegedly fraudulent course of conduct – the concealment of facts related to the allegedly defective panoramic sunroofs in Class Vehicles – the Court concludes *Kearns* applies. *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103–04 (9th Cir. 2003) ("In cases where fraud is not a necessary element of a claim, a plaintiff may choose nonetheless to allege in the complaint that the defendant has engaged in fraudulent conduct. In some cases, the plaintiff may allege a unified course of fraudulent conduct and rely entirely on that course of conduct as the basis of a claim. In that event, the claim is said to be 'grounded in fraud' or to 'sound in fraud,' and the pleading of that claim as a whole must satisfy the particularity requirement of Rule 9(b)."). Consequently, the Court will analyze Plaintiffs' claims under Alabama, New Hampshire, Texas, and Washington law under the Rule 9(b) standard. *See Keegan*, 838 F. Supp. 2d at 957 ("Because plaintiffs' claims are based on defendants' allegedly fraudulent conduct in concealing a purported defect in the class vehicles, *Kearns* applies. Consequently, the Court will analyze plaintiffs' non-California state law claims under Rule 9(b).").

The Court does notes that, although Rule 9(b) applies to the claims specified above, "[w]hen a claim rests on allegations of fraudulent omission" – as is the case here – "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." *Shahinian v. Kimberly-Clark Corp.*, No. CV 14-8390 DMG (SHX), 2015 WL 4264638, at *4 (C.D. Cal. July 10, 2015) (quoting *Asghari v. Volkswagen Grp. of Am., Inc.*, 42 F. Supp. 3d 1306, 1325 (C.D. Cal. 2013) (internal quotation marks omitted)).

Nonetheless, "a plaintiff alleging fraudulent omission or concealment must still plead the claim with particularity." *Asghari*, 42 F. Supp. 3d at 1325. "Specifically, a plaintiff must 'set forth an explanation as to why [the] omission complained of was false and misleading' to state a claim under Rule 9(b)." *Id.* (quoting *Bias v. Wells Fargo & Co.*, 942 F. Supp. 2d 915, 932 (N.D. Cal. 2013)).

With this background in place, the Court must consider whether Plaintiffs have sufficiently alleged their fraud-based claims with particularity. Based on its review of the FAC, the Court concludes Plaintiffs have done so. First, Plaintiffs allege the content of the omission at issue; for example, they allege "Hyundai has long known that its sunroofs are prone to spontaneous and dangerous shattering." FAC ¶ 25; *see also id.* ¶ 31 ("[I]t is

likely that Hyundai knew of the danger of shattering before it first began selling and leasing the vehicles."); *id.* ¶ 33 ("[A]s early as 2012 . . . Hyundai dealerships and Hyundai itself were aware of the problem."). Plaintiff alleges several details concerning HMA's alleged knowledge of this defect. *See id.* ¶¶ 26–33; *see also* ¶ 43 ("Hyundai has not warned consumers at the point of sale or lease (nor instructed dealerships to do so), and has made no effort to alert Hyundai drivers to the sunroofs' risk of suddenly shattering."). Further, Plaintiffs allege the omissions emanated in Fountain Valley, California, FAC ¶ 76, and were communicated at the time of purchase. *See, e.g.*, *id.* ¶ 43. As such, the Court concludes the FAC adequately pleads Plaintiffs' remaining fraud-based claims under an omission theory. *See Precht v. Kia Motors America, Inc.*, Case No. SA CV 14-1148-DOC (MANx), 2014 WL 10988343, at *6 (C.D. Cal. Dec. 29, 2014).

Defendant also argues Plaintiffs have not adequately alleged reliance; it argues Plaintiffs "never identify a single representation by HMA that they saw or relied on in purchasing their cars." Mot. at 17. Plaintiffs respond they "plausibly allege that they would have received the omitted disclosures, as they researched their purchases on Hyundai's website and spoke to personnel at dealerships, and plausibly pleaded reliance by alleging that if they had received the disclosures, they would not have bought their class vehicles or would have paid less for them." Opp'n at 14.

"[R]eliance is proved by showing that the defendant's misrepresentation or nondisclosure was 'an immediate cause' of the plaintiff's injury-producing conduct. A plaintiff may establish that the defendant's misrepresentation is an 'immediate cause' of the plaintiff's conduct by showing that in its absence the plaintiff 'in all reasonable probability' would not have engaged in the injury-producing conduct." *In re Tobacco II Cases*, 46 Cal. 4th 298, 326 (2009). "[E]ven where, as here, a plaintiff bases his claim not on an omission from a specific advertising campaign or brochure, but on a defendant's total failure to disclose the material fact in any way, the plaintiff's claim must fail when he never viewed a website, advertisement, or other material that could plausibly contain the allegedly omitted fact." *Daniel v. Ford Motor Co.*, No. CIV. 2:11–02890 WBS, 2013 WL 2474934, at *4 (E.D. Cal. June 7, 2013); *see also Ehrlich v. BMW of N. Am., LLC*, 801 F. Supp. 2d 908, 920 (C.D. Cal. 2010) (dismissing UCL and CLRA claims where plaintiff failed to allege that he would have been aware of a defect in his BMW before buying it if defendant had publicized the information).

Here, each Plaintiff alleges he or she did some combination of reviewing Hyundai's website, researching the vehicle prior to purchase, speaking to dealership personnel, reading Consumer Reports of the vehicle, and reviewing safety ratings. FAC ¶¶ 47, 52, 56, 60. Accepting these allegations as true, the Court finds Plaintiffs have adequately alleged reliance.

In arguing Plaintiffs have not alleged reliance, Defendant cites to the *Ehrlich* decision and this Court's decision in *Precht*. These two cases are distinguishable. In *Ehrlich*, the plaintiff did not allege "he reviewed any brochure, website, or promotional material that might have contained a disclosure of the cracking defect" prior to purchasing his BMW, *Ehrlich*, 801 F. Supp. 2d at 919; similarly, in *Precht*, the FAC only contained a "conclusory statement that 'Plaintiff relied upon Defendant's warranty to his detriment,'" *Precht*, 2014 WL 10988343, at *7. In the instant case, by contrast, Plaintiffs allege they reviewed websites, other promotional and safety materials, and spoke with dealership staff prior to purchasing their vehicles.

Additionally, the Court notes all Plaintiffs allege that had "Hyundai adequately disclosed the panoramic sunroof defect," they would not have purchased their vehicles, or "would have paid substantially less" for them. *Id.* ¶¶ 51, 55, 59, 63. The Court finds these statements sufficient to allege reliance at this stage. *See Hodsdon*, 2016 U.S. Dist. LEXIS 19268, at *11 (finding reliance where plaintiff alleged he "would not have purchased [the product] or paid as much for them had he known the truth") (internal quotation marks omitted).

For the foregoing reasons, the Court DENIES Motion to Dismiss Plaintiffs' remaining fraud-based claims on the grounds they were not pleaded with particularity as required under Rule 9(b).

C. Plaintiffs' Alabama Deceptive Trade Practices Act Claim

Next, Defendant seeks to dismiss Glenn's claim under the Alabama DTPA for two reasons.

First, Defendant argues Glenn has waived his claim under the Alabama DTPA by bringing an unjust enrichment claim. Specifically, HMA points to language from the "savings clause" of the Alabama DTPA, which reads "[a]n election to pursue any civil remedies available at common law, by statute or otherwise, for fraud, misrepresentation, deceit, suppression of material facts or fraudulent concealment . . . shall exclude and be a surrender of all rights and remedies under" the Alabama DTPA. Ala. Code § 8-19-15(b).

This argument is unavailing. While the Court recognizes the existence of contrary authority, the Court agrees with the Alabama district court's decision in *Barcal v. EMD Serono, Inc.*, Case No.: 5-14-cv-01709-MHH, 2016 WL 1086028, at *5 (N.D. Ala. Mar. 21, 2016). In that decision, the court stated "[a]lthough the ADTPA's savings clause would preclude Ms. Barcal from ultimately obtaining relief under both the ADTPA and her common law claims, Federal Rule of Civil Procedure 8 allows parties to plead

alternative, even inconsistent, theories." *Id.* (citation omitted). This approach is consistent with how this Court has previously approached inconsistently pleaded theories in similar cases. *See Precht*, 2014 WL 10988343, at *12. At this stage, Glenn can pursue his claim under the Alabama DTPA.

Second, Defendant argues Glenn cannot state a fraudulent omission under the Alabama DTPA. Mot. at 18. Because the Alabama DTPA details 27 specific practices that are unlawful under the statute – none of which cover the situation here – Defendant argues Glenn's Alabama DTPA must be dismissed. *Id.* However, the Court notes the Alabama DTPA contains a catchall for "other unconscionable, false, misleading, or deceptive act[s] or practice[s]." Ala. Code § 8-19-15(27). Given this language, which seems broad enough to encompass the allegations at issue, the Court rejects Defendant's invitation to dismiss Glenn's DTPA claim.[11]

As such, the Court DENIES Defendant's request to dismiss Glenn's DTPA claim.

D. Plaintiffs' Unjust Enrichment Claim

Defendant also argues Plaintiffs' unjust enrichment claim should be dismissed for two main reasons.[12] First, HMA argues the unjust enrichment claim should be dismissed because both parties agree there is a valid, enforceable contract that governs the subject matter of the dispute; additionally, it argues unjust enrichment is not an independent cause of action under California, Texas, or New Hampshire law. Mot. at 19. Plaintiff states it can plead unjust enrichment in the alternative, and asks the Court to construe its unjust enrichment claim as one for quasi-contract seeking restitution. Opp'n at 17–18.

The Court notes an important defect with Plaintiffs' unjust enrichment claim: it does not identify under which state's law Plaintiffs are pursuing their unjust enrichment claim. Rather, the FAC broadly asserts the unjust enrichment claim is brought by "Plaintiff individually and on behalf of the proposed Nationwide Class or, alternatively, each statewide class." FAC at 31. The Court is unclear whether Plaintiffs are asserting an unjust enrichment claim under California law for all Plaintiffs, whether each Plaintiff is asserting an unjust enrichment claim under his or her home state's law, or something else. In their Opposition, Plaintiffs are similarly confused as to what state law or laws they are relying on. *See* Opp'n at 18 ("Neither should the Court dismiss Plaintiffs' unjust

[11] Defendant notes that "counsel for HMA is unaware of any authority recognizing a duty to disclose defects in consumer products under the Alabama DTPA." Mot. at 18. The fact that Defendant's counsel is unaware of any authority does not provide a sound reason to dismiss Glenn's DTPA claim, especially considering the stage of the litigation and the expansive language of the statute.

[12] Defendant also argues Plaintiffs' unjust enrichment claims fail because Plaintiffs fail to allege reliance. This argument is rejected for the reasons discussed earlier.

enrichment claims under Texas or New Hampshire law, t*o whatever extent those states' law apply*.") (emphasis added).

The Court finds it prudent to refrain from guessing what state law or laws Plaintiffs are using as the basis for their unjust enrichment claims. Following other courts in this Circuit, the Court concludes that "until Plaintiffs indicate which States' laws support their claim, the Court cannot assess whether the claim has been adequately plead[ed]." *In re Static Random Access Memory (SRAM) Antitrust Litig.*, 580 F. Supp. 2d 896, 910 (N.D. Cal. 2008). Accordingly, the Court GRANTS Defendant's request with respect to Plaintiffs' unjust enrichment claim. The Court DISMISSES Plaintiffs' unjust enrichment claim WITHOUT PREJUDICE. *See Los Gatos Mercantile, Inc v. E.I. DuPont De Nemours & Co*., No. 13-CV-01180-BLF, 2014 WL 4774611, at *11 (N.D. Cal. Sept. 22, 2014) ("Plaintiffs assert unjust enrichment claims under the laws of 'all states' alleged in Claims 1 and 2. No further specificity is provided in the FAC; it does not identify the relevant laws of the thirty-two states in question or attempt to set forth facts showing that claims lie under each of those laws. The Court informed counsel at the hearing that those allegations are inadequate and that Plaintiffs must identify and plead the elements of unjust enrichment for each state. Accordingly, the motion is GRANTED with leave to amend as to Claim 3."); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 586 F. Supp. 2d 1109, 1124 (N.D. Cal. 2008). If Plaintiffs re-plead these claims, they must identify which state or states' laws they rely upon.

E. Glenn's Magnuson-Moss Warranty Act Claim

Defendant next argues Glenn's MMWA claim should be dismissed because he has not complied with the statute's exhaustion requirement for informal dispute resolution. Mot. at 20–21. Plaintiff responds that Glenn's failure to take part in the warrantor's informal dispute resolution is an affirmative defense that should not be considered at this stage. Opp'n at 19.

The MMWA "encourage[s] warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms." 15 U.S.C. § 2310(a)(1). If the warrantor establishes such a procedure, the procedure meets certain requirements established by the Federal Trade Commission, and the warrantor "incorporates in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty," then "a class of consumers may not proceed in a class action except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the named plaintiffs (upon notifying the defendant that they are named plaintiffs in a class action with respect to a warranty obligation) initially resort to

such procedure." 15 U.S.C. § 2310(a)(3). "[F]ailure to participate in [the warrantor's] informal dispute settlement procedure is an affirmative defense–subject to waiver, tolling, and estoppel, that [the warrantor] may raise, not that Plaintiff must negate in [his or] her Complaint." *Sanchez–Knutson v. Ford Motor Co.*, No. 14–61344–CIV, 2014 WL 5139306, at *12 (S.D. Fla. Oct. 7, 2014); *see also Maronyan v. Toyota Motor Sales, U.S.A., Inc.*, 658 F.3d 1038, 1040, 1042, 1043 n.4 (9th Cir. 2011) (holding that § 2310(a) is a prudential, not a jurisdictional bar to filing an MMWA claim and that failure to exhaust under § 2310(a) is an affirmative defense).

Here, HMA's express warranty provides that customers must use an informal dispute resolution procedure called BBB AUTO LINE prior to bringing an MMWA claim in court. *See* Declaration of Michael Reynolds ("Reynolds Decl.") Ex. 7 (Dkt. 42-7) at 13. The FAC contains no allegations about BBB AUTO LINE or any other informal dispute resolution procedure. However, Plaintiffs are not required to negate anticipated affirmative defenses in their complaints. HMA may assert its affirmative defenses in its answer. Thus, the Court DENIES Defendant's request to dismiss Glenn's MMWA claim on this ground.

F. Plaintiffs' Standing to Represent Consumers Who Purchased Different Vehicles

Defendant next moves to dismiss or strike a portion of Plaintiffs' class allegations because they include Hyundai models Plaintiffs never purchased or leased. Mot. at 21–22.[13] In particular, while Plaintiffs purchased four of the six models at issue, HMA argues "Plaintiffs have neither Article III standing nor statutory standing to include the Sonata or Veloster models in this action because none of them has purchased or claims to have been harmed by those models." *Id.* at 22.

Plaintiffs first argue the Court should defer this decision to the class certification stage. Opp'n at 21. Should the Court consider this issue now, Plaintiffs argue they have pleaded sufficient similarity between the models they purchased and the Hyundai Sonata and Veloster.

To have Article III standing to bring a claim, (1) plaintiff must have suffered an injury in fact; (2) the injury must be fairly traceable to the defendant's conduct; and (3) it must be likely that the injury can be redressed by a favorable decision of the court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). An "injury in fact" is "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or

[13] Though Defendant uses both the terms dismiss and strike, the Court finds Defendant's request is properly viewed as a request to strike certain class allegations. *See Precht*, 2014 WL 10988343, at *16.

imminent, not conjectural or hypothetical." *Id.* at 560 (internal citations and quotation marks omitted). "[N]amed plaintiffs who represent a class must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent." *Lewis v. Casey*, 518 U.S. 343, 357 (1996) (internal quotation marks omitted).

Some courts have held that a named plaintiff lacks Article III standing to assert claims regarding products that he or she did not purchase. *Dysthe v. Basic Research LLC*, 2011 U.S. Dist. LEXIS 137315, at *9 (C.D. Cal. June 13, 2011); *see also Chin v. Gen. Mills, Inc.*, No. CIV. 12–2150 MJD/TNL, 2013 WL 2420455, at *2–4 (D. Minn. June 3, 2013); *Lieberson v. Johnson & Johnson Consumer Companies, Inc.*, 865 F. Supp. 2d 529, 536–37 (D.N.J. 2011).[14]

On the other hand, some courts in this Circuit have held that "[w]here a class action complaint encompasses both a product the plaintiff purchased and a product he did not, the plaintiff sufficiently has [Article III] standing to proceed with claims on behalf of class members who purchased the latter if there is sufficient similarity between the products purchased and not purchased." *Sharma v. BMW of North Am., LLC,* 2014 U.S. Dist. LEXIS 5399, at *6 (N.D. Cal. Jan. 15, 2014) (internal quotation marks omitted); *see also Astiana v. Dreyer's Grand Ice Cream, Inc.*, 2012 U.S. Dist. LEXIS 101371, at *3338 (N.D. Cal. July 20, 2012) (acknowledging that district courts in this circuit go both ways and collecting cases).

This latter line of cases takes its cue from *Gratz v. Bollinger*, 539 U.S. 244 (2003). *See Koh v. S.C. Johnson & Son, Inc.*, 2010 U.S. Dist. LEXIS 654, at *7 (N.D. Cal. Jan. 5, 2010) (citing *Gratz* and deferring ruling on the defendant's motion to dismiss class allegations regarding a product the named plaintiff had not purchased until the class certification stage). In *Gratz*, the Supreme Court confronted an argument that the University of Michigan used race differently in undergraduate transfer admissions than in its undergraduate freshman admissions and that the named plaintiff, who went through the transfer application process, therefore lacked standing to represent absent class members who had gone through the freshman application process. The Court noted that "[a]s an initial matter, there is a question whether the relevance of this variation, if any, is a matter of Article III standing at all or whether it goes to the propriety of class

[14] Some courts in this Circuit have held plaintiffs do not have statutory standing under the UCL or CLRA to assert claims based on products they did not purchase because they could not show that they were harmed by defendant's conduct related to those products. *Mlejnecky v. Olympus Imaging Am. Inc.*, No. 2:10–CV–02630 JAM, 2011 WL 1497096, at *4 (E.D.Cal. Apr. 19, 2011); *Johns v. Bayer Corp.*, No. 09CV1935DMSJMA, 2010 WL 476688, at *5 (S.D. Cal. Feb. 9, 2010). Because the Court has dismissed Plaintiff's UCL and CLRA claims, the Court does not address this issue.

certification pursuant to Federal Rule of Civil Procedure 23(a)." *Id.* at 263; *see also id.* at 263 n.15. Saving that question for another day, the Court went on to find the named plaintiff satisfied both the Article III standing and the Rule 23(a) adequacy of representation requirements because the University's use of race in undergraduate transfer and freshman admissions did not implicate "significantly different set[s] of concerns." *Id.* at 265–66.

In light of *Gratz*, this Court is persuaded a named plaintiff may assert class claims regarding vehicle models she has not purchased if she adequately pleads "sufficient similarity" between the vehicle models purchased and those models not purchased.

Here, the Court finds Plaintiffs have adequately pleaded "sufficient similarity" at this stage. Plaintiffs allege all the models' sunroofs were made with tempered glass, thinned to improve fuel efficiency, and coated with ceramic paint. FAC ¶¶ 18–20. Even more, Plaintiffs include numerous complaints lodged by Hyundai owners and lessees with the NHTSA. These complaints include several involving the Hyundai Sonata and Veloster. For instance, the FAC includes the following complaint from a driver of the 2013 Hyundai Sonata:

> I was on my way into work driving down the highway and out of no where [sic] a hear this very loud explosion like a gun going off and thought someone had shot me. I then felt things falling on my head and lap, so I pulled over to the shoulder of the highway and turned the inside light on and saw shattered glass and then looked up and my sunroof was gone.

FAC ¶ 24. Plaintiffs also include complaints from drivers of the 2013 Hyundai Veloster and the 2015 Hyundai Veloster. *Id.* Taken together, and taken as true, these allegations are sufficient to show a sufficient similarity between Plaintiffs' Hyundai models and the Hyundai Sonata and Hyundai Veloster.

In arguing Plaintiffs lack standing, Defendant points to this Court's decision in *Precht*. However, in that decision, Plaintiffs only made a "bald assertion that all the Class Vehicles contained the same defect" but failed to allege the other models of cars "actually experienced the Defect as Plaintiff did." *Precht*, 2014 WL 10988343, at *16. Here, by contrast, Plaintiffs have included allegations that owners and lessees of the Hyundai Sonata and Hyundai Veloster experienced the same alleged defect as Plaintiffs did. *See* FAC ¶ 24. That is sufficient at this stage.

Accordingly, the Court DENIES Defendant's request to dismiss or strike a portion of Plaintiffs' class allegations on these grounds.

G. Plaintiffs' Request for a Recall Injunction

In their prayer for relief, Plaintiffs request "[a]n order requiring Hyundai to adequately disclose and repair the defect panoramic sunroofs." FAC at 34.[15] Defendant asks the Court to dismiss or strike Plaintiffs' request for a recall injunction under the doctrines of primary jurisdiction and preemption. The Court will consider these two doctrines separately.

First, Defendant urges the Court to decline to exercise jurisdiction over the recall request in favor of NHTSA's special competence in this area pursuant to the doctrine of primary jurisdiction. Mot. at 23. Plaintiff argues the doctrine of primary jurisdiction does not apply under the facts of this case, pointing to several decisions within this Circuit. *See* Opp'n at 23.

In considering the primary jurisdiction doctrine, courts should consider "(1) the need to resolve an issue (2) that has been placed by Congress within the jurisdiction of an administrative body having regulatory authority (3) pursuant to a statute that subjects an industry or activity to a comprehensive regulatory authority that (4) requires expertise or uniformity in administration." *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 760 (9th Cir. 2015) (citation omitted).

The Court declines to apply the primary jurisdiction doctrine at this stage. As to the first two factors, the Court recognizes that a recall alone would not provide Plaintiffs with all the relief they seek. Indeed, the fact Plaintiffs "seek recovery which the recall does not provide" – namely monetary damages – "weighs against application of the primary jurisdiction doctrine here." *Phillips v. Ford Motor Co.*, Case No. 14-CV-02989-LHK, 2016 WL 693283, at *11 (N.D. Cal. Feb. 22, 2016).

With respect to the third factor, the Court recognizes the NHTSA plays an important role in automobile safety. However, "unlike some federal agencies, which may be charged with the administration of a particular law, there is little authority to suggest that Congress intended NHTSA to have exclusive automobile safety." *Id.* at *12.

[15] Plaintiffs also reference an injunction in their class allegations. *See* FAC ¶ 69(f) (proposing the common question of "[w]hether the Court may enter an injunction requiring Hyundai to notify owners and lessees about the sunroofs' propensity to spontaneously shatter").

Additionally, the Court is unclear as to the scope of NHTSA's current investigation. Defendant argues that because the NHTSA is currently investigating nearly identical allegations concerning the Kia Sorento, and because it is "seeking information and data on panoramic sunroofs from nearly all major car manufacturers in the United States," the Court should defer to the NHTSA's investigation. This is unpersuasive. It appears the NHTSA is currently focusing its investigation on Kia and has requested information from Hyundai as part of that investigation. *See* Mot. at 5. Therefore, Defendant has not demonstrated the current NHTSA investigation covers all the Class Vehicles at issue here.

Under these circumstances, the Court hesitates to strike Plaintiffs' request at this early stage. *See Phillips*, 2016 WL 693283, at *12 ("Thus, unlike what took place in *Bussian*, NHTSA did not undertake a full investigation, did not independently examine Ford's data, and did not issue any formal findings."). As Plaintiffs note, it appears that "NHTSA's only active investigation on panoramic sunroofs concerns a different manufacturer's vehicles." Opp'n at 24. Therefore, Hyundai "has not shown that an actual conflict exists between Plaintiffs' claims or requested relief and the NHTSA investigation." *In re Toyota Motor Corp. Unintended Acceleration Mktg. Sales Practices and Prods. Liab. Litig. ("In re Toyota")*, 754 F. Supp. 2d 1145, 1199 (C.D. Cal. 2010).

Further, as another court in this District explained,

> [T]he claims that Plaintiffs assert in this case do not arise under the Safety Act or NHTSA regulations; rather, they are based on California statutes, the MMA, and general contract and tort principles. Plaintiffs' claims therefore are within the conventional competence of the courts. Thus, the Court does not find that exercise of the doctrine of primary jurisdiction is necessary at this stage of the case, either to ensure uniformity of regulation or because NHTSA is better-equipped than the Court to address the issues raised by Plaintiffs claims.

In re Toyota, 754 F. Supp. 2d at 1200 (citations and internal quotation marks omitted).

Likewise, the Court finds Plaintiffs' request for injunctive relief is not preempted by the National Traffic and Motor Vehicle Safety Act ("Safety Act") at this stage.[16]

[16] In discussing this issue, the Court notes Defendant confusingly uses both the terms dismiss and strike. *See* Mot. at 23 ("Plaintiffs' request . . . should be dismissed or struck under the doctrines of primary jurisdiction and preemption."). The Court finds that Rule 12(f) does not provide a basis for striking Plaintiffs' claim for injunctive relief. *See In re Toyota*, 754 F. Supp. 2d at 1195. Nor has Defendant stated "which of Plaintiffs' claims it seeks to

Defendant argues "[i]t would conflict with and frustrate the purposes of the Safety Act if courts were permitted to order recalls where NHTSA has not found a recall is warranted, particularly here, where NHTSA has been investigating a similar alleged panoramic sunroof defect issue in other car manufacturers' vehicles since 2013, and has not ordered any recall." Mot. at 25.

Conflict preemption exists "where state law conflicts with federal law, either because it's impossible to comply with both laws or because state law stands as an obstacle to accomplishing the purposes of federal law." *Nat'l Meat Ass'n v. Brown*, 599 F.3d 1093, 1097 (9th Cir. 2010). For the Court to find Plaintiffs' requested relief is conflict-preempted, "[t]here must be 'clear evidence' of such a conflict." *Chamberlan v. Ford Motor Co.*, 314 F. Supp. 2d at 953, 957 (quoting *Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 884 (2000)). "Speculative or hypothetical conflict is not sufficient: only State law that 'actually conflicts' with federal law is preempted." *Id.* (quoting *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 516 (1992)). Additionally, the Court notes a "presumption against preemption applies in this case." *In re Toyota*, 754 F. Supp. 2d at 1197.

The Court finds preemption does not apply here. HMA simply "has not met its burden of showing that it was Congress' *clear and manifest intent* for the Safety Act to preempt the relief Plaintiffs seek pursuant to their State law claims." *Id.* at 1197 (emphasis added). Most importantly, Defendant has not shown an actual conflict exists between "the recall sought by Plaintiffs and the Safety Act." *Id.* at 1197. As discussed above, Defendant has not shown the ongoing NHTSA investigation encompasses all the models of the Class Vehicles – thus, the Court cannot conclude the relief Plaintiffs request is preempted by the Safety Act. Rather, Defendant "[a]t most . . . has demonstrated that the relief sought by Plaintiffs *might* conflict with some future action of NHTSA as it investigates the alleged defect[s] at issue in this action." *Kent v. DaimlerChrysler Corp.*, 200 F. Supp. 2d 1208, 1217–18 (N.D. Cal. 2002). Because of this fundamental deficiency,[17] the Court declines to find preemption exists here.

---

dismiss on the grounds of preemption." *Id.* In any event, the Court "will proceed with the preemption analysis because, even if [HMA] argues that certain claims should be dismissed under Rule 12(b)(6) on preemption grounds, the Court finds that [HMA] has failed to show that Plaintiffs' request for injunctive relief or any claims underlying Plaintiffs' requested relief are preempted by the Safety Act." *Id.*

[17] The Court further notes that in assessing whether an actual conflict exists, it is not appropriate to "split remedies." *Kent*, 200 F. Supp. 2d at 1217. "Therefore, the Court declines to treat Plaintiffs' request for injunctive relief differently from its request for damages in determining whether or not there is an actual conflict." *Id.* Defendant has failed to acknowledge the other remedies Plaintiffs request, or explain how those other remedies affect the preemption analysis. This further supports a finding that preemption is not warranted here.

Accordingly, the Court DENIES the Motion as to Defendant's arguments concerning primary jurisdiction or preemption.

IV. Disposition

For the foregoing reasons, the Court ORDERS as follows:

1. Plaintiffs' Individual UCL and CLRA Claims are DISMISSED WITHOUT PREJUDICE;[18]

2. Defendant's Motion to Dismiss Plaintiffs' remaining fraud-based claims on the grounds they were not pleaded with particularity is DENIED;

3. Defendant's Motion to Dismiss Glenn's DTPA claim is DENIED;

4. Plaintiffs' unjust enrichment claim is DISMISSED WITHOUT PREJUDICE;

5. Defendant's Motion to Dismiss Glenn's MMWA claim is DENIED;

6. Defendant's Motion to Strike Plaintiffs' class allegations is DENIED; and

7. Defendant's Motion to Dismiss Plaintiffs' request for an injunction is DENIED.

The Clerk shall serve this minute order on the parties.

[18] As noted above, Plaintiffs' UCL and CLRA *nationwide class* claims are DISMISSED WITH PREJUDICE.