UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 8:20-cv-01584-SB (JDEx)	Date: 1/25/2022

Title: *Ramtin Zakikhani et al. v. Hyundai Motor Company et al.*

Present: The Honorable	**STANLEY BLUMENFELD, JR., U.S. District Judge**
Jennifer Graciano Deputy Clerk	N/A Court Reporter
Attorney(s) Present for Plaintiff(s): None Appearing	Attorney(s) Present for Defendant(s): None Appearing

Proceedings: **[In Chambers] ORDER RE: DEFENDANTS' MOION TO DISMISS PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT [Dkt. No. 57]**

Plaintiffs Ramtin Zakikhani, Kimberly Elzinga, Theodore Maddox Jr., Michael Summa, Jacqueline Washington, Patti Talley, Ana Olaciregui, Elaine Peacock, Melody Irish, and Donna Tinsley (Plaintiffs) purchased vehicles that allegedly contained manufacturing defects (Defective Vehicles). Before the Court is a motion to dismiss Plaintiffs' Second Amended Class Action Complaint filed by Defendants Hyundai Motor Company (HMC), Hyundai Motor America (HMA), Kia Corporation (KC), and Kia America, Inc. (KA) (Defendants). Dkt. No. 57. Plaintiffs have filed an opposition, Dkt. No. 61, and Defendants timely replied, Dkt. No. 63. The Court finds this matter suitable for resolution without oral argument. Fed. R. Civ. P. 78; L.R. 7-15. For the reasons stated below, Defendants' motion is **GRANTED in part**.

BACKGROUND

As recounted in the Court's previous order on the first motion to dismiss, Dkt. No. 48, this class action involves allegations of defects in certain Hyundai and Kia vehicles.

Plaintiffs are the owners of Hyundai and Kia vehicles. Zakikhani is a Florida resident who purchased a 2007 Hyundai Entourage on June 10, 2008 in Rhode Island from Hyundai of Newport, which Plaintiffs allege is "part of Hyundai's network of authorized dealers" and is "promoted on Hyundai's website."[1] Second Amended Class Action Complaint (SAC), Dkt. No. 49, ¶ 36. Elzinga is a California resident who purchased a 2019 Hyundai Tucson in August 2019 from Westlake Hyundai in California. *Id*. ¶ 29. Maddox is a Virginia resident who purchased a 2007 Kia Sorento on May 4, 2015 from Charlie Obaugh Kia in Virginia. *Id*. ¶ 86. Summa is a New York resident who leased a 2015 Kia Sorrento in Connecticut from Danbury Kia in 2015 and purchased the vehicle on July 23, 2017.[2] *Id*. ¶ 72. Washington is an Ohio resident who purchased a 2014 Kia Sorento in June 2020 from Kings Kia in Ohio. *Id*. ¶ 42. Talley is a Florida resident who purchased a 2017 Hyundai Tuscon in Florida from Hyundai of New Port Richey in July 2019. *Id*. ¶ 50. Olaciregui is a Maryland resident who purchased a 2015 Kia Sorento in October 2015 from Kia of Bowie, in Maryland. *Id*. ¶ 58. Peacock is also a Maryland resident, who purchased a 2007 Kia Sorento in July 2007 from Safford Kia of Salisbury (then known as Sherwood Kia), in Maryland. *Id*. ¶ 65. Irish is an Idaho resident who purchased a 2009 Kia Sedona in December 2011 from Young Chevrolet in Texas. *Id*. ¶ 79. Irish's vehicle was "serviced by authorized dealerships." *Id*. Following the recall announcement, Irish brought her vehicle into Kendall Kia of Nampa, in Idaho. *Id*. Tinsley is a Missouri resident who purchased a 2009 Kia Sorento in December 2009 from Lou Fusz Kia in Missouri. *Id*. ¶ 93.

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[1] Plaintiffs' SAC includes the same allegations regarding Hyundai's website and network of authorized dealers with respect to Plaintiffs Elzinga, Maddox, Summa, Washington, Talley, Olaciregui, Peacock, and Tinsley. SAC ¶¶ 29, 42, 50, 58, 65, 72, 86, 93; *see also id*. ¶ 79 (asserting same allegations on behalf of Irish for the location where she brought her vehicle after the recall announcement).

[2] Summa has since dismissed without prejudice his claims against KC and KA. Dkt. No. 60.

HMA is a California corporation responsible for the manufacturing, assembly, marketing, and distribution of Hyundai vehicles sold in California and the United States. *Id*. ¶ 100. Executives located at HMA's headquarters in California are responsible for the manufacture, development, distribution, marketing, sales, customer service, and warranty servicing of Hyundai vehicles. *Id*. ¶ 101. Plaintiffs allege that decisions regarding (1) the marketing and sale of the Defective Vehicles, (2) disclosure of the defect, and (3) development and issuance of the recalls were made "in whole or substantial part" by HMA in California. *Id*. HMA also listed itself as the manufacturer of the Defective Vehicles on its recall reports filed with the National Highway Traffic Safety Administration (NHTSA) and instructed owners of Defective Vehicles to visit the "nearest Hyundai dealer" for repair. *Id*. ¶ 102. HMC is a South Korean corporation and the parent corporation of HMA. *Id*. ¶ 103. On its website, it promotes "all Hyundai models" sold by HMC in the United States. *Id*. ¶ 104.

KA is a California corporation responsible for the manufacturing, assembly, marketing, and distribution of Kia vehicles in the United States. *Id*. ¶ 105. Executives located at KA's headquarters in California are responsible for the manufacture, development, distribution, marketing, sales, customer service, and warranty servicing of Kia vehicles. *Id*. ¶ 107. Plaintiffs allege that decisions regarding (1) the marketing and sale of the Defective Vehicles, (2) disclosure of the defect, and (3) development and issuance of the recalls were made "in whole or substantial part" by KA in California. *Id*. KA also listed itself as the manufacturer of the Defective Vehicles on its recall reports filed with the NHTSA and instructed owners of Defective Vehicles to bring their vehicles to the "nearest Kia dealer" for repair. *Id*. ¶ 106. KC is a South Korean corporation and the parent corporation of KA. *Id*. ¶ 108. HMC also owns 33.88% of KC. *Id*. ¶ 103. On its website, KC promotes "Kia branded vehicles" sold by KA in the United States. *Id*. ¶ 109.

Plaintiffs allege that the Defective Vehicles contain defective Anti-Lock Brake Systems (ABS) modules and faulty Hydraulic Electronic Control Units (HECU).[3] *Id*. ¶ 140. More specifically, Plaintiffs allege that the Defective Vehicles suffer from two defects: first, the ABS modules remain charged with an electrical current even if the car is off; and second, the ABS modules allow moisture to become trapped. *Id*. Together, these defects make the ABS modules

[3] Hyundai and Kia use these terms interchangeably when referring to the same component. SAC ¶ 135. The Court adopts Plaintiffs' use of "ABS modules" in the SAC when referring to this component.

susceptible to short circuiting. Once the vehicle short circuits, there is a high likelihood the vehicle will catch fire, even when the vehicle has been parked for days. *Id*. ¶¶ 141–142. Plaintiffs allege that numerous complaints were filed with the NHTSA about Defective Vehicles catching fire. *Id*. ¶¶ 143–144.

Plaintiffs allege that Defendants had knowledge of the defects in the Defective Vehicles for several years before issuing any recalls, *id*. ¶¶ 158–181, and that Defendants' inadequate and incomplete recall efforts pose a safety hazard to "all drivers, owners, and bystanders," *id*. ¶¶ 182–238.

Based on these and other allegations, Plaintiffs bring a putative nationwide class action under California law. *Id*. ¶¶ 271–304. Plaintiffs propose the following nationwide class:

> All persons or entities in the United States who are current or former owners and/or lessees of a Hyundai Entourage (model years 2007-2008); Kia Sedona (model years 2006-2010); Kia Sorento (model years 2007-2009, 2014-2015); Hyundai Tucson (model years 2016-2021).

Id. ¶ 306. Plaintiffs also seek to certify nine state classes, each represented by a different named Plaintiff. *Id*. ¶ 307. Each state class consists of "[a]ll persons or entities in the State" who currently or formerly owned and/or leased a particular Hyundai or Kia vehicle (the same model owned by the representative Plaintiff).[4]

Defendants filed a motion to dismiss Plaintiffs' First Amended Complaint, which the Court granted in part on June 28, 2021. Order. The Court dismissed with prejudice Plaintiffs' claims based on Defective vehicles they did not purchase or lease for lack of standing. *Id*. at 9. The Court also dismissed the following without prejudice: (1) the California law claims of non-California Plaintiffs (for lack of standing); (2) the cause of action for violation of state consumer protection laws and breach of the implied warranty of merchantability (for impermissible shotgun pleading); and (3) Elzinga's fraud-based claims (for failure to satisfy Rule 9(b)). *Id*. at 9–12.

[4] For example, Plaintiffs propose a California Class, represented by Elzinga, comprised of "[a]ll persons or entities in the State of California who are current or former owners and/or lessees of a Hyundai Tucson (model years 2016-2021)." SAC ¶ 307.

Plaintiffs filed an SAC on July 16, 2021, alleging violations of: (1) the California Consumer Legal Remedies Act (CLRA), Cal. Civ. Code § 1750, *et seq*.; (2) the California Unfair Competition Law (UCL), Cal. Bus. & Prof. Code § 17200, *et seq*.; (3) the California False Advertising Law (FAL), Cal. Bus. & Prof. Code § 17500, *et seq*.; and (4) the Song-Beverly Act (Song-Beverly), Cal. Civ. Code §§ 1792, 1791.1, *et seq*. Plaintiffs also bring additional causes of action under the consumer protection acts of eight states,[5] and breach of implied warranty claims under Florida, Ohio, Maryland, Virginia, Rhode Island, Texas, and Missouri law.[6]

MOTION TO DISMISS

A. Legal Standards

1. Rule 12(b)(1)

Under Federal Rule of Civil Procedure 12(b)(1), a party may move to dismiss a case for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "A Rule 12(b)(1) jurisdictional attack may be facial or factual." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). "In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction." *Id*. "[I]n a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Id*. In resolving a factual attack, "the district court may review

[5] Florida Deceptive and Unfair Trade Practices Act (FDUTPA), Fla. Stat. § 501.201 *et seq*.; Ohio Consumer Sales Practices Act (OSCPA), Ohio Rev. Code Ann. § 1345.01 *et seq*.; Maryland Consumer Protection Act (MCPA), Md. Code Ann., Com. Law § 13-101 *et seq*.; Virginia Consumer Protection Act (VCPA), Va. Code Ann. § 59.1–196 *et seq*.; Rhode Island Unfair Trade Practices and Consumer Protection Act (Rhode Island CPA), R.I. Gen. Laws § 6-13.1 *et seq*.; Connecticut Unfair Trade Practices Act (CUTPA), Conn. Gen. Stat. § 42-110A *et seq*.; Texas Deceptive Trade Practices and Consumer Protection Act (Texas DTPA), Tex. Bus. & Com. Code § 17.4 *et seq*.; and Missouri Merchandising Practices Act (MMPA), Mo. Rev. Stat. § 407.010 *et seq*.

[6] Fla. Stat § 672.314; Ohio Rev. Code Ann. § 1302.27; Md. Code Ann., Com. Law §§ 2–314; Va. Code Ann. § 8.2-314; R.I. Gen. Laws § 6A-2-314; Tex. Bus. & Com. Code § 2.314; and Mo. Rev. Stat. § 400.2-314.

evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." *Id*. (citing *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003)). The court does not need to presume the truthfulness of the plaintiff's allegations. *Id*.

Once a party has moved to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), the opposing party bears the burden of establishing the Court's jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010).

2. Rule 12(b)(6)

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state "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" if the plaintiff pleads facts that "allow[] 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).

In resolving a Rule 12(b)(6) motion, a court must accept all well-pleaded factual allegations as true, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*. at 678. That is, a pleading must set forth allegations that have "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. Courts "are not bound to accept as true a legal conclusion couched as a factual allegation." *Id*. (internal quotation marks omitted) (quoting *Twombly*, 550 U.S. at 555). Assuming the veracity of well-pleaded factual allegations, a court next must "determine whether they plausibly give rise to an entitlement to relief." *Id*. at 679. There is no plausibility "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." *Id*.

B. Analysis

1. Standing for Vehicles Not Purchased or Leased

Defendants again move for dismissal of Plaintiffs' claims based on vehicles they did not purchase or lease, which the Court previously dismissed with prejudice for lack of standing. Motion at 5–6. Plaintiffs argue their revised

proposed class is consistent with the Court's prior Order because Plaintiffs only seek relief for owners or lessees of the four models that Plaintiffs purchased. Opp. at 23. This is true. But Plaintiffs' proposed class includes additional model years of vehicles they did not purchase: (1) the 2008 Hyundai Entourage, (2) the 2016, 2018, 2020, and 2021 Hyundai Tuscon, (3) the 2008 Kia Sorento, and (4) the 2006, 2007, 2008, and 2010 Kia Sedona. In a footnote, Plaintiffs note that the SAC alleges these vehicle models "utilize the same components across multiple years of production," and are therefore recalled collectively. Opp. at 23 n.6 (citing SAC ¶¶ 18, 128–130, 134–135). Plaintiffs do not explain, however, how an allegation of harm caused by a similar legal wrong is itself sufficient to confer standing. While Plaintiffs are careful to avoid the words "substantial similarity," the theory upon which they rely depends on this concept—a concept for which they offer no limiting principle. A similar wrong may affect a product within the same line or wholly outside of it (e.g., a misrepresentation about different products). Under Plaintiffs' theory, they have standing to assert claims on behalf of anyone who suffered harm from a substantially similar wrong, even across different products. The Court has already rejected this argument as inconsistent with Article III standing and the statutory standing requirements under the UCL, FAL, and CLRA. Order at 7–9. *Contra* *Beaty v. Ford Motor Co.*, No. C17-5201RBL, 2018 WL 3320854, at *2 (W.D. Wash. Jan. 16, 2018) (applying the "substantial similarity" standard and finding that a plaintiff had "sufficiently pled that the sunroof defects are similar across the lines, vehicles, and model years"). This conclusion extends to Plaintiffs' claims that are based on vehicle year models they did not purchase or lease.

2. Non-California Plaintiffs' Claims Under California Law

Defendants again seek to dismiss the non-California Plaintiffs' claims under California law. Plaintiffs' SAC attempts to draw on its alternative argument in opposition to the prior motion to dismiss, which is that their claims "emanate from KMA and KA's presence in California." Opp. at 23. "California courts have concluded that 'state statutory remedies may be invoked by out-of-state parties when they are harmed by wrongful conduct occurring in California.'" *In re iPhone 4S Consumer Litig.*, No. C 12-1127 CW, 2013 WL 3829653, at *7 (N.D. Cal. July 23, 2013) (quoting *Norwest Mortg., Inc. v. Superior Ct.*, 72 Cal. App. 4th 214, 224–25 (1999). "To determine whether sufficient wrongful conduct occurred in California, 'courts consider where the defendant does business, whether the defendant's principal offices are located in California, where class members are located, and the location from which . . . decisions were made.'" *Schmitt v. SN Servicing Corp.*, No. 21-cv-03355-WHO, 2021 WL 3493754, at *3 (N.D. Cal.

Aug. 9, 2021) (quoting *In re Toyota Motor Corp.*, 785 F. Supp. 2d 883, 917 (C.D. Cal. 2011)).

The Court previously found Plaintiffs' allegations "too conclusory to survive a motion to dismiss." Order at 10. Plaintiffs attempt to remedy this deficiency by including new allegations that HMA and KA's executives and employees made decisions about the marketing and sale of the Defective Vehicles, the disclosure of the defect, and the development and issuance of the recalls in California. *See, e.g.*, SAC ¶¶ 101, 107, 272, 294–295. Other courts have found such allegations sufficient to allow out-of-state plaintiffs to assert claims under California law. *See, e.g.*, *In re iPhone 4S Consumer Litig.*, 2013 WL 3829653, at *7 (collecting cases and finding allegations that "Apple's purportedly misleading marketing, promotional activities and literature were coordinated at, emanate from and are developed at its California headquarters, and that all 'critical decisions' regarding marketing and advertising were made within the state" sufficient to survive a motion to dismiss); *Schmitt*, 2021 WL 3493754, at *3 (collecting cases).

Defendants argue that California's choice of law principles, which are applied under the Class Action Fairness Act, support finding that non-California Plaintiffs cannot bring claims under California law. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 561 (9th Cir. 2019). Defendants rely heavily on *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012), for the proposition that "the law of the state where each Plaintiff and proposed class member purchased his or her vehicle governs each person's claims." Motion at 23. Courts have rejected such a broad interpretation of *Mazza* and reiterated that the party objecting to the application of California law must show that the "differences in state law are 'material,' that is, they 'make a difference in this litigation.'" *Bruno v. Eckhart Corp.*, 280 F.R.D. 540, 547 (C.D. Cal. 2012) (quoting *Mazza*, 666 F.3d at 590); *see also Mazza*, 666 F.3d at 591 (noting that the defendants had "exhaustively detailed the ways in which California law differs from the laws of the 43 other jurisdictions in which class members reside"). Defendants have made no such showing here. Accordingly, Defendants have failed to "address how any . . . differences" between the consumer protection laws of the relevant states "would also be material to the facts of the instant litigation." *In re iPhone 4S Consumer Litig.*, 2013 WL 3829653, at *9.

Although Plaintiffs' allegations are sufficient to establish wrongful conduct by HMA and KA in California, the same cannot be said about HMC and KC, which are both headquartered in South Korea. Plaintiffs' SAC does not contain the same specific allegations for HMC and KC, and even admits that "while HMC and

KMC participated in the investigations of the Defect in Hyundai and Kia vehicles, the ultimate decisions concerning whether to recall the Defective Vehicles were made by [HMA] and [KA] executives at their respective California headquarters." SAC ¶ 304. Accordingly, the non-California Plaintiffs' claims under California law against HMC and KC fail.

3. Fraud-Based Claims and Rule 9(b)

Defendants argue that Plaintiffs' fraud-based claims fail to satisfy Rule 9(b) and do not plead actionable fraud. Motion at 7.

a. Group Pleading

"Federal Rule of Civil Procedure 9(b) instructs that 'a party must state with particularity the circumstances constituting fraud or mistake.' Though this requirement is relaxed in the context of fraud-by-omission, plaintiff still must articulate the 'who, what, when, and how of the fraud.'" *Drake v. Toyota Motor Corp. (Drake II)*, No. 2:20-cv-01421-SB-PLA, 2021 WL 2024860, at *4 (C.D. Cal. May 17, 2021) (quoting *Baranco v. Ford Motor Co.*, 294 F. Supp. 3d 950, 969 (N.D. Cal. 2018)). Defendants argue that Plaintiffs continue to rely on impermissible group pleading to plead the "who" of their fraud-based claims. Motion at 8. "It is inappropriate to group multiple defendants together where doing so would make the defendants unsure of the accusations against them," *Cirulli v. Hyundai Motor Co. (Cirulli II)*, No. SACV 08-0854 AG (MLGx), 2009 WL 4288367, at *4 (C.D. Cal. Nov. 9, 2009), but a pleading is not necessarily deficient "where collective allegations are used to describe the actions of multiple defendants who are alleged to have engaged in precisely the same conduct," *United States ex rel. Swoben v. United Healthcare Ins. Co.*, 848 F.3d 1161, 1184 (9th Cir. 2016); *see also* Order at 7 ("Based on these allegations, it can be reasonably inferred that HMC and [KC] were involved in the relevant decision-making process from the outset.").

Defendants recognize that Plaintiffs' SAC "contains more references to each Defendant." Motion at 8. Further, in the fraudulent omission and concealment section, the SAC alleges:

> [E]ach Defendant (Hyundai America, HMC, Kia America, and KMC) actively concealed and omitted the Defect from Plaintiffs and Class Members while simultaneously touting the safety and dependability of the Defective Vehicles, as alleged herein. Plaintiffs are unaware of,

> and therefore unable to identify, the true names and identities of those specific individuals responsible for such decisions.

SAC ¶ 252. "Because the [Defendants] are largely 'alleged to have engaged in precisely the same conduct,' there was no reason (and no way) for [Plaintiffs] to differentiate among those allegations that are common to the group." *United States ex rel. Anita Silingo v. WellPoint, Inc.*, 904 F.3d 667, 678 (9th Cir. 2018) (quoting *Swoben*, 848 F.3d at 1184). To the extent that the SAC includes allegations against "Hyundai" or "Kia," these terms are defined to include both HMA and HMC and KA and KC, respectively. SAC at 1. Accordingly, Plaintiffs' fraud-based claims, as amended, no longer fail due to the use of group allegations.

b. Omission and Concealment

Defendant argues that Plaintiffs fail to adequately allege fraudulent omission or concealment.[7] A party pleading a fraudulent omission must satisfy Rule 9(b)'s heightened standards, but the specificity requirements must take into account the information reasonably available to the pleader under the circumstances. *See Washington v. Baenziger*, 673 F. Supp. 1478, 1482 (N.D. Cal. 1987) (noting that a plaintiff may not be able to allege the specific time or place in cases involving an alleged failure to act). At a minimum, a plaintiff should be able to "describe the content of the omission and where the omitted information should or could have been revealed, as well as provide representative samples of advertisements, offers,

[7] Defendants also argue that the FAL claim fails because Plaintiffs make only vague and conclusory references to misrepresentations. Motion at 10. "A FAL claim is not cognizable when based solely on an omission of material information. Even if a FAL claim involves a fraudulent omission or concealment, the complaint must still identify an affirmative statement that was made false or misleading by the omission of relevant and material information." *Stewart v. Electrolux Home Prod., Inc.*, 304 F. Supp. 3d 894, 907–08 (E.D. Cal. 2018) (citation omitted). Plaintiffs do not address this argument in opposition, and such failure constitutes waiver. *See, e.g.*, *Stichting Pensioenfonds ABP v. Countrywide Fin. Corp.*, 802 F. Supp. 2d 1125, 1132 (C.D. Cal. 2011) ("[I]n most circumstances, failure to respond in an opposition brief to an argument put forward in an opening brief constitutes waiver or abandonment in regard to the uncontested issue." (internal quotation marks omitted) (quoting *Sportscare of Am., P.C. v. Multiplan, Inc.*, No. 2:10-4414, 2011 WL 589955, at *1 (D.N.J. Feb. 10, 2011))). Accordingly, Plaintiffs' FAL claims are deficient.

or other representations that plaintiff relied on to make her purchase and that failed to include the allegedly omitted information." *Shamamyan v. FCA US LLC*, No. CV19-54220DMG (FFMx), 2020 WL 3643481, at *7 (C.D. Cal. Apr. 1, 2020) (internal quotation marks omitted) (quoting *Marolda v. Symantec Corp.*, 672 F. Supp. 2d 992, 1002 (N.D. Cal. 2009)).

Plaintiffs' SAC meets the standard for pleading a fraudulent omission. The SAC alleges that Plaintiffs reviewed Defendants' marketing materials and that all but Irish purchased their vehicles at authorized dealers, and yet the defect was never disclosed. Plaintiffs "provide representative samples of advertisements, offers, or other representations" that Plaintiffs relied on to make their purchase that "failed to include the allegedly omitted information." *Pelayo v. Hyundai Motor Am., Inc.*, No. 8:20-cv-01503-JLS-ADS, 2021 WL 1808628, at *5 (C.D. Cal. May 5, 2021). In *Pelayo*, the plaintiffs "failed to set forth *any* facts about the content" of the brochures and window stickers that they allegedly relied on, *id*. at *6, but here, Plaintiffs have provided examples of the content of the materials they reviewed before purchasing their Defective Vehicles, *see, e.g.*, SAC ¶¶ 119–125 (noting, for example, that the promotional materials for the 2009 Kia Sedona is "class-leading [in] safety").

Plaintiffs' allegations of active concealment are also sufficient. Defendant argues that Plaintiffs fail to specifically allege the required "affirmative acts of concealment." *Taragan v. Nissan N. Am., Inc.*, No. C 09-3660 SBA, 2013 WL 3157918, at *7 (N.D. Cal. June 20, 2013). Plaintiffs, however, specify multiple facts that together are sufficient to allege concealment. They allege, among other things, that Defendants, despite knowing about the alleged defect, denied responsibility for the alleged defect and attributed the problem to "user error." *See* SAC ¶¶ 144, 241–245; *Rushing v. Williams-Sonoma, Inc.*, No. 16-cv-01421-WHO, 2017 WL 766678, at *6 (N.D. Cal. Feb. 28, 2017) (noting that affirmative acts of concealment can include "affirmative denials of the defect and denials of free servicing or repairs of defective parts when consumers complain"). Plaintiffs also allege that Defendants offered remedies in the recalls that do not remove the risk posed by the defect, which Defendants have not yet disclosed to the public, SAC ¶¶ 19, 20, 197, 214, 218; *see also Sloan v. Gen. Motors LLC*, No. 16-CV-07244-EMC, 2020 WL 1955643, at *15 (N.D. Cal. Apr. 23, 2020) (noting that active concealment may exist where "a company implements a 'fix' it knows is not effective").

c. Reliance

For Plaintiffs' UCL, CLRA, FAL, MCPA, OCSPA, VCPA, and DTPA claims,[8] Plaintiffs must allege facts demonstrating that "had the omitted information been disclosed, one would have been aware of it and behaved differently." *Daniel v. Ford Motor Co.*, 806 F.3d 1217, 1225 (9th Cir. 2015) (internal quotation marks omitted) (quoting *Mirkin v. Wasserman*, 5 Cal. 4th 1082, 1093 (1993)). "Alleged defects that create 'unreasonable safety risks'" are presumed to be material, but Plaintiffs must also allege "that they would have been aware of a disclosure." *Id*. at 1226. For pleading purposes, Plaintiffs satisfy that element here. The SAC alleges that Plaintiffs reviewed Defendants' marketing materials, SAC ¶¶ 30, 37, 43, 51, 59, 66, 80, 88, 94, and that all except Irish purchased their Defective Vehicles from authorized dealerships, *id*. ¶¶ 29, 36, 42, 50, 58, 65, 86, 93. Such allegations are sufficient to allege reliance. *See, e.g.*, *Glenn v. Hyundai Motor Am.*, No. SA CV 15-2052-DOC (KESx), 2016 WL 3621280, at *12 (C.D. Cal. June 24, 2016) ("[E]ach 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. Accepting these allegations as true, the Court finds Plaintiffs have adequately alleged reliance." (citation omitted)); *Sloan v. Gen. Motors LLC*, 287 F. Supp. 3d 840, 878 (N.D. Cal. 2018) (inferring that Plaintiffs "interacted with a sales agent and would have received the material information during the purchase process" from "the mere fact that they purchased their vehicles from an authorized dealership").

4. Knowledge at the Time of Sale

Defendants contend that Plaintiffs' fraud-based claims fail to allege knowledge of the alleged defect at the time of sale. Motion at 11. "Rule 9(b) does not apply to allegations of knowledge and intent. Thus, Plaintiff[s] only need[] to

[8] *Snider v. Hostess Brands, LLC*, No. 7:20-CV-00516, 2021 WL 311871, at *4 (W.D. Va. Jan. 15, 2021) (VCPA requires allegations of reliance); *Marlowe v. Nature's Bounty Co.*, No. 1:17 CV 332, 2017 WL 2291683, at *2–3 (N.D. Ohio May 25, 2017) (same for the OCSPA); *Resnick v. Hyundai Motor Am., Inc.*, No. CV1600593BROPJWX, 2017 WL 1531192, at *20 (C.D. Cal. Apr. 13, 2017) (same for the UCL, CLRA, FAL, and MCPA); *Robinson v. Match.com, L.L.C.*, No. 3:10-CV-2651-L, 2012 WL 5007777, at *7 (N.D. Tex. Oct. 17, 2012) (same for the DTPA).

allege facts raising a plausible inference that Defendant[s] knew of the [d]efect at the time of the sale." *Precht v. Kia Motors Am., Inc.*, No. SA CV 14-1148-DOC (MANx), 2014 WL 10988343, at *6 (C.D. Cal. Dec. 29, 2014) (cleaned up).

Plaintiffs make several allegations that provide circumstantial evidence of knowledge as of 2012: (1) extensive presale "performance and durability tests"; (2) dealership records and warranty claims; (3) dozens of customer complaints filed with the NHTSA, which Defendants monitor; and (4) recalls issued as early as October 2013, after Hyundai learned of the defect in 2012. SAC ¶¶ 144, 160, 162, 169–178, 180. "Even if the testing data is not sufficient to allege knowledge," Plaintiffs have provided "additional bases" for inferring knowledge here. *Mosqueda v. Am. Honda Motor Co.*, 443 F. Supp. 3d 1115, 1132 (C.D. Cal. 2020); *see also Precht*, 2014 WL 10988343, at *7 ("[T]he allegations about the recall and the relationship between Hyundai and Kia are sufficient to support a plausible inference that Kia knew in 2009 that, if it used and continued to use the same design and manufacturing process for the Class Vehicles as Hyundai did for its vehicles, then the Class Vehicles were likely to contain the same defect when sold."). Further, Plaintiffs allege "post-sale evidence of a defect," which "may support an inference that the manufacturer was already aware of it."[9] *Espineli v. Toyota Motor Sales, U.S.A., Inc.*, No. 2:17-cv-00698-KJM-CKD, 2019 WL 2249605, at *7 (E.D. Cal. May 24, 2019). Taken together, these alleged facts raise an inference of Defendants' knowledge of the relevant defects as early as 2012.

Plaintiffs have not, however, adequately alleged that Defendants knew of the defect prior to 2012. At most, Plaintiffs are able to state that Defendants knew of the defect in 2012 "at the latest," but they do not allege knowledge before then. Opp. at 9 (emphasis omitted). Four Plaintiffs purchased their vehicles prior to 2012: Peacock (2007), Zakikhani (2008), Tinsley (2009), and Irish (2011). SAC ¶¶ 36, 65, 79, 93. Because the SAC does not allege that Defendants knew about the defect as early as 2011, let alone as far back as 2007, the fraud-based claims against these four Plaintiffs fail. As for the other Plaintiffs, the allegations of knowledge are sufficient.[10]

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[9] The allegations that Defendants confirmed some of the defects after the sale of many of Plaintiffs' vehicles, *see, e.g.*, SAC ¶ 220, do not necessarily contradict the claim that Defendants knew about the defects before official confirmation.

[10] The Court's findings on the fraud-based claims extend to the derivative UCL claims. *See Cleveland v. Groceryworks.com, LLC*, 200 F. Supp. 3d 924, 961 (N.D.

5. Statute of Limitations

Both parties recognize that several of Plaintiffs' claims are untimely unless the statute of limitations was tolled. The potentially untimely claims include: (1) the CLRA, FAL, and state consumer protection act claims of Zakikhani, Olaciregui, Peacock, Summa, Irish, Maddox, and Tinsley; (2) the UCL claims of Zakikhani, Olaciregu, Peacock, Irish, Maddox, and Tinsley; and (3) the implied warranty claims of Zakikhani, Olaciregui, Peacock, Irish, Maddox, and Tinsley. Motion at 15–16; Opp. at 14 (arguing the claims are timely only because the statute of limitations was tolled).

"Fraudulent concealment tolls a statute of limitations when a plaintiff pleads '(a) the substantive elements of fraud, and (b) an excuse for late delivery of the facts.'" *Sater v. Chrysler Grp. LLC*, No. EDCV 14-00700-VAP, 2015 WL 736273, at *9 (C.D. Cal. Feb. 20, 2015) (quoting *Investors Equity Life Holding Co. v. Schmidt*, 195 Cal. App. 4th 1519, 1533 (2011)). As previously discussed, Plaintiffs have adequately alleged fraudulent concealment. *See id.* (alleging facts showing fraudulent concealment satisfies the first part of test for tolling the statute of limitations). Further, as previously noted, Plaintiffs have adequately alleged that Defendants had knowledge of the defect by 2012, but did not issue recalls on the affected vehicles until much later. *See Roberts v. Electrolux Home Prod., Inc.*, No. CV 12-1644 CAS VBKX, 2013 WL 7753579, at *8 (C.D. Cal. Mar. 4, 2013) ("[T]he fact that defendant had exclusive knowledge of the defect also excuses plaintiffs' late discovery of their claim."). Accordingly, Plaintiffs have alleged sufficient facts of tolling to avoid dismissal of their claims.

6. Privity

Defendants argue that Talley's and Washington's implied warranty claims fail for lack of privity under Florida and Ohio law.[11] The SAC alleges that privity

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Cal. 2016) ("[L]iability under the UCL is generally derivative of liability under another statutory violation.").

[11] Defendants argue that Maddox's and Zakikhani's implied warranty claims also fail for lack of privity under Virginia and Rhode Island law (respectively), but the parties fail to address whether such claims are subject to an exception for third-party beneficiaries. Virginia recognizes the third-party beneficiary doctrine, *see Pro. Realty Corp. v. Bender*, 216 Va. 737, 739 (1976), but Rhode Island does not, *Ace Am. Ins. Co. v. Grand Banks Yachts, Ltd.*, 587 F. Supp. 2d 697, 708 (D. Md.

is not required under Florida and Ohio law for "intended third-party beneficiaries" of contracts between Defendants and their authorized dealerships. SAC ¶¶ 375, 393.

Under Florida law, there are cases that permit an exception for "third-party beneficiaries of a transaction between a vehicle manufacturer and its agent dealers," but the "overwhelming weight of Florida law" suggests that "Florida law does not recognize a third-party beneficiary exception to the privity of contract requirement for a breach of implied warranty claim." *Peguero v. Toyota Motor Sales, USA, Inc.*, No. 2:20-cv-05889-VAP (ADSx), 2021 WL 4894299, at *5 (C.D. Cal. Aug. 27, 2021) (collecting cases and citing a recent Eleventh Circuit opinion, *Kelly v. Lee Cnty. RV Sales Co.*, 819 F. App'x 713, 717 (11th Cir. 2020), that required consumers to enjoy privity of contract to recover for breach of an implied warranty). To the extent Talley may be able to establish privity by alleging she purchased the vehicle from Defendants' agent, *see Wilson v. Volkswagen Grp. of Am., Inc.*, No. 17-23033-CIV, 2018 WL 9850223, at *4 (S.D. Fla. Nov. 30, 2018), the SAC's allegations are insufficient to establish an agency relationship, *see* SAC ¶ 354 (referring vaguely to dealerships as agents of Defendants). Accordingly, Talley's implied warranty claim is deficient.

Under Ohio law, a limited third-party beneficiary exception appears to exist for a specific transaction intended to benefit a specific individual. *See, e.g.*, *Bobb Forest Prod., Inc. v. Morbark Indus., Inc.*, 151 Ohio App. 3d 63, 84 (2002) (applying exception under an "intent to benefit" test when a manufacturer did not "mass produce" the product but rather "produced this specific sawmill for this specific consumer while knowing this specific consumer's needs"); *Savett v. Whirlpool Corp.*, No. 12 CV 310, 2012 WL 3780451, at *10 (N.D. Ohio Aug. 31, 2012) (finding that "[a]bsent some additional allegation regarding plaintiff's intended third-party beneficiary status, . . . the complaint alleges an ordinary downstream consumer transaction"). Here, Washington alleges that: (1) she is an intended third-party beneficiary, (2) the dealer was not intended to be the ultimate consumer of the Defective Vehicle, and (3) the warranty was "designed for and

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2008) ("Because the legislature has not amended Rhode Island's implied warranty of merchantability to extend from manufacturers to third party beneficiaries, that warranty continues to require contractual privity." (citation omitted)). Accordingly, as Plaintiff fails to sufficiently allege privity of contract between Zakikhani and Defendants, his implied warranty claim under Rhode Island law fails.

intended to benefit the consumers only." SAC ¶ 393. Such general and conclusory allegations fall outside the limited scope of the exception because they apply to an entire class of "downstream consumer transaction[s]." *Bobb Forest Prod.*, 151 Ohio App. 3d at 84. Accordingly, Washington's implied warranty claim fails.

7. Required Notice

Defendants seek to dismiss several of Plaintiffs' implied warranty claims for failure to comply with statutory notice requirements. First, Defendants argue that Olaciregui, Peacock, Irish, and Tinsley fail to allege compliance with pre-suit notice required for their implied warranty claims. Motion at 18; *see also* Md. Code Ann. Com. Law § 2-607(3)(a) (buyer must notify seller within a reasonable time following discovery); Mo. Rev. Stat. § 400.2-607(3)(a) (same); Tex. Bus. & Com. Code § 2.607(c)(1) (same).[12] Plaintiffs' argument that they provided contemporaneous knowledge the same day the suit was filed falls short.[13] Opp. at 19; *see also Tasion Commc'ns, Inc. v. Ubiquiti Networks, Inc.*, No. C-13-1803 EMC, 2014 WL 1048710, at *4 (N.D. Cal. Mar. 14, 2014) ("[N]otice that is after, or contemporaneous with, the filing of the lawsuit is insufficient."). So does their argument that notice is excused for futility because no repair or replacement would solve the problem—as Plaintiffs are requesting injunctive relief that would require Defendants to repair or replace the vehicles. SAC, Prayer, ¶ c.

Alternatively, Plaintiffs argue that pre-suit notice is not required because they have adequately alleged that Defendants had actual knowledge prior to the litigation. The notice requirement in all three states is modeled on U.C.C. § 2-607(3)(a), and Comment 4 to this provision states that the notice need only be

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[12] Plaintiffs claim that Defendants have waived this argument by failing to raise it in their first motion to dismiss. Opp. at 18. But Plaintiffs rely on causes of action that the Court previously dismissed as impermissible shotgun pleadings. Order at 10–11. Shotgun pleadings are prohibited because they prevent the defendant from being "able to discern what the plaintiff is claiming and to frame a responsive pleading." *Anderson v. Dist. Bd. of Trustees of Cent. Fla. Cmty. Coll.*, 77 F.3d 364, 366 (11th Cir. 1996). Accordingly, the Court declines to find waiver in these circumstances.

[13] The parties ask the Court to take judicial notice of the notice letters Plaintiffs sent to Defendants on August 25, 2020 and November 4, 2020. Dkt. Nos. 57-2 (November 2020 letters), 61-2 (August 2020 letters). The Court **grants** these unopposed requests.

"sufficient to let the seller know that the transaction is still troublesome and must be watched." U.C.C. § 2-607, cmt. 4. In interpreting this provision, courts have inferred that a company had notice of a defect based on sufficient allegations of actual knowledge. *See In re Toyota RAV4 Hybrid Fuel Tank Litig.*, 534 F. Supp. 3d 1067, 1092 (N.D. Cal. 2021) (finding that notice was sufficiently pleaded because the complaint alleged that Toyota knew about the defect prior to when the complaint was filed); *In re Rust-Oleum Restore Mktg., Sales Pracs. & Prod. Liab. Litig.*, 155 F. Supp. 3d 772, 800 (N.D. Ill. 2016) (interpreting U.C.C. § 2-607 and identical state law to contain an exception to direct notice "when the seller had actual knowledge of the defect of the particular product"). As previously discussed, Plaintiffs' SAC adequately alleges that Defendants had knowledge of the defect for years prior to when this complaint was filed. Accordingly, to the extent Defendants move to dismiss on the grounds that Plaintiffs "failed to satisfy U.C.C. notice requirements," *In re Toyota RAV4*, 534 F. Supp. 3d at 1092, Plaintiffs' allegations of knowledge are sufficient.

Defendants also move to dismiss Washington's OCSPA claim for failure to allege facts satisfying the notice requirement. Motion at 20. "To pursue a class action claim under the OCSPA, plaintiff must allege that defendant had prior notice that its conduct was 'deceptive or unconscionable'" by alleging that "an Ohio state court has found the specific practice either unconscionable or deceptive in a decision open to public inspection." *Pattie v. Coach, Inc.*, 29 F. Supp. 3d 1051, 1055 (N.D. Ohio 2014) (quoting *Johnson v. Microsoft Corp.*, 155 Ohio App. 3d 626, 636 (Ct. App. 2003)). On a motion to dismiss, "consent decrees and default judgment cannot serve as the basis of prior notice," *id*. at 1057, and the "alleged violation . . . must be "substantially similar to an act or practice previously declared to be deceptive," *id*. at 1055 (internal quotation marks omitted) (quoting *Marrone v. Philip Morris USA, Inc.*, 110 Ohio St. 3d 5, 6 (2006)). The Court cannot determine from the face of the SAC whether the decisions cited[14] are "substantially similar" to the "essential circumstances or conditions" of this case. *Id*. (internal quotation marks omitted) (quoting *Marrone*, 110 Ohio St. 3d at 10). Further, the descriptions Plaintiffs provide in their opposition for some of the cases are too vague to establish substantial similarity. *See, e.g.*, Opp. at 21 (noting that one of the cases involved omissions that contradicted advertisements that the "vessel" was safe and dependable). Accordingly, Washington's OCSPA claim fails.

[14] Plaintiffs did not ask the Court to take judicial notice of the contents of these decisions.

8. Claims for Equitable Relief

Defendants move to dismiss Plaintiffs' claims for equitable relief for failure to allege a lack of an adequate remedy at law. Motion at 22–23. "It is a basic doctrine of equity jurisprudence that courts of equity should not act . . . when the moving party has an adequate remedy at law." *Drake v. Toyota Motor Corp. (Drake I)*, No. 2:20-cv-01421-SB-PLA, 2020 WL 7040125, at *13 (C.D. Cal. Nov. 23, 2020). The SAC contains no "substantive allegations showing Plaintiffs' legal claims would not provide them an adequate remedy." *Id*. Though Plaintiffs are entitled to plead legal and equitable remedies in the alternative, *id*., they must still affirmatively plead a lack of adequate remedy at law. Accordingly, Plaintiffs' equitable claims fail.

MOTION TO STRIKE

Under Federal Rule of Civil Procedure 12(f), a court "may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). But courts "within the Ninth Circuit have determined that 'motions to strike are not the proper vehicle for seeking dismissal of class actions.'" *Gardiner v. Walmart, Inc.*, No. 20-cv-04618-JSW, 2021 WL 2520103, at *10 (N.D. Cal. Mar. 5, 2021) (quoting *Tasion Commc'ns, Inc. v. Ubiquiti Networks, Inc.*, No. 13-cv-01803-EMC, 2014 WL 1048710, at *3 (N.D. Cal. Mar. 14, 2014)). Thus, "[t]o the extent" Defendants rely on 12(f) as grounds to strike Plaintiff's class action allegations, such allegations "are not redundant, immaterial, impertinent, or scandalous." *Id*.

Federal Rule 23 addresses class action allegations specifically, permitting a court to order that "pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly." Fed. R. Civ. P. 23(d)(1)(D). A court may "strike class allegations prior to discovery if the complaint demonstrates that a class action cannot be maintained." *Tietsworth v. Sears*, 720 F. Supp. 2d 1123, 1146 (N.D. Cal. 2010).

Defendants move to strike Plaintiffs' state class allegations because the law of the state where class members purchased their vehicles should govern.[15] Motion

[15] The Court will overlook the typographical errors in Plaintiffs' Texas and Missouri class allegations, *see* *Dillard v. Victoria M. Morton Enterprises, Inc.*, No.

at 25. As discussed above, Defendants have failed to show that California law should not apply to the nationwide class based on the allegations in the SAC. Defendants also move to strike the California class allegations under the Song-Beverly Act because the Act applies only to "consumer goods that are sold at retail in this state," and not to all vehicles owned by people in the state. Cal. Civ. Code § 1792. Plaintiffs failed to respond to this argument in their opposition, which the Court construes as an abandonment of the claim. *See Stichting Pensioenfonds*, 802 F. Supp. 2d at 1132. Accordingly, the Court **strikes** Plaintiffs' California class allegations with respect to the Song-Beverly Act claim.

LEAVE TO AMEND

Plaintiffs again request leave to amend their complaint. Opp. at 25. Leave to amend, though liberally granted, is not limitless. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). A district court "may deny leave to amend due to 'undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of amendment.'" *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008) (cleaned up) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). "A district court's discretion to deny leave to amend is 'particularly broad' where the plaintiff has previously amended." *Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1133 (9th Cir. 2013) (quoting *Sisseton–Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 355 (9th Cir. 1996)).

On the face of the complaint, it is clear that amendment for some claims would be futile: (1) Plaintiffs admit that HMC and KC's alleged wrongful conduct did not emanate from California; and (2) Plaintiffs sufficiently allege that Defendants had knowledge of the defect as early as 2012 but Zakikhani, Peacock, Irish, and Tinsley purchased their vehicles prior to that year. *See Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1998) (affirming dismissal with prejudice when "any amendment would be an exercise in futility"). For the remaining deficient claims, Plaintiffs have not demonstrated that amendment is warranted here. Defendants raised some of the same deficiencies in their prior motion—including Plaintiffs' failure to allege claims for equitable relief or plead any affirmative misrepresentation for Plaintiffs' FAL claims—and the Court noted

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08-1339 FCD/GGH, 2008 WL 11388472, at *8 (E.D. Cal. Oct. 8, 2008), and address only the additional grounds to strike that Defendants raised.

in its prior Order that Plaintiffs should consider the additional Rule 9(b) "issues raised by Defendants in their moving and reply papers" not addressed by the Court. Order at 12 n.3. Still, some of Plaintiffs' claims remain deficient.

This case has been pending for two years, and Plaintiffs have twice amended their complaint, once in response to a previous motion to dismiss. *See Strategic Partners, Inc. v. FIGS, Inc.*, No. 2:19-cv-02286-JWH-KSx, 2021 WL 4813645, at *7 (C.D. Cal. Aug. 10, 2021) (denying leave to amend because the plaintiff "had a more-than-adequate opportunity to plead [its] claim" where the action was commenced "nearly two-and-a-half years ago," the plaintiff had amended its complaint multiple times, and the parties had already engaged in discovery). They do not identify additional facts they could plead to cure deficiencies in the SAC, only summarily requesting leave to amend at the end of their opposition. "A plaintiff may not in substance say 'trust me,' and thereby gain a license for further amendment when prior opportunity to amend ha[s] been given." *Salameh*, 726 F.3d at 1133; *see also Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1052 (9th Cir. 2008) (finding amendment to be futile because plaintiffs "fail to state what additional facts they would plead if given leave to amend"); *Verduzco v. Conagra Foods Packaged Foods, LLC*, No. 1:18-cv-01681-DAD-SKO, 2021 WL 2322522, at *9 (E.D. Cal. June 7, 2021) ("To avoid dismissal with prejudice after leave to amend was previously granted, a plaintiff should disclose facts that he or she believes will help cure any deficiencies."). Under all these circumstances, Plaintiffs have not shown that further amendment would be fruitful, and further leave to amend would invite another round of motions, thereby increasing the costs of litigation, delaying already protracted proceedings, and causing undue prejudice.

CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss is **GRANTED** in part. The Court **dismisses without leave to amend**: (1) Plaintiffs' claims based on vehicle year models that Plaintiffs did not purchase or lease; (2) the non-California Plaintiffs' CLRA and UCL claims against HMC and KC; (3) Plaintiffs' FAL claims; (4) Zakikhani's implied warranty and Rhode Island CPA claims; (5) Tinsley's MMPA claim; (6) Irish's Texas DTPA claim; (7) Peacock's MCPA claim; (8) Washington's implied warranty and OCSPA claims; (9) Talley's implied warranty claim; and (10) Plaintiffs' claims for equitable relief. The Court also **STRIKES** Plaintiff's California class allegations with respect to the Song-Beverly Act claim.