UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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MARGIE DANIEL, individually and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

FORD MOTOR COMPANY, a Delaware corporation,

Defendant.

CIV. NO. 2:11-02890 WBS EFB

MEMORANDUM AND ORDER RE: MOTION FOR CLASS CERTIFICATION

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Plaintiff Margie Daniel brought this action against defendant Ford Motor Company alleging a defect in rear suspension geometry in new 2005 through 2011 Ford Focus vehicles ("class vehicles").[1] Presently before the court is plaintiff's renewed

[1] There were originally five named plaintiffs in this action, but the court entered summary judgment against plaintiffs Robert McCabe, Mary Hauser, Donna Glass, and Andrea Duarte. (See June 6, 2013 Order at 20 (Docket No. 84); May 17, 2016 Order at 3, 22 (Docket No. 107).) Plaintiff Daniel is the only remaining plaintiff.

motion for class certification. (Pl.'s Renewed Mot. to Certify Class ("Pl.'s Renewed Mot.") (Docket No. 111).)

I. Factual and Procedural Background

In January 2011, plaintiff purchased a class vehicle in California. (Def.'s Opp'n at 3 (Docket No. 114).) She alleges that class vehicles have an "alignment/geometry defect" in their rear suspensions that leads to premature tire wear, which, in turn, leads to safety hazards such as decreased control in handling, steering, and stability, and threat of catastrophic tire failure. (Compl. ¶¶ 17-20 (Docket No. 1).) Plaintiff brings claims for: (1) breach of express warranty under California Commercial Code section 2313; (2) breach of implied warranty under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1790-1795.8; (3) breach of warranty under the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301-2312[2]; (4) violation of the California Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750-1784; and (5) violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17210. (Id. at 28-34.)

In an Order dated June 6, 2013, the court granted defendant's motion for summary judgment on all claims and entered final judgment in its favor. (June 6, 2013 Order at 24-25 (Docket No. 84).) On June 17, 2013, the court denied plaintiffs' motion for class certification. (June 17, 2013 Order at 14 (Docket No. 85).)

[2] The parties stipulate that pursuant to the Ninth Circuit's opinion in this case, "class certification of [plaintiff's claims brought under the Magnuson-Moss Warranty Act] should stand or fall with class certification of [plaintiff's express and implied warranty claims under state law]." (Pl.'s Reply at 10 n.6.)

Plaintiffs appealed the summary judgment Order and the Ninth Circuit reversed on all claims. Daniel v. Ford Motor Co., 806 F.3d 1217 (9th Cir. 2015). In its opinion, the Ninth Circuit stated, "In light of our reversal, we also instruct the district court to reconsider its denial of Plaintiffs' motion for class certification." Id. at 1227.

On remand, defendant moved for renewed summary judgment on several grounds that the Ninth Circuit declined to address on appeal. (See Def.'s Renewed Mot. for Summ. J., Br. (Docket 101-1).) This court denied defendant's renewed motion for summary judgment as to Daniel and granted it as to all other plaintiffs. (May 17, 2016 Order at 22 (Docket No. 107).)

Presently before the court is plaintiff's renewed motion for class certification. Plaintiff seeks to certify a class of "individuals who purchased or leased any class vehicle in California and who currently reside in the United States." (Pl.'s Reply at 1 (Docket No. 116).) Counsel for plaintiff represented at oral argument and in plaintiff's renewed motion that plaintiff does not seek to include in her class purchasers who have sold their vehicles. (Pl.'s Renewed Mot. at 1.)

## II. Legal Standard

To certify a class, plaintiff must satisfy the 'numerosity,' 'commonality,' 'typicality,' and 'adequacy of representation' requirements of Federal Rule of Civil Procedure 23(a). Fed. R. Civ. P. 23. Plaintiff must also establish an appropriate ground for bringing a class action under Rule 23(b). Id.

"Rule 23 does not set forth a mere pleading standard. A

party seeking class certification must affirmatively demonstrate his compliance with the Rule . . . ." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011). "[C]ertification is proper only if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied." Id. at 350-51 (internal quotation marks and citation omitted). "Frequently that rigorous analysis will entail some overlap with the merits of the plaintiff's underlying claim." Id. at 351 (internal quotation marks, brackets, and citations omitted). "Merits questions may be considered to the extent--but only to the extent--that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." Amgen Inc. v. Connecticut Ret. Plans & Trust Funds, 133 S. Ct. 1184, 1195 (2013).

III. Analysis

A. Numerosity

"[N]umerosity is presumed where the plaintiff class contains forty or more members." In re Cooper Companies Inc. Sec. Litig., 254 F.R.D. 628, 634 (C.D. Cal. 2009); see also, e.g., Collins v. Cargill Meat Solutions Corp., 274 F.R.D. 294, 300 (E.D. Cal. 2011) (Wanger, J.). Plaintiff estimates, and defendant does not dispute, that the class in this case would include "tens of thousands" of people. (See Pl.'s Renewed Mot. at 12; Def.'s Opp'n at 13.) Accordingly, plaintiff has satisfied 'numerosity.'

B. Commonality and Predominance

The 'commonality' requirement of Rule 23(a)(2) requires that the plaintiff show that "there are questions of law or fact

common to the class." Fed. R. Civ. P. 23(a)(2). "All questions of fact and law need not be common to satisfy [Rule 23(a)(2)]. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). "What matters to class certification . . . [is] the capacity of a class[-]wide proceeding to generate common answers apt to drive the resolution of the litigation." Wal-Mart, 564 U.S. at 350 (quoting Richard A. Nagareda, Class Certification in the Age of Aggregate Proof, 84 N.Y.U. L. Rev. 97, 132 (2009)). Class members' claims "must depend upon a common contention . . . [that is of] such a nature that it is capable of classwide resolution--which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Id.

Rule 23(b)(3), under which plaintiff seeks certification, requires that "questions of law or fact common to class members predominate over questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). The 'predominance' inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Amchem Prod., Inc. v. Windsor, 521 U.S. 591, 623 (1997). "Because Rule 23(a)(3) already considers commonality, the focus of the Rule 23(b)(3) predominance inquiry is on the balance between individual and common issues." Murillo v. Pac. Gas & Elec. Co., 266 F.R.D. 468, 476 (E.D. Cal. 2010) (citing Hanlon, 150 F.3d at 1022). The 'predominance' requirement subsumes the

'commonality' requirement, Georgine v. Amchem Prod., Inc., 83 F.3d 610, 627 (3d Cir. 1996), aff'd sub nom. Amchem, 521 U.S. 591, and is more difficult to satisfy, Comcast Corp. v. Behrend, 133 S. Ct. 1426, 1432 (2013).

1. Express Warranty

The 2007 through 2011 Focus warranty,[3] under which plaintiff brings her express warranty claim, states:

> [I]f:
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> --your Ford vehicle is properly operated and maintained, and
>
> --was taken to a Ford dealership for a warranted repair during the warranty period,
>
> then authorized Ford Motor Company dealers will, without charge, repair, replace, or adjust all parts on your vehicle that malfunction or fail during normal use during the applicable coverage period due to a manufacturing defect in factory-supplied materials or factory workmanship. . . .
>
> Defects may be unintentionally introduced into vehicles during the design and manufacturing processes and such defects could result in the need for repairs. For this reason, Ford provides the New Vehicle Limited

[3] The warranty for 2005 through 2006 Focuses covers "all parts on [the customer's] vehicle that are defective in factory-supplied materials or workmanship." (Pl.'s Mot. to Certify Class Exs. F-G, 2005-2006 Ford Focus New Vehicle Limited Warranty (Docket No. 33-2).) That the 2005 through 2006 warranty may differ materially from the 2007 through 2011 warranty does not defeat a finding of 'commonality' and 'predominance' with respect to plaintiff's express warranty claim, as such differences need only be noted once for all class members. See Hanlon, 150 F.3d at 1019 ("All questions of fact and law need not be common to satisfy [Rule 23]. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class."); Melgar v. CSk Auto, Inc., No. 13-CV-03769-EMC, 2015 WL 9303977, at *11 (N.D. Cal. Dec. 22, 2015) (holding that potential necessity of subclasses does not defeat 'predominance' finding).

> Warranty in order to remedy any such defects that result in vehicle part malfunction or failure during the warranty period.

(Pl.'s Mot. to Certify Class ("Pl.'s Mot.") Exs. H-L, 2007-2011 Ford Focus New Vehicle Limited Warranty ("Focus NVLW") (Docket No. 33-2).) The Ninth Circuit has held in this case that "[t]he warranty must be construed to guarantee against . . . design defects." Daniel, 806 F.3d at 1225.

Plaintiff has provided evidence that an alleged rear suspension geometry defect in class vehicles causes premature tire wear. (See, e.g., Pl.'s Renewed Mot. at 8 ("Ford did alert its dealers to the [Focus'] rear suspension problem . . . [informing them] that some of these vehicles 'may exhibit premature front and/or rear tire wear.'" (citing Pl.'s Mot. Ex. B, Ford Internal Records)); id. at 10 ("[A] Consulting Engineer . . . with nearly two decades in design engineering and related fields in private industry, has opined that the Class Vehicles have a common rear suspension defect, which causes . . . premature tire wear.").) Defendant's own engineer testified that all class vehicles are built with the same rear suspension geometry. (See Pl.'s Mot. Ex. HH, Eric Kalis Deposition Transcript ("Kalis Deposition") at 160:4-161:15 (conceding that "suspension hard points" was fundamentally same for class vehicles) (Docket No. 33-6).) Because the court can resolve the central question in plaintiff's express warranty claim--whether the rear suspension geometry is defective--once for all class members, plaintiff has met 'commonality' with respect that claim. See Wolin v. Jaguar Land Rover N. Am., LLC, 617 F.3d 1168, 1172

(9th Cir. 2010) (plaintiffs "easily satisfy the commonality requirement" by alleging suspension geometry defect in same make and model of vehicle covered by same warranty).

Defendant notes that the warranty requires "malfunction or fail[ure] during normal use during the applicable coverage period" for coverage to apply. (Def.'s Opp'n at 14, 22.) Because determining "normal use" and "malfunction . . . during the applicable coverage period" requires examining individual class members' driving habits and vehicles, the argument goes, resolution of plaintiff's express warranty claim cannot take place on a class-wide basis. See id. Plaintiff responds that whether class vehicles malfunction during "normal use" and "the applicable coverage period" is irrelevant because design defects like the one she alleges, by definition, cause malfunction "from the moment each class vehicle left the factory." (See Pl.'s Reply at 6.) Under that theory, it matters not how class members used their vehicle or at what point the tires needed replacement, as the tires would always wear faster with the alleged defect than without. (Id. at 8-9.) In light of the Ninth Circuit's holding that defendant's 2007 through 2011 express warranty covers design defects like the one plaintiff alleges, the court must hold in favor of plaintiff on this issue.

Defendant further points out that there are "47 configurations" of class vehicles and each configuration differs with respect to tire wear and handling. (Def.'s Opp'n at 16.) Rear suspension geometry, according to defendant, is one of many mechanical factors that determine how quickly tires wear, how much they wear, and how soon they need to be replaced. (See id.

at 18-22.) Plaintiff's experts do not deny this, according to defendant. (See id. at 9-11.) Because mechanical factors and other factors affecting tire wear (e.g., individual driving habits) vary from class member to class member, the argument goes, tire wear will also vary by class member. (See id. at 17.) That variance, defendant argues, precludes class certification.

Plaintiff's theory of liability, however, does not depend on the extent of tire wear or even the rate of tire wear itself. Instead, it depends on the rate of tire wear relative to how quickly the tires would wear without the alleged defect. (See Pl.'s Reply at 8-9.) Plaintiff's experts have provided support for her express warranty claim under that theory by opining that all class vehicles experienced premature tire wear, (see Pl.'s Mot. Ex. LL, Op. Report of Andrew Webb at 2; id. Ex. NN, Op. Report of Thomas Lepper at 3-4), a position which their concession about variances in degree or absolute rate of tire wear does not undermine.

Defendant's argument about variance in tire wear is ultimately an argument about damages under plaintiff's theory of liability. With respect to that argument, the Ninth Circuit has held that damage calculations, while necessarily individual in nature, do not defeat class certification. Yokoyama v. Midland Nat. Life Ins. Co., 594 F.3d 1087, 1089 (9th Cir. 2010) ("[T]he amount of damages is invariably an individual question and does not defeat class action treatment." (internal quotation marks and citation omitted)); Pulaski & Middleman, LLC v. Google, Inc., 802 F.3d 979, 988 (9th Cir. 2015) ("Yokoyama remains the law of this court, even after Comcast."), cert. denied, 136 S. Ct. 2410

(2016). That holding applies in products liability cases. See Edwards v. Ford Motor Co., 603 F. App'x 538, 541 (9th Cir. 2015) (individual damage calculations do not defeat class certification in vehicle defect case).

Because the Ninth Circuit has validated plaintiff's theory of liability in this case, see Daniel, 806 F.3d at 1225, defendant cannot defeat class certification merely by showing that class members' tires wore to different degrees or at different rates. So long as plaintiff is able to show that the tires wore prematurely across the class, her request to certify her express warranty claim survives defendant's 'variance' argument.[4] See Vaquero v. Ashley Furniture Indus., Inc., 824 F.3d 1150, 1154 (9th Cir. 2016) (holding that while plaintiff must prove that "damages resulted from the defendant's conduct," "different damage calculations do not defeat predominance").

Defendant also argues that causation, a required element under the express warranty, (see Focus NVLM (requiring malfunction or failure "due to" defect)), cannot be resolved on a class-wide basis. (See Def.'s Opp'n at 25.) As explained above, plaintiff need only prove that the alleged defect caused some, not necessarily the same, damage to class vehicles. Vaquero, 824 F.3d at 1154. The court can resolve that question on a class-wide basis because all class vehicles share the same rear

[4] The court recognizes the possibility that some purchasers of class vehicles may have sold their vehicles prior to replacing or experiencing noticeable issues with their tires. Such class members would find it difficult to quantify any damages at all. However, plaintiff no longer seeks to include purchasers who have sold their vehicles in her class. (Pl.'s Renewed Mot. at 1.) Accordingly, the issue is moot.

suspension geometry. See Wolin, 617 F.3d at 1172 (holding that "whether the [class vehicle's] alignment geometry was defective" due to its tendency to cause premature tire wear was a common question).

Susceptibility to statute of limitations defenses in some class members' cases does not overcome class certification. See Cameron v. E.M. Adams & Co., 547 F.2d 473, 478 (9th Cir. 1976) ("[E]ven if there exists questions of individual compliance with the Oregon statute of limitations, they are not sufficient, on balance, to negate the predominance of the common issues."); Williams v. Sinclair, 529 F.2d 1383, 1388 (9th Cir. 1975) ("Given a sufficient nucleus of common questions, the presence of the individual issue of compliance with the statute of limitations has not prevented certification of class actions in securities cases."); Tait v. BSH Home Appliances Corp., 289 F.R.D. 466, 486 (C.D. Cal. 2012) ("[C]ourts have been nearly unanimous . . . in holding that possible differences in the application of a statute of limitations to individual class members, including the named plaintiffs, does not preclude certification of a class action." (internal quotation marks and citation omitted)). Neither does the question of whether class members took their vehicles in for repair during warranty periods, which the parties can efficiently resolve using defendant's records or a claim form. See Melgar v. CSk Auto, Inc., No. 13-CV-03769-EMC, 2015 WL 9303977, at *11 (N.D. Cal. Dec. 22, 2015) (individual inquiries that can be resolved via claim form or similar process do not defeat 'predominance').

Plaintiff has shown that the court can resolve the

central question in her express warranty claim--whether the rear suspension geometry in class vehicles caused premature tire wear--on a class-wide basis. Because individual inquiries in this case do not hold much weight for purposes of Rule 23's 'predominance' test under the relevant authorities, the court finds that plaintiff has met 'predominance' with respect to her express warranty claim. See Wolin, 617 F.3d at 1172 (where plaintiffs allege suspension geometry defect in same make and model of vehicle covered under same express warranty, a 'predominance' finding is proper).

2. Implied Warranty

As an initial matter, defendant argues that the Ninth Circuit's opinion in this case did not affect this court's earlier decision to deny class certification on plaintiff's implied warranty claim. Defendant is mistaken, as the Ninth Circuit instructed this court to "reconsider its denial of [plaintiff's] motion for class certification." Daniel, 806 F.3d at 1227. Plaintiff's motion to certify her implied warranty claim for class action is presently before this court.

With respect to that claim, the Song-Beverly Act requires that "every sale of consumer goods that are sold at retail in this state shall be accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable." Cal. Civ. Code § 1792. The implied warranty of merchantability guarantees that goods: "(1) Pass without objection in the trade under the contract description. (2) Are fit for the ordinary purposes for which such goods are used. (3) Are adequately contained, packaged, and labeled. (4) Conform to

the promises or affirmations of fact made on the container or label." Id. § 1791.1. Plaintiff's implied warranty claim only alleges breach of fitness for ordinary purpose. (Compl. ¶¶ 112-115.)

In the context of motor vehicles, fitness for ordinary purpose means that "the product is in safe condition and substantially free of defects." Brand v. Hyundai Motor Am., 226 Cal. App. 4th 1538, 1546 (4th Dist. 2014) (internal quotation marks and citations omitted), as modified on denial of reh'g (July 16, 2014); Isip v. Mercedes-Benz USA, LLC, 155 Cal. App. 4th 19, 23 (2d Dist. 2007) (stating the same); Am. Suzuki Motor Corp. v. Superior Court, 37 Cal. App. 4th 1291, 1297 (2d Dist. 1995) (stating the same), as modified on denial of reh'g (Sept. 21, 1995).

The Ninth Circuit has held in this case that "[a] reasonable fact finder could infer that a vehicle that experiences premature and more frequent tire wear would pose an unreasonable safety risk." Daniel, 806 F.3d at 1226. Plaintiff has provided evidence that an alleged defect in rear suspension geometry causes premature tire wear on class vehicles, (see Pl.'s Renewed Mot. at 8), and that all class vehicles share the same rear suspension geometry, (see Pl.'s Reply at 3 (citing Kalis Deposition at 160:4-161:15).) Plaintiff has shown that the court can resolve whether the vehicles were merchantable--the central issue in her implied warranty claim--on a class-wide basis.[5]

[5] Defendant directs the court's attention to Kramer v. Toyota Motor Corp., No. 13-56433, 2016 WL 4578370 (9th Cir. Sept. 2, 2016), in which the Ninth Circuit upheld denial of class certification of plaintiffs' Song-Beverly and CLRA and UCL claims

Accordingly, plaintiff has met 'commonality' with respect to that claim.

Defendant raises the same issues concerning damages, causation, statute of limitations, and vehicle misuse that it raised with respect to plaintiff's express warranty claim. (See Def.'s Opp'n at 30-32.) Because the court has addressed those issues in the preceding section, it will not do so in detail here. Suffice to repeat that such issues, while undisputedly individual in nature, do not hold much weight for purposes of Rule 23's 'predominance' test under relevant authorities.

Defendant also argues, specifically with respect to plaintiff's implied warranty claim, that whether class vehicles constitute "consumer goods" within the meaning of the Song-Beverly Act differs as to each class member. (Id. at 28.) "[C]onsumer goods" under the Act requires that a given product is "used, bought, or leased for use primarily for personal, family, or household purposes." Cal. Civ. Code § 1791. This is another question the parties can efficiently resolve via a claim form or similar process. It will not dominate litigation. See Melgar, 2015 WL 9303977, at *11.

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because plaintiffs did not produce evidence of a common defect in the Toyota Prius' braking system. Id. at *1-2. That case is easily distinguishable. There, the Ninth Circuit based its decision on the fact that plaintiffs failed to produce "any evidence of a common defect." Id. at *2 (internal quotation marks and citation omitted). Here, plaintiff has produced evidence of a common defect. (See Pl.'s Renewed Mot. at 10 (citing defendant's internal communications indicating existence of a "rear suspension problem" in class vehicles); Kalis Deposition at 160:4-161:15 (conceding that "suspension hard points" was fundamentally same for class vehicles).) Accordingly, Kramer does not control this case.

Under the Ninth Circuit's opinion in this case, this court can resolve whether an alleged defect in rear suspension geometry rendered the class vehicles unsafe, and thus whether the vehicles were merchantable, on a class-wide basis. Other inquiries do not outweigh that question. See Wolin, 617 F.3d at 1173 (where plaintiffs allege suspension geometry defect in same make and model of vehicle, a 'predominance' finding is proper with respect to their implied warranty of merchantability claims). Accordingly, the court finds that plaintiff has met 'predominance' with respect to her implied warranty claim.

3. CLRA and UCL Claims

The CLRA prohibits certain "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services." Cal. Civ. Code § 1770(a). Among these are "[r]epresenting that goods or services have . . . characteristics . . . uses, benefits, or qualities which they do not have," id. § 1770(a)(5), and "[r]epresenting that goods or services are of a particular standard, quality, or grade . . . if they are of another," id. § 1770(a)(7). The UCL proscribes "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200.

Here, plaintiff claims that defendant violated the CLRA and UCL by fraudulently omitting the alleged defect when dealing with class members. (Pl.'s Renewed Mot. at 14.)

Under California law, a fraudulent omission claim requires proving that the defendant had a duty to disclose the

omitted information.[6] Goodman v. Kennedy, 18 Cal. 3d 335, 346 (1976). Such a duty exists when defendant has "sole knowledge or access to material facts and knows that such facts are not known to or reasonably discoverable by the other party."[7] Id. at 347. Plaintiff must also show that she relied on the fraudulent omission. See Daniel, 806 F.3d at 1225.

Plaintiff has shown that this court may resolve whether defendant had a duty to disclose the alleged defect on a class-wide basis. The court can determine what defendant knew about the alleged defect, when it knew what, and at what point that knowledge was no longer exclusive once for all class members. See Wolin, 617 F.3d at 1171 (holding that "[c]ommon issues

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[6] Such a claim also requires showing that defendant breached a duty to disclose. Plaintiff states that some Ford dealers disclosed the alleged defect to class members after they purchased class vehicles, (see Pl.'s Renewed Mot. at 7.), raising the possibility that some dealers disclosed the alleged defect prior to purchase (e.g., to persuade a customer to purchase a different Ford car). That possibility, however, does not defeat class certification. The same possibility was present in Wolin, for example, where the Ninth Circuit certified class for plaintiffs' failure to disclose claims despite the fact that class members purchased their vehicles from dealers across multiple states who, presumably, may also have disclosed an alleged defect to some class members. See Wolin, 617 F.3d at 1171.

[7] A duty to disclose also exists when one party actively conceals material facts from another. See Goodman, 18 Cal. 3d at 347 (citing Herzog v. Capital Co., 27 Cal. 2d 349, 353 (1945)). Because the parties focus their dispute on whether a duty existed under the 'sole knowledge' doctrine, the court will address that issue instead. It notes, however, that defendant also likely had a duty to disclose under the 'active concealment' doctrine, as plaintiff has provided evidence that defendant concealed the alleged defect. (See Pl.'s Renewed Mot. at 5 (citing exhibits indicating Ford technicians denied existence of premature tire wear issue to dealers despite numerous customer complaints).)

predominate such as whether Land Rover was aware of the existence of the alleged defect, whether [it] had a duty to disclose its knowledge and whether it violated consumer protection laws when it failed to do so"). As to the element of materiality, the Ninth Circuit has held in this case that "[m]ateriality is judged from the perspective of a 'reasonable consumer,'" Daniel, 806 F.3d at 1226 (quoting Ehrlich v. BMW of N. Am., LLC, 801 F. Supp. 2d 908, 916 (C.D. Cal. 2010)), signifying that it is an objective inquiry, see Edwards, 603 F. App'x at 541 ("[M]ateriality is governed by an objective 'reasonable person' standard under California law, an inquiry that is the same for every class member . . . ."). With respect to whether class members relied on the alleged fraudulent omission, the Ninth Circuit has similarly held that an objective inquiry is proper. "To prove reliance on an omission, a plaintiff . . . [may] simply prov[e] 'that, had the omitted information been disclosed, one would have been aware of it and behaved differently.'" Daniel, 806 F.3d at 1225 (quoting Mirkin v. Wasserman, 5 Cal.4th 1082, 1093 (1993)). "That one would have behaved differently can be presumed, or at least inferred, when the omission is material." Id. As discussed above, materiality is an objective inquiry under California law. With respect to whether one would have been aware of the omitted information, the Ninth Circuit has held in this case that interacting with an authorized Ford dealer prior to purchase is sufficient to show that one would have been aware of a disclosure. Id. at 1226. Because plaintiff's class includes only purchasers of new Focuses who, presumably, interacted with

authorized Ford dealers prior to purchase, that inquiry, too, is amenable to class-wide resolution.

Defendant raises the same issues concerning existence of defect, damages, purchase for "consumer" use, and statute of limitations that it raised with respect to plaintiff's other claims. (See Def.'s Opp'n at 45-50.) As stated above, such issues do not defeat class certification under the relevant authorities.

In light of the Ninth Circuit's opinions in this and other cases, plaintiff has shown that common questions predominate in her CLRA and UCL claims.

C. Superiority

Rule 23(b)(3) also requires "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). It sets forth four non-exhaustive factors in determining 'superiority': (A) class members' interests in individually controlling the litigation; (B) the extent and nature of any litigation concerning the controversy already begun by class members; (C) the desirability of concentrating the litigation in the particular forum; and (D) likely difficulties in managing a class action. Id.

Here, class members' interest in individually controlling the litigation is low given that many members likely stand to recover relatively little compared to the costs of individual litigation. (See, e.g., Pl.'s Mot. at 26 ("Plaintiff was compelled to spend an amount measured in the hundreds of dollars to replace tires worn out prematurely by the suspension

defect.").) The court is aware of neither any concurrent litigation in this case, nor a reason why this particular forum would be ill-suited to resolving plaintiff's class action. Managing this class action would not present undue difficulties in light of the greater burden and inefficiency of trying the cases individually. See Wolin, 617 F.3d at 1176 ("Forcing individual vehicle owners to litigate their cases, particularly where common issues predominate for the proposed class, is an inferior method of adjudication."). Accordingly, plaintiff has met 'superiority.'

D. Typicality

'Typicality' requires that plaintiff have claims "reasonably coextensive" with those of proposed class members. Hanlon, 150 F.3d at 1020. The test for 'typicality' is "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted).

Here, plaintiff alleges that defendant sold her and the proposed class defective vehicles. (See Pl.'s Mot. at 14.) Even if plaintiff and members of the class did not suffer same damages from the alleged defect, they, according to plaintiff, suffered the same injuries (i.e., breach of warranties and violation of consumer protection laws) from the same inaction (i.e., defendant's failure to repair and disclosed the alleged defect) and seek to recover pursuant to the same legal theories and warranties. (Id. 15-17.) This satisfies 'typicality.' See

Hanon, 976 F.2d at 508; see also Wolin, 617 F.3d at 1175 (where plaintiffs "allege that they, like all prospective class members, were injured by a defective alignment geometry in the vehicles . . . [and] seek to recover pursuant to the same legal theories," they have satisfied 'typicality').

E. Adequacy

Rule 23(a) requires that the class representative "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23. This inquiry involves two questions: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" Hanlon, 150 F.3d at 1020.

Defendant argues that plaintiff is inadequate because she will be representing class members who may have suffered personal injuries from the alleged defect, yet is not seeking personal injury damages herself. (Def.'s Opp'n at 53.) Defendant contends that this "claim-splitting decision creates a conflict between Plaintiff's interests and those of the putative class." (Id. (quoting Sanchez v. Wal Mart Stores, Inc., Civ. No. 2:06-02573, 2009 WL 1514435, at *9 (E.D. Cal. May 28, 2009) (Mendez, J.)).) Again, however, as the Ninth Circuit has told us, differences in damages do not defeat class certification. See Wolin, 617 F.3d at 1173; Edwards, 603 F. App'x at 541; Yokoyama, 594 F.3d at 1089; Pulaski, 802 F.3d at 988.

Plaintiff's counsel are experienced attorneys who have prosecuted more than two hundred class actions. (Pl.'s Mot. at 20.) They have committed significant resources to investigating

plaintiff's claims, conducting discovery, litigating this case on summary judgment motions, and successfully appealing to the Ninth Circuit. (Id.) The court finds no reason to doubt that plaintiff's counsel are qualified to conduct this litigation and will vigorously prosecute the action on behalf of class members. See Hanlon, 150 F.3d at 1021 ("Although there are no fixed standards by which 'vigor' can be assayed, considerations include competency of counsel.").

Accordingly, the court finds that plaintiff and plaintiff's counsel are adequate representatives of the class.

III. Conclusion

IT IS THEREFORE ORDERED that plaintiff's motion to certify a class of individuals who--(1) purchased or leased any 2005 through 2011 Ford Focus vehicle in California, (2) currently own such a vehicle, and (3) currently reside in the United States--for her claims against defendant be, and the same hereby is, GRANTED.

Dated: September 23, 2016

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE