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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARIO CONTRERAS and MADELINE
HUNTER, on behalf of themselves and all
others similarly situated,

No. C 09-06024 JSW

Plaintiffs,

**NOTICE OF TENTATIVE AND
QUESTIONS FOR HEARING**

v.

TOYOTA MOTOR SALES USA, INC., and
DOES 1 through 50,

Defendants.

_____ /

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE OF
THE FOLLOWING QUESTIONS FOR THE HEARING SCHEDULED ON JANUARY 15,
2010, AT 9:00 A.M.

The Court has reviewed the parties' memoranda of points and authorities and, thus, does
not wish to hear the parties reargue matters addressed in those pleadings. If the parties intend to
rely on legal authorities not cited in their briefs, they are ORDERED to notify the Court and
opposing counsel of these authorities reasonably in advance of the hearing and to make copies
available at the hearing. If the parties submit such additional authorities, they are ORDERED
to submit the citations to the authorities only, with pin cites and without argument or additional
briefing. Cf. N.D. Civil Local Rule 7-3(d). The parties will be given the opportunity at oral
argument to explain their reliance on such authority. The Court also suggests that associates or

1 of counsel attorneys who are working on this case be permitted to address some or all of the
2 Court's questions contained herein.

3 The Court **tentatively reserves issuing a tentative ruling on the motion to dismiss**
4 **and tentatively grants, in part, the motion to strike.**

5 1. Plaintiffs do not allege that they suffered any personal injuries as a result of the alleged
6 defects in the Vehicles. Rather, Plaintiffs rely solely on a "benefit of the bargain" theory
7 to support their alleged injuries and damage.

8 a. Plaintiffs do not address Toyota Motor Sales USA, Inc.'s ("TMS") argument that
9 such a theory does not satisfy Article III standing requirements. How do
10 Plaintiffs respond to the numerous cases cited by TMS at pages 6-8 of its brief,
11 that the facts alleged do not demonstrate they have standing? *See, e.g., Birdsong*
12 *v. Apple, Inc.*, 590 F.3d 955, 959-60 & n.4, 961-62 (9th Cir. 2009) (concluding
13 plaintiffs lacked standing under Section 17200 but noting that plaintiffs also
14 "would lack an Article III injury in fact"); *Whitson v. Bumbo*, 2009 WL 1515597
15 at *5-*6 (N.D. Cal. Apr. 16, 2009) (finding that plaintiff did not have standing to
16 pursue claims under a benefit of the bargain theory).

17 b. How would TMS distinguish *Cole v. General Motors Corp.*, 484 F.3d 717 (5th
18 Cir. 2007) (concluding plaintiffs sufficiently alleged standing where plaintiffs
19 claimed to have suffered economic harm at moment he or she purchased
20 defective vehicle) and *Sanchez v. Wal-Mart Stores, Inc.*, 2008 WL 3272101, at
21 *2-*3 (E.D. Cal. Aug. 6, 2008) (denying motion for summary judgment for lack
22 of standing and finding disputed issue of fact as to whether plaintiff "'lost
23 money' because she possessed a less valuable stroller than that for which she
24 bargained due to an alleged defect" that defendant did not disclose).

25 2. Are Plaintiffs withdrawing their claim for breach of express warranty? (*See* TMS Reply
26 at 8:25-9:8.) If not, which paragraphs in the Amended Class Action Complaint provide
27 the factual basis for this claim?

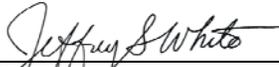
28 3. What additional facts, if any, would Plaintiffs add to a further amended complaint?

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4. Are there any other issues the parties wish to address?

IT IS SO ORDERED.

Dated: June 9, 2010



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE