IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MUI HO, SHELDA ANGLIN, and TED FLORY, individually, and on behalf of other members of the general public similarly situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION and TOYOTA MOTOR SALES, U.S.A., INC., Defendants.	Case No. 12-2672 SC ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS

I. INTRODUCTION

Now before the Court is Defendants Toyota Motor Sales, U.S.A., Inc. ("TMS") and Toyota Motor Corporation's (collectively "Defendants") motion to dismiss Plaintiffs Mui Ho, Shelda Anglin, and Ted Flory's ("Plaintiffs") First Amended Class Action Complaint. ECF No. 27 ("MTD"); ECF No. 21 ("FAC"). The motion is fully briefed, ECF Nos. 32 ("Opp'n"),[1] 34 ("Reply"), and suitable

[1] The Court is concerned that Plaintiffs' excessively long footnotes are attempts to circumvent the Local Rules' page limits by pushing material that should properly be in the body of Plaintiffs' argument into the single-spaced footnote format. See, e.g., Opp'n at 10 nn.5-6.; Civ. L.R. 7-4(b). Plaintiffs are warned

for decision without oral argument, Civ. L.R. 7-1(b). For the reasons explained below, the Court GRANTS in part and DENIES in part Defendants' motion.

II. BACKGROUND

The named Plaintiffs are three purchasers of Defendants' Lexus RX vehicles produced between the years of 2004 and 2009 (the "Class Vehicles"). FAC ¶ 1. They bring this putative class action on their own behalf and that of all other purchasers or lessees of the Class Vehicles. Id. ¶¶ 1, 80-89. Plaintiffs claim that the Class Vehicles' headlamp assemblies are defective because they are prone to condensation and moisture retention. Id. ¶¶ 3-4. These problems eventually cause the headlamps to become dangerously dim or to fail completely, posing safety hazards and creating expense for the Class Vehicles' owners. Id. ¶¶ 5-7. Plaintiffs allege harms based on these hazards and expenses. Id. ¶ 17-19.

Plaintiffs claim that they had no way to discover the alleged defects until the headlamps began to pose problems. See id. ¶¶ 48-49. However, they claim that Defendants were aware of the Class Vehicles' headlamp problems as early as 2004, due to Defendants' exclusive knowledge of and access to facts like "pre-release testing data, early consumer complaints . . . , testing, and other internal investigation conducted in response to those complaints." Id. ¶¶ 48-49. Despite this alleged knowledge, Defendants never publicly disclosed any defects or issued a recall. Id. ¶¶ 11-19, 57-58. According to Plaintiffs, Defendants chose instead to

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that use of these tactics in future filings could result in non-compliant portions of their papers being stricken.

provide haphazard "temporary fixes" that provided stopgap relief to consumers until the problem inevitably manifested again after the Class Vehicles' express warranty periods. Id. ¶¶ 11-19. As further proof of Defendants' knowledge of the alleged defect and failure to disclose it, Plaintiffs point to Defendants' issuance of two technical service informational bulletins ("TSIB(s)") to their dealers in 2007 and 2010. Id. Both TSIBs addressed the alleged headlamp defect. Id. The 2007 TSIB stated that dealers could provide new headlamps to replace the old ones, and the 2010 TSIB informed dealers that "improved headlamp housings" were available to replace the old headlamps. Id. ¶¶ 8-12. Plaintiffs allege that all of these repair parts were defective too. Id.

Plaintiffs Ho and Flory bought used Class Vehicles in 2007 and 2011, respectively. Id. ¶¶ 20, 30. Plaintiff Anglin bought a new Class Vehicle from an authorized dealer in 2006. Id. ¶ 35. Plaintiff Ho complained about her passenger side headlamp's moisture problems three times, in January 2008, January 2010, and January 2012. Id. ¶¶ 20-28. Each time she had it replaced at one of Defendants' dealerships. Id. Her 2008 repair was covered under her warranty, but Plaintiff Ho paid $1,000 and $155.88, respectively, for the latter two repairs. Id. ¶¶ 24, 28. Plaintiff Anglin complained about a similar problem in March 2008 and again in either December 2008 or January 2009. Id. ¶¶ 32-33. On her first visit, Defendants' dealer verified her complaint but refused to repair it, contending that such moisture issues were normal and not repairable. Id. ¶ 32. On the second visit, the dealer again verified her problems and refused repair, stating that water intrusion and oxidation were not covered under her warranty.

Id. ¶ 33. Plaintiff Flory first complained about his headlamp in January 2012, bringing it to a dealer per Defendants' instructions in February 2012. Id. ¶¶ 37-38. There he was told that Toyota would repair the headlamp for $185. Id. He refused the repair and the charges, choosing instead to attempt to remedy his headlamp's moisture problems on his own. Id. ¶ 38.

Based on the facts described above, Plaintiffs initially asserted six causes of action against Defendants: (1) violation of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750 et seq.; (2) violation of California's Unfair Competition Law ("UCL"), Cal. Bus & Prof. Code §§ 17200 et seq., pursuant to California's Secret Warranty Law, Cal. Civ. Code §§ 1795.90 et seq.; (3) violation of the UCL on grounds other than violation of California's Secret Warranty Law; (4) fraud by omission; (5) breach of implied warranty pursuant to the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1792 and 1791.1 et seq.; and (6) breach of express warranty under California Commercial Code section 2313, exclusively asserted against Defendant TMS. In their opposition brief, Plaintiffs withdrew their UCL claim based on the California Secret Warranty Law. Opp'n at 24 n.23. Defendants' motion to dismiss asserts that Plaintiffs fail to state claims under any of the remaining five causes of action. See MTD at 1-2.

III. LEGAL STANDARD

A. Motions to Dismiss

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) "tests the legal sufficiency of a claim." Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based

on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). The court's review is generally "limited to the complaint, materials incorporated into the complaint by reference, and matters of which the court may take judicial notice." Metzler Inv. GMBH v. Corinthian Colls., Inc., 540 F.3d 1049, 1061 (9th Cir. 2008) (citing Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007)).

B. Rule 9(b)

Claims sounding in fraud are subject to the heightened pleading requirements of Federal Rule of Civil Procedure 9(b), which requires that a plaintiff alleging fraud "must state with particularity the circumstances constituting fraud." See Kearns v. Ford Motor Co., 567 F. 3d 1120, 1124 (9th Cir. 2009). "To satisfy Rule 9(b), a pleading must identify the who, what, when, where, and how of the misconduct charged, as well as what is false or misleading about [the purportedly fraudulent] statement, and why it is false." United States ex rel Cafasso v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1055 (9th Cir. 2011) (internal quotation marks

and citations omitted).

IV. DISCUSSION

A. Warranty Claims

i. Breach of Implied Warranty

The Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1792 ("Song-Beverly"), provides that "every sale of consumer goods that are sold at retail in [California] shall be accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable." "Consumer goods" means "any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables." Id. § 1791(a).

Defendants argue that Plaintiffs' claims under Song-Beverly fail as to Plaintiffs Ho and Flory, because they purchased used Class Vehicles. MTD at 5. Defendants apparently concede that Plaintiff Anglin has a valid claim under this cause of action, since they do not argue otherwise. See id.; Opp'n at 23 n.20. Plaintiffs respond as to Plaintiff Ho that Song-Beverly applies to used goods notwithstanding section 1791 if an express warranty was given during the used goods' sale. They claim that she may plead an implied warranty claim under Song-Beverly, because there is no dispute that she was given an express warranty when she bought her used Class Vehicle, and because a defendant can be held to have breached an implied warranty by selling a product with a latent defect. Opp'n at 23 (citing Cal. Civ. Code § 1795.5(c); Mexia v. Rinker Boat Co., 174 Cal. App. 4th 1297, 1304-05 (Cal. Ct. App. 2009)). Plaintiffs concede that they have no claim as to Plaintiff

Flory under Song-Beverly, because his express warranty had expired by the time he purchased his Class Vehicle. Id. at 24.

The Court finds that Plaintiffs have not pled a breach of implied warranty as to Plaintiff Ho. Song-Beverly provides that the duration of the implied warranty for used goods extends only up to three months after purchase from a distributor or retail seller. Plaintiffs did not plead exactly when or from whom Plaintiff Ho purchased her Class Vehicle in 2007, and the Court cannot assume, without facts, that Plaintiff Ho's purchase of her Class Vehicle fell within Song-Beverly's time limits, or that she purchased her Class Vehicle from a "distributor or retail seller" per Song-Beverly.

As to Plaintiff Ho, Plaintiffs' claim for breach of implied warranty is DISMISSED. Plaintiffs have leave to amend this claim if they can plead that Plaintiff Ho purchased her Class Vehicle from a dealer or retailer seller within the implied warranty period provided by Song-Beverly. This claim is undisturbed as to Plaintiff Anglin.

ii. Breach of Express Warranty

Plaintiffs' claim for breach of express warranty is based on California Commercial Code section 2313. "To prevail on a breach of express warranty claim, the plaintiff must prove: (1) the seller's statements constitute an affirmation of fact or promise or a description of the goods; (2) the statement was part of the basis of the bargain; and (3) the warranty was breached." Weinstat v. Dentsply Int'l, Inc., 180 Cal. App. 4th 1213, 1227 (Cal. Ct. App. 2010) (internal quotation marks and citation omitted).

The Class Vehicles come equipped with a four-year, 50,000-mile

New Vehicle Limited Warranty ("NVLW"), which covers "repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by [Defendants] . . . ." FAC ¶ 142. Plaintiffs assert against Defendant TMS alone that, in responding to the Class Vehicles' headlamp problems with temporary fixes and defective parts, and in Plaintiff Anglin's case refusing to honor the NVLW, TMS breached an express warranty. Opp'n at 20-21 (citing FAC ¶¶ 96, 141-42). Plaintiffs concede that Plaintiff Flory has no standing to bring a claim under this cause of action, thereby limiting their claim to Plaintiffs Ho and Anglin. See Opp'n at 23 n.19. The parties do not appear to contest that the NVLW is an affirmation of fact or a promise, or that it was part of the basis of the bargain. They contest whether it was breached and whether Plaintiffs have standing to bring claims for breach of express warranty. See MTD at 5-10; Reply at 13-14.

a. Plaintiff Ho

As to Plaintiff Ho, Plaintiffs claim that "[b]y replacing a defective part with another defective part in [Plaintiff Ho's] vehicle in January 2008 . . . [TMS] breached its NVLW because it failed to 'correct [the] defect' under its warranty." Opp'n at 21. In so clarifying their allegations from the FAC, Plaintiffs apparently concede that Plaintiff Ho's 2010 and 2012 repairs fall outside the express warranty, since they do not dispute Defendants' arguments that Plaintiff Ho's Class Vehicle had exceeded the NVLW's mileage limitations by those points. See Opp'n at 21-22; MTD at 8-10.

The Court finds that Plaintiffs fail to plead a breach of express warranty as to Plaintiff Ho. The NVLW covers "repairs and

adjustments needed to correct defects in materials or workmanship of any part supplied by [Defendants]," and regardless of any alleged defects in replacement parts, that is what Defendants provided to Plaintiff Ho. Defendant TMS did not breach the NVLW by acting in conformance with it during Plaintiff Ho's 2008 repair. Moreover, the fact that the problem arose again after the warranty period, in 2010 and 2012, cannot be the basis of a breach of express warranty claim. The California Court of Appeals in Daugherty v. American Honda Motor Company Inc., 144 Cal. App. 4th 824 (Cal. Ct. App. 2006), made that point of law very clear:

> Opening the door to [a theory of liability based on a product's failure outside the warranty period] would change the landscape of warranty and product liability law in California. Failure of a product to last forever would become a 'defect,' a manufacturer would no longer be able to issue limited warranties, and product defect litigation would become as widespread as manufacturing itself.

Id. at 829; see also Anunziato v. eMachines, Inc., 402 F. Supp. 2d 1133, 1135-36 (C.D. Cal. 2005) (applying that principle), Brothers v. Hewlett-Packard Co., No. C 06-2254 RMW, 2006 U.S. Dist. LEXIS 82027 at *25 (N.D. Cal. Oct. 31, 2006) (same).

Accordingly, Plaintiffs' claim for breach of express warranty is therefore DISMISSED WITH PREJUDICE as to Plaintiff Ho.

b. Plaintiff Anglin

As to Plaintiff Anglin, Plaintiffs assert that Defendants breached the NVLW when they refused to repair Plaintiff Anglin's headlamps during the warranty period. FAC ¶¶ 32-33. Defendants argue that Plaintiffs do not plead a claim as to Plaintiff Anglin because she did not contact Toyota directly to seek assistance with her warranty claim, as the NVLW directs. MTD at 10. Rather,

Plaintiff Anglin only contacted a Toyota-licensed servicing dealer. Id. Defendants claim that to bring a proper breach of express warranty as to Plaintiff Anglin, Plaintiffs must have first notified Defendants of the problem. Id.

In response, Plaintiffs rely primarily on two cases, Keegan v. American Honda Motor Co., Inc., 838 F. Supp. 2d 929, 950-51 (C.D. Cal. 2012), and In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liab. Litig., 754 F. Supp. 2d 1145, 1173 (C.D. Cal. 2010). These cases in turn rely chiefly on Justice Traynor's opinion in Greenman v. Yuba Power Prods, Inc., 59 Cal. 2d 57 (Cal. 1963), which held that timely notice of a breach of an express warranty is not required if the action is against a manufacturer and is brought "by injured consumers against manufacturers with whom they have not dealt." Id. at 61. The rationale for that holding was that "[b]etween the immediate parties to the sale [the notice requirement] is a sound commercial rule, designed to protect the seller against unduly delayed claims for damages. As applied to personal injuries, and notice to a remote seller, it becomes a booby-trap for the unwary." Id. Defendants respond that Greenman and its progeny do not apply in a commercial setting, since the plaintiff in Greenman was physically injured. Reply at 14. Defendants also argue, without any elaboration, that Keegan and Toyota stretched Greenman's holding "to an illogical extreme." Id.

In Keegan, the plaintiff bought a car from a dealership and then sued the manufacturer instead of the dealership for breach of express warranty, alleging that the car's tires prematurely wore down and posed a safety risk. 838 F. Supp. 2d at 949-51. The

defendants in Keegan argued that the plaintiff should have given notice to the dealership first, thereby giving them an opportunity to cure the defect, rather than suing the manufacturer immediately. Id. at 950-51. Rejecting this argument, the Keegan court followed Greenman, holding that "under California law, a consumer need not provide notice to a manufacturer before filing suit against them." Id. (citing Greenman, 59 Cal. 2d at 61).

In Toyota, the plaintiff bought a car from a dealership and sued the manufacturer for breach of express warranty because the car would accelerate unexpectedly and uncontrollably. 754 F. Supp. 2d at 1171-72, 1180. This posed an obvious safety hazard. Id. The court held that the plaintiffs who bought their cars directly from the manufacturer were subject to the notice requirement, but that as to the plaintiffs who bought their cars from dealerships, the notice requirement was "excused as to a manufacturer with which the purchaser did not deal." Id. at 1180.

The Court sees no reason to conclude, as Defendants urge, that the Keegan or Toyota courts stretched Greenman to an illogical extreme. Rather, those courts held, consistent with California law, that where a customer pleads injuries arising from a product purchased from a dealer, the notice requirement as to the manufacturer is waived. See, e.g., Greenman, 59 Cal. 2d at 61. The Court finds that Plaintiffs did not need to provide Defendants with notice of Plaintiff Anglin's claims before bringing a breach of express notice claim as to her. Further, like other courts in this district and elsewhere, the Court finds that Greenman imposes no physical injury requirement on plaintiffs who bring a breach of express warranty claim against a manufacturer for a defective

product purchased from a dealer. See, e.g., Keegan, 838 F. Supp. 2d at 951; Toyota, 754 F. Supp. 2d at 1171-72; Greenman, 59 Cal. 2d at 61.

The Court finds that Plaintiffs sufficiently pled a breach of express warranty claim as to Plaintiff Anglin. Defendants' motion is DENIED as to this claim.

B. Fraud Claims

Plaintiffs' claims under the CLRA and UCL, like their fraud by omission claim, sound in fraud because plaintiffs allege "a unified course of fraudulent conduct and rely entirely on that conduct" in bringing these claims. Kearns, 567 F. 3d at 1124. These claims are therefore subject to the heightened pleading requirement of Federal Rule of Civil Procedure 9(b). See id. ("[W]e have specifically ruled that Rule 9(b)'s heightened pleading standards apply to claims for violations of the CLRA and UCL.").

i. CLRA

The CLRA prohibits "unfair methods of competition and unfair or deceptive acts or practices." Cal. Civ. Code § 1770. Plaintiffs rely on sections 1770(a)(5) and 1770(a)(7) of the CLRA, which respectively prohibit "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have" and "[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another."

These sections of the CLRA are held to encompass both representations, per the explicit text of the statute, as well as omissions. Daugherty, 144 Cal. App. 4th at 835. To be actionable,

an omission must be "contrary to a representation actually made by the defendant, or an omission of a fact the defendant was obliged to disclose." Id. A fact is material, rendering a defendant potentially obligated to disclose it, if a "reasonable consumer would deem it important in determining how to act in the transaction at issue." Collins, 202 Cal. App. 4th at 255. When "a plaintiff's claim is predicated on a manufacturer's failure to inform its customers of a product's likelihood of failing outside the warranty period, the risk posed by such asserted defects cannot be 'merely' the cost of the product's repair . . . rather, for the omission to be material, the failure must pose 'safety concerns.'" Smith v. Ford Motor Co., 749 F. Supp. 2d 980, 987 (N.D. Cal. 2010) (citing Daugherty, 144 Cal. App. 4th at 835-38). Therefore, "under California law . . . [a] manufacturer's duty to consumers is limited to its warranty obligations absent either an affirmative misrepresentation or a safety issue." Id. at 988; see also Wilson v. Hewlett-Packard Co., 668 F.3d 1136, 1141 (9th Cir. 2012).

Nondisclosure or concealment of a material fact that a defendant was obliged to disclose can be actionable in four situations: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; or (4) when the defendant makes partial representations but also suppresses some material fact. LiMandri v. Judkins, 52 Cal. App. 4th 326, 336-37 (Cal. Ct. App. 1997). As the Ninth Circuit has recently cautioned, in the context of product defect claims, "California courts have generally rejected a broad obligation to

disclose." Wilson, 668 F.3d at 1142.

Plaintiffs' CLRA claims are based on their allegations that Defendants had a duty to disclose the alleged defect's safety and cost ramifications but fraudulently refused to do so.[2] See FAC ¶¶ 94-104, Opp'n at 7-8.[3] Plaintiffs allege that Defendants' failure to disclose these facts is actionable because (1) Defendants had exclusive knowledge of the material fact that the headlamps were defective, or, alternatively, (2) Defendants actively concealed that material fact. See Opp'n at 15-16. Both theories require the existence of a material fact.

a. The Class Vehicles' Headlamp Problem Was Material

Plaintiffs allege that the Class Vehicles' headlamp problems were inherently unsafe because the headlamps could shut off randomly, posing a safety hazard when driving at night or in unsafe conditions.[4] Plaintiffs further allege that they would not have purchased the Class Vehicles had they known of the headlamps'

[2] Plaintiffs argue in a footnote that Defendants waived their right to respond to Plaintiffs' arguments about safety by not anticipating Plaintiffs' reliance on such arguments and rebutting them in its MTD. See Opp'n at 9 n.3. This argument fails. Defendants raised the issue, however briefly, and cannot realistically be expected to predict and rebut every argument Plaintiffs might make in their opposition brief.

[3] In clarifying this theory in their opposition brief, Plaintiffs apparently abandon the FAC's allegations that Defendants made explicit representations under the CLRA. See FAC ¶ 94.

[4] Plaintiffs also argue for a separate duty to disclose the headlamp defect within the warranty period, based on material non-safety reasons, but these arguments are not supported by the law, and the Court need not address them since it finds a duty to disclose for safety reasons. See Ford Motor, 749 F. Supp. 2d at 987 (stating that for an omission to be material, the failure to disclose must pose safety concerns) (citing Daugherty, 144 Cal. App. 4th at 835-38).

issues. FAC ¶ 17. Defendants argue that Daugherty and an earlier case, Bardin v. DaimlerChrysler Corp., 136 Cal. App. 4th 1255, 1261-62 (Cal. Ct. App. 2006), require a plaintiff to have actually been injured before an omission as to an alleged safety defect can be held material and actionable. See Reply at 5-8.

Defendants are wrong. Daugherty stated, as Defendants quote, that a duty to disclose may arise if a plaintiff alleges "physical injury or . . . safety concerns posed by the defect." Daugherty, 144 Cal. App. 4th at 836 (emphasis added) (citing Bardin, 136 Cal. App. 4th at 1261-62). Daugherty and cases following it, including Falk v. General Motors Corp., 496 F. Supp. 2d 1088 (N.D. Cal. 2007), which Defendants also cite, held that a fact can give rise to a duty to disclose and an actionable omission if it implicates safety concerns that a reasonable consumer would find material. Falk, 496 F. Supp. 2d at 1096-97; Daugherty, 144 Cal. App. 4th at 836. This is a basic rule of California law. Contrary to Defendants' concerns, Reply at 8, this uncontroversial holding does not render the word "safety" in a plaintiff's pleadings a talisman that forces a duty to disclose -- plaintiffs must still plead facts showing a material safety defect. Nor does it mean that a product's failure to last forever is an actionable defect, since such a failure is obviously distinct from a product's safety risks. See id. Defendants' attempts to restate the rule of Daugherty and subsequent cases are unavailing.

Defendants also cite the appellate decision from Smith v. Ford Motor Company, 462 Fed. App'x 660, 663 (9th Cir. 2011), aff'g 749 F. Supp. 2d 980 (N.D. Cal. 2010), to support their contention that Plaintiffs' alleged "safety risk" was "inherently speculative

or implausible" and therefore cannot be the basis for a duty to disclose. In Ford Motor, the Ninth Circuit affirmed the district court's finding that the plaintiffs did not plead a safety defect because they did not adequately show how problems with a car's ignition lock (i.e., a driver's inability to start or shut off the car's engine) posed an unreasonable safety hazard. Id.

In the instant matter, the Court finds that Plaintiffs successfully showed that the alleged defect posed a genuine safety risk because a headlamp flickering or going out at night or in inclement weather could put the car's driver in danger. A reasonable consumer would consider this risk material because of the inherent risks of physical injury in the event of a headlamp-related accident, or the costs associated with continually repairing problematic headlamps. Moreover, Plaintiffs point to sections of the California Vehicular Code requiring working headlamps for safety purposes, providing further support for their claim that defective or inoperative headlamps pose a public safety hazard. See FAC ¶¶ 51 (citing Cal. Veh. Code § 24400). Defendants respond that the possibility of headlamp failure after years of use is not actually an "unreasonable safety risk," and that the accumulation of water in the Class Vehicles' headlamps is "readily observable," Reply at 9, but these disputes raise questions of fact that are inappropriate for a Rule 12(b)(6) motion to dismiss.

The Court finds that Plaintiffs have adequately alleged that Defendants had a duty to disclose the headlamp problems.

b. Exclusive Knowledge of a Material Fact

An actionable omission can arise "when the defendant had exclusive knowledge of material facts not known to the plaintiff."

Judkins, 52 Cal. App. 4th at 337. As discussed above, Plaintiffs adequately alleged that the Class Vehicles' headlamp problem is material. Section IV.B.i.a, supra. Plaintiffs allege that Defendants had a duty to disclose facts about the headlamp defect because they had exclusive knowledge of those facts. Opp'n at 15. To support this allegation, Plaintiffs claim that Defendants had non-public, internal data about the Class Vehicles' headlamp problems, including "pre-release testing data, early consumer complaints about the defect to Defendants' dealers who are their agents for vehicle repairs, dealership repair orders, testing conducted in response to those complaints, and other internal sources." Id.

Defendants claim that Plaintiffs' pleadings are conclusory and that Plaintiffs merely parroted boilerplate allegations similar to those in other class actions. See Reply at 10-11. These are not compelling responses. Plaintiffs sufficiently alleged enough non-conclusory facts to support their claim. At this stage of litigation, Plaintiffs have provided the Court with sufficient detail to make a determination about Defendants' knowledge relative to that of its customers.

The Court finds that Plaintiffs' allegations support their claims that Defendants had exclusive knowledge of the headlamp issue such that a failure to disclose it would be actionable.

c. Active Concealment of Material Facts

"[W]hen the defendant actively conceals a material fact from the plaintiff," a failure to disclose that fact can be actionable. Judkins, 52 Cal. App. 4th at 337. To state a claim for active concealment, a plaintiff must plead the following five elements:

> (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.

Lovejoy v. AT&T Corp., 119 Cal. App. 4th 151, 157 (Cal. Ct. App. 2004). These are essentially the same elements of a fraud by omission claim. Compare id. with SCC Acquisitions, Inc. v. Cent. Pac. Bank., 207 Cal. App. 4th 859, 863 (Cal. Ct. App. 2012) (providing fraud by omission elements).

Plaintiffs adequately pled that the Class Vehicles' headlamp problem was material and that Defendants had a duty to disclose it. See Section IV.B.i.a supra. Plaintiffs allege the elements of knowledge and intent to conceal by citing to multiple other consumers' similar complaints, as well as Defendants' decisions to repair Class Vehicles' headlamps only temporarily, or to replace them with other defective parts. See, e.g., id. ¶¶ 2, 7, 14, 16, 17 (knowledge of the defect), 7, 17, 56, 58 (intent to conceal it). Further, as to reliance, Plaintiffs allege that they would not have purchased the Class Vehicles had they known of the headlamp issue. See id. ¶¶ 17, 18, 61, 99, 116, 127. Finally, Plaintiffs pled facts showing adequate grounds for damages based on costs of repair and being exposed to the risk of automobile accidents and moving violations. See, e.g., id. ¶¶ 6, 13, 17-19, 24, 26, 28, 38, 50. These facts support Plaintiffs' allegation that Defendants actively concealed the truth of the Class Vehicles' headlamp problem from

the public.

The Court finds that Plaintiffs allege sufficient facts to support a claim under the CLRA. Defendants' motion to dismiss Plaintiffs' CLRA claims is therefore DENIED.

ii. Fraud by Omission

To plead fraud by omission under California law, a plaintiff must show (1) the concealment or suppression of material fact, (2) a duty to disclose the fact to the plaintiff, (3) intentional concealment with intent to defraud, (4) justifiable reliance, and (5) resulting damages. SCC Acquisitions, 207 Cal. App. 4th at 863. Claims for fraud must be pled at a heightened standard of specificity per Federal Rule of Civil Procedure 9(b). However, because a plaintiff bringing fraud by omission claims "will not be able to specify the time, place, and specific content of an omission as precisely as would a plaintiff in a false representation claim," plaintiffs may plead fraud by omission by alternative means. Falk, 496 F. Supp. 2d at 1098-99.

The elements for fraud by omission were addressed in a different context above, in which the Court found that Plaintiffs stated a claim for Defendants' active concealment of a material safety defect. See supra Section IV.B.i.c. The elements are the same here, and the Court need not restate them. The Court finds that Plaintiffs have adequately pled a fraud by omission claim. Defendants' motion to dismiss this claim is DENIED.

iii. Violations of the UCL

California Business & Professions Code § 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice." "Because [section 17200] is

written in the disjunctive, it establishes three varieties of unfair competition -- acts or practices which are unlawful, or unfair, or fraudulent." Berryman v. Merit Prop. Mgmt., Inc., 152 Cal. App. 4th 1544, 1554 (Cal. Ct. App. 2007).

Plaintiffs allege that Defendants' knowledge and concealment of the Class Vehicles' headlamps' problems were "unfair competition and unlawful, unfair, and fraudulent business practices" under the UCL. FAC ¶¶ 113-121. Plaintiffs clarify in their opposition brief that they plead violations of each prong. Opp'n at 17-18.

a. Unlawful Practices

Plaintiffs can plead a UCL violation under the "unlawfulness" prong by pleading that a business practice violated a predicate federal, state, or local law. See Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co., 20 Cal. 4th 163, 180 (Cal. 1999) (citing State Farm Fire & Cas. Co. v. Superior Court, 45 Cal. App. 4th 1093, 1103 (Cal. Ct. App. 1996)). Plaintiffs state that their claims are predicated on Defendants' alleged violations of the CLRA and California's express and implied warranty statutes. See Opp'n at 18. The Court finds that Plaintiffs' allegations showing that Defendants' concealment violates the CLRA and California's express warranty statute is sufficient to support Plaintiffs' claims under the unlawful prong of the UCL.

b. Unfair Business Practices

To support their unfairness claim, Plaintiffs cite McKell v. Washington Mutual, Inc., 142 Cal. App. 4th 1457, 1473 (Cal. Ct. App. 2006), which held that "[a] business practice is unfair within the meaning of the UCL if it violates established public policy or if it is immoral, unethical, oppressive or unscrupulous and causes

injury to consumers which outweighs its benefits."[5] Under this approach, California courts balance the "impact of [the business practice] on its alleged victim" against "the reasons, justifications, and motives of the alleged wrongdoer." Id. Specifically regarding safety issues, this Court has stated that "[f]ailing to provide safety information is a practice that violates public policy." Mourning v. SmithKline Beecham Corp., No. C 08-04929 WHA, 2009 WL 733873, at *4 (N.D. Cal. Mar. 17, 2009). Plaintiffs' opposition brief clarifies that "Defendants violated the unfair prong by, among other things, actively concealing the headlight defect and associated costs." Opp'n at 18.

As stated above, Plaintiffs allege sufficient facts to state a CLRA claim premised on Defendants' failure to disclose a material safety problem. See Section IV.B.i, supra. The Court finds that this failure to disclose violates public policy as well as the CLRA. See Mourning, 2009 WL 733873, at *4. Therefore Plaintiffs adequately plead a violation of the unfairness prong of the UCL.

c. Fraudulent Business Practices

To state a claim under the UCL's "fraudulent" prong, plaintiffs must plead that a defendant's allegedly fraudulent business practice is one "in which members of the public are likely

[5] California courts and the legislature have not specified which of several possible "unfairness" standards is the proper one. This Court recently found that the California Supreme Court would likely adopt the approach to unfairness provided in Camacho v. Automobile Club of Southern California, 142 Cal. App. 4th 1394, 1402 (Cal. Ct. App. 2006), which incorporated the three factors constituting unfairness under the Federal Trade Commission Act. Lyons v. Bank of America, N.A., No. 11-01232 CW, 2011 WL 3607608, at *10 (N.D. Cal. Aug. 15, 2011) (citing Camacho, 12 Cal. App. 4th at 1402). However, without guidance from a controlling source, the Court cannot say that Plaintiffs' legal grounds for this claim are improper, and Defendants have not argued that they are.

to be deceived." Id. at *11 (citing Morgan v. AT&T Wireless Servs., Inc., 177 Cal. App. 4th 1235, 1254 (Cal. Ct. App. 2009)). The Court finds that because Plaintiffs have sufficiently stated a claim for fraud by omission and have pled a violation of the CLRA based on a duty to disclose, Plaintiffs sufficiently plead a violation of the UCL under the fraudulent prong.

Plaintiffs have adequately pled violations of each prong of the UCL. Defendants' motion to dismiss this claim is DENIED.

V. CONCLUSION

For the reasons explained above, Defendants Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.'s motion to dismiss Plaintiffs Mui Ho, Shelda Anglin, and Ted Flory's First Amended Class Action Complaint is GRANTED in part and DENIED in part. The Court orders as follows:

- Plaintiffs' claim for breach of implied warranty under the Song-Beverly Act is DISMISSED with leave to amend as to Plaintiff Ho. This claim is undisturbed as to Plaintiff Anglin.
- Plaintiffs' claim for breach of express warranty as to Plaintiff Ho is DISMISSED WITH PREJUDICE. This claim is undisturbed as to Plaintiff Anglin.
- Plaintiffs' fraud by omission claim is undisturbed.
- Plaintiffs' CLRA claim is undisturbed.
- Plaintiffs' UCL claim is undisturbed.

Plaintiffs have leave to amend their claim for breach of implied warranty under the Song-Beverly Consumer Warranty Act only if they are able to plead that Plaintiff Ho purchased her Class Vehicle

from a dealer or retailer seller within the implied warranty period provided by that statute. Plaintiffs have thirty (30) days from this Order's signature date to file an amended complaint. All filings are subject to Rule 11, and since Plaintiffs have amended their complaint once, they may not re-plead any additional facts or causes of action without requesting leave from the Court. If Plaintiffs do not file an amended complaint, the deficient claim may be dismissed with prejudice.

IT IS SO ORDERED.

Dated: March 14, 2013

UNITED STATES DISTRICT JUDGE