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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LUX GLOBAL AUTO SALES, a
California corporation, and
MARIA VELARDE, on behalf of
themselves and others
similarly situated,

Plaintiffs,

v.

NISSAN NORTH AMERICA, INC.,
and DOES 1 to 10,

Defendants.

No. 2:21-cv-02157-JAM-AC

ORDER GRANTING MOTION TO DISMISS

Lux Global Auto Sales and Maria Velarde filed this lawsuit against Nissan North America, Inc., and various fictitious persons (collectively "Defendants") for allegedly violating § 17200 of California's Business and Professions Code—also known as California's Unfair Competition Law. See First Am. Comp. ("FAC") ¶ 69, ECF No. 8. Thereafter, Lux Global Auto Sales voluntarily dismissed its claim against Defendants without prejudice. See Stipulation of Dismissal, ECF No. 11. Velarde ("Plaintiff") maintained her claims and Defendants filed a motion to dismiss and request for judicial notice. See Mot. to Dismiss

1 ("Mot."), ECF No. 15; see also Req. for Judicial Notice, ECF
2 No. 15-1. Plaintiff filed her opposition and Defendants replied.
3 See Opp'n, ECF No. 22; see also Reply, ECF No. 24.

4 For the reasons set forth below, the Court GRANTS
5 Defendants' Motion to Dismiss without leave to amend.¹

6 I. BACKGROUND

7 Plaintiff filed this suit because of Defendants' alleged
8 failures to comply with the California Emissions Warranty
9 ("Warranty"). FAC ¶ 1. Under this Warranty, car manufacturers—
10 like Defendants—must provide additional coverage for specific
11 components of Super Ultra Low Emissions Vehicles ("SULEV") if the
12 California Air Resources Board ("CARB") issued them non-methane
13 organic gases or vehicle equivalent credits. Id. Such parts are
14 generally covered for eight years or 100,000 miles; high-mileage
15 parts are covered for 112,500 miles (collectively referred to as
16 "Extended Coverage"). Id. Plaintiff contends Defendants
17 concocted a scheme to deprive Nissan SULEV owners of these
18 protections by "unilaterally defining and wrongfully limiting the
19 parts that should properly be identified as parts covered by the
20 [] Warranty and covered for the Extended Coverage period." Id.
21 ¶ 7. Plaintiff argues Defendants' supposed mischaracterizations
22 enables them to curb the costs of its warranty-related repairs
23 because "most if not all dealerships or customers will not
24 investigate or understand what components should actually and
25 correctly be covered under the [] Warranty" Id. ¶ 8.

26
27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled
for September 13, 2022.

1 Plaintiff asserts Defendants' supposed scheme is
2 demonstrated by their refusal to provide Extended Coverage to
3 SULEV transmissions, pointing to her own experience as evidence.
4 Id. ¶ 30. Plaintiff owns a 2019 Nissan Sentra—a SULEV vehicle.
5 In 2019, prior to being driven for 100,000 miles or in use for
6 eight years, Plaintiff's vehicle exhibited "classic symptoms" of
7 "transmission slipping" as it would shake and hesitate upon
8 acceleration. FAC ¶ 30. Because of these issues, Plaintiff
9 contacted Defendants and was informed her transmission was not
10 under warranty. Id. Since Defendants denied Plaintiff
11 assistance, Plaintiff took her vehicle to a local repair shop and
12 "paid thousands of dollars out of pocket to have the transmission
13 repairs performed." Id. ¶ 34. Plaintiff argues the Warranty's
14 Extended Coverage should have encompassed these repairs because
15 the transmission's malfunctioning increased the vehicle's
16 emission output—which Plaintiff argues triggers such coverage
17 pursuant to California Code of Regulations' Title 13
18 §§ 1961(a)(8), 2035, 2037, and 2038. Id. ¶¶ 5, 39.

19 Based on these allegations, Plaintiff initiated this
20 diversity action pursuant to 28 U.S.C. § 1332(d)(2)(A) and filed
21 her First Amended Complaint consisting of one claim under § 17200
22 of California's Business and Professions Code—also known as
23 California's Unfair Competition Law. Id. ¶ 66.

24 II. OPINION

25 A. Legal Standard

26 Under FRCP 12(b)(6), a court can grant a motion to dismiss
27 when the complaint fails "to state a claim upon which relief can
28 be granted." Generally, affirmative defenses—like res judicata—

1 cannot be raised in such a motion. Scott v. Kuhlmann, 746 F.2d
2 1377, 1378 (9th Cir. 1994). When, however, the defense does not
3 raise disputed issues of fact—such as here—res judicata is
4 properly asserted in a motion to dismiss. Id.; see also Intri-
5 Plex Technologies, Inc. v. Crest Group, Inc., 499 F.3d 1048 (9th
6 Cir. 2007) (examining a 12(b)(6) motion's res judicata defense
7 and affirming a district court's dismissal on such grounds).
8 Furthermore, when deciding a motion to dismiss, a district court
9 can consider matters of judicial notice without turning it into
10 a motion for summary judgment. United States v. Ritchie, 342
11 F.3d 903, 908 (9th Cir. 2003)

12 B. Judicial Notice

13 Defendants ask the Court take judicial notice of the Order
14 and Judgment Granting Final Approval of Class Action Settlement
15 and Settlement Agreement entered in Weckwerth v. Nissan North
16 America, Inc., Case No. 3:18-cv-00588 (M.D. Tenn. Mar. 10, 2020).
17 See Req. for Judicial Notice, ECF No. 15-1; see also Order and J.
18 Granting Final Approval of Class Action Settlement ("Judgment"),
19 Exh. 1 to Mot., ECF No. 15-2, Settlement Agreement ¶ 34, Exh. 2
20 to Mot., ECF No. 15-3. The Court can "take judicial notice of
21 court filings and other matters of public record," Reyn's Pasta
22 Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n. 6 (9th Cir.
23 2006), and accordingly grants Defendants' request. The Court's
24 judicial notice, however, extends only to the existence of these
25 documents and not to their substance to the extent it is disputed
26 or irrelevant. Lee v. City of Los Angeles, 250 F.3d 668, 690
27 (9th Cir. 2001).

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1 C. Res Judicata

2 The parties dispute whether the doctrine of res judicata (or
3 claim preclusion) bars Plaintiff's claim. Defendants argue the
4 class action settlement and judgment entered in Weckwerth
5 ("Weckwerth Judgment") precludes Plaintiff's claim under the
6 doctrine of res judicata. See Mot. at 4. The Weckwerth Judgment
7 incorporated the parties' settlement agreement and released with
8 prejudice all past, present, and future transmission-related
9 claims for certain vehicles manufactured by Defendants—including
10 Plaintiff's 2013 Sentra—pursuant to the provision below:

11 "Released Claims" means and includes any and all
12 claims, demands, rights, damages, obligations, suits,
13 debts, liens, contracts, agreements, and causes of
14 action of every nature and description whatsoever,
15 ascertained or unascertained, suspected or unsuspected,
16 accrued or unaccrued, existing or claiming to exist,
17 including those unknown, both at law and equity which
18 have been brought, which might have been brought, and
19 which might be brought in the future upon the happening
20 of certain events, against the Released Parties, or any
21 of them, **based upon or in any way related to**
22 **transmission** design, manufacturing, performance, or
23 **repair of Class Vehicles**, including but not limited to
24 all claims asserted in the Lawsuits, **whether based upon**
25 breach of contract, violation of a duty sounding in
26 tort, **violation of any state** or federal statute or
27 **regulation, violation of any state consumer protection**
28 **statute or regulation** (including any lemon law statute
or regulation), fraud, unjust enrichment, money had and
received, restitution, equitable relief, punitive or
exemplary damages and civil penalties and fines or **any**
other claims whatsoever under federal or **state law**. See
Settlement Agreement ¶ 34 (emphasis added); see also
Judgment at n. 1.

26 Notably, Plaintiff did not opt out of the settlement agreement.
27 See Timely Opt Out List, Exh. A to Mot., ECF No. 15-2. As a
28 result, Defendants contend Plaintiff's claim is barred and asks

1 the Court to dismiss it with prejudice.

2 In opposition, while she does not deny that she did not opt
3 of out of the Weckwerth Judgment and concedes it "bars a
4 subsequent case," Plaintiff argues the Weckwerth Judgment
5 invalidates the public policy underlying the Warranty's Extended
6 Coverage and is therefore unenforceable. See Opp'n at 1-2. To
7 support her contention, Plaintiff: (1) states the Weckwerth
8 Judgment "shortens the warranty for SULEV transmissions by [one]
9 year or 16,000 miles" so that class members do not receive the
10 Extended Coverage's full benefit of eight years or 100,000 miles;
11 and (2) cites cases where the California Supreme Court, a
12 California Appellate court, or a federal court outside this
13 Court's jurisdiction analyzed contracts or settlements that
14 allegedly ran afoul of public policy to render them void. Id. at
15 2-3. As a result, Plaintiff does not dispute Defendants'
16 contention that her complaint relies on a claim released by the
17 Weckwerth Judgment. Instead, she only argues res judicata does
18 not bar it because the Weckwerth Judgment's "contravenes the
19 public policy underpinning" the Warranty's Extended Coverage.
20 Id.

21 Since this is a diversity action, the laws of the forum
22 state, California, apply. Bates v. Union Oil Co. of Cal., 944
23 F.2d 647, 649 (9th Cir. 1991). Under California law, the
24 preclusive effect of a prior federal court judgment is resolved
25 pursuant to federal law. Lumpkin v. Jordan, 49 Cal.App.4th 1223,
26 1230, 57 Cal.Rptr.2d 303 (1st Dist. 1996). Under federal law,
27 res judicata applies "whenever there is (1) an identity of
28 claims, (2) a final judgment on the merits, and (3) privity

1 between parties.” Stratosphere Litig. L.L.C. v. Grand Casinos,
2 Inc., 298 F.3d 1137, 1143 n. 3 (9th Cir. 2002) (citing Owens v.
3 Kaiser Found. Health Plan, Inc., 244 F.3d 708, 713 (9th Cir.
4 2001)). A prior valid judgment “operates as an absolute bar to a
5 second suit between the same parties or their privies based on
6 the same cause of action not only in respect of every matter
7 actually litigated, but also as to every ground of recovery or
8 defense which might have been presented.” Mirin v. Nevada ex
9 rel., Public Service Commission, 547 F.2d 91, 94 (9th Cir. 1976),
10 Cert. denied, 432 U.S. 906, 97 S.Ct. 2952, 53 L.Ed.2d 1079
11 (1977). Furthermore, under the federal rule, “a judgment or
12 order, once rendered, is final for purposes of res judicata until
13 reversed on appeal or modified or set aside in the court of
14 rendition.” Stoll v. Gottlieb 305 U.S. 165, 170 (1938).

15 Given the above caselaw, the Court finds res judicata’s
16 elements satisfied. First, although the legal theory and grounds
17 for recovery regarding Plaintiff’s claim differ from those
18 underlying the Weckwerth Judgment, the two cases share an
19 “identity of claims” because they both concern the warranty of
20 Plaintiff’s transmission. See Hooker v. Simon, No. 1:06-CV-
21 00389, 2010 WL 3516662, at *2 (E.D. Cal. Sept. 7, 2010)
22 (citations omitted). As a result, Plaintiff’s claim is precluded
23 because she could have presented her claim to the Weckwerth
24 court. Id.; See also Stewart v. U.S. Bancorp, 297 F.3d 953, 956
25 (9th Cir. 2002) (“Res judicata, or claim preclusion, prohibits
26 lawsuits on any claims that were raised or could have been raised
27 in a prior action.”). Second, the Weckwerth court gave final
28 approval to the parties’ class action settlement, which “meet[s]

1 the 'final on the merits' element of res judicata" and is "as
2 conclusive a bar as a judgment rendered after trial." Rangel v.
3 PLS Check Cashiers of California, Inc., 833 F.3d 1106, 110 (9th
4 Cir. 2018). In turn, the Weckwerth Judgment has a preclusive
5 effect on the released claims described above—such as
6 Plaintiff's. Third, because Plaintiff is a member of the
7 Weckwerth class, the parties in this case overlap with those in
8 Weckwerth and Plaintiff is bound by the judgment in that class
9 action. Dosier v. Miami Valley Broadcasting Corp., 656 F.2d
10 1295, 1298 (9th Cir. 1981).

11 Because all three elements are met, the Court agrees with
12 Defendants that res judicata bars Plaintiff's claim.
13 Furthermore, under federal law, any modification or appeal of
14 this judgment lies with the Weckwerth court. See Stoll v.
15 Gottlieb, 305 U.S. 165 at 170. This conclusion is supported by
16 the fact that: (1) Plaintiff fails to cite any caselaw supporting
17 her proposition that this Court can invalidate another federal
18 district court's order and judgment approving a class action
19 settlement; and (2) the Weckwerth Judgment's own language stating
20 "[t]he Parties and Class Members have irrevocably submitted to
21 the exclusive jurisdiction of the [Weckwerth] [c]ourt for any
22 suit, action, proceeding or dispute arising out of the
23 settlement." See Judgment ¶ 8. As a result, the Court declines
24 to address Plaintiff's contention that the Weckwerth Judgment
25 contravenes public policy and is accordingly unenforceable.
26 Lastly, because the Court finds res judicata precludes
27 Plaintiff's claim, the Court finds Defendants' remaining 12(b)(6)
28 arguments moot and need not address them.

1 Accordingly, the Court dismisses Plaintiff's claim.
2 Dismissal is with prejudice as amendment would be futile. See
3 Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002) (finding
4 leave to amend need not be granted when amendment would be
5 futile).

6 III. ORDER

7 For the reasons set forth above, the Court GRANTS
8 Defendants' Motion to Dismiss.

9 IT IS SO ORDERED.

10 Dated: November 28, 2022

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14 JOHN A. MENDEZ
15 SENIOR UNITED STATES DISTRICT JUDGE
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