

United States District Court  
For the Northern District of California

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

MONITA SHARMA, et al.,  
Plaintiffs,  
v.  
BMW OF NORTH AMERICA, LLC,,  
Defendant.

No. C-13-2274 MMC

**ORDER GRANTING DEFENDANT’S  
MOTION TO DISMISS; AFFORDING  
PLAINTIFFS LEAVE TO AMEND;  
DENYING AS MOOT DEFENDANT’S  
MOTION TO STRIKE CLASS  
ALLEGATIONS**

Before the Court are two motions, filed March 17, 2014, by defendant BMW of North America, LLC (“BMW”): (1) “Motion to Dismiss for Lack of Standing and Failure to State a Claim”; and (2) “Motion to Strike Class Allegations.” Plaintiffs Monita Sharma (“Sharma”) and Eric Anderson (“Anderson”) have filed opposition, to which BMW has replied. Having read and considered the papers filed in support of and in opposition to the motions, the Court rules as follows.<sup>1</sup>

**BACKGROUND**

The following factual allegations are contained in the operative complaint, the Second Amended Class Action Complaint (“SAC”).

According to plaintiffs, specified “makes and models” of BMWs were “designed so that certain vital electrical components known as SDARS, RDC, and PDC Modules, are

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<sup>1</sup>By order filed April 29, 2014, the Court took the matters under submission.

1 located in the lowest part of the vehicles' trunk," to wit, "the spare tire well under the trunk"  
2 (see SAC ¶ 1), and, further, were "designed so that drainage tubes used to drain water  
3 away from the vehicles' sun roofs are located directly next to the vital electrical equipment  
4 that is located in the bottom of the trunk" (see SAC ¶ 2).<sup>2</sup> The drainage tubes, plaintiffs  
5 allege, were "designed in such a way that they are prone to become clogged with dirt,  
6 debris, leaves, and other naturally-occurring materials," and, when clogged, "come loose or  
7 leak into the trunks of the vehicles." (See SAC ¶ 2.) In short, plaintiffs assert, the "critical  
8 modules and electronic components" in the trunk are "prone to damage and failure due to  
9 water exposure," which exposure can occur either because "[w]ater can enter the trunk  
10 through normal use of the vehicle" or because of "clogs in the sunroof drains." (See SAC  
11 ¶ 3.)

12 Plaintiffs allege that although BMW "knows of the vulnerability of water damaging  
13 the SDARS, RDC, and PDC Modules" (see SAC ¶ 3), it "has not informed its customers of  
14 the defects" (see id.), and "refuses to cover the costs of repairs under its warranty" (see  
15 SAC ¶ 4).

16 Both Sharma and Anderson purchased BMWs that assertedly have the subject  
17 defect, and, as set forth below, each plaintiff is alleged to have encountered problems  
18 resulting therefrom.

19 According to plaintiffs, Sharma purchased a "2008 BMW X5" in 2008. (See SAC  
20 ¶ 6.) Plaintiffs allege that in September 2012, after "an EDC warning light appeared" and  
21 Sharma was unable to open the "rear hatch of her vehicle," she took the vehicle to a "local  
22 BMW dealership" (see SAC ¶¶ 9, 10), which "found moisture around the electrical  
23 components located in the trunk and inspected the sun roof drains" (see SAC ¶ 10).  
24 Plaintiff further allege that thereafter, on or about January 15, 2013, Sharma was driving on  
25 a freeway, and "suddenly, without warning, power in her car completely shut down while  
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27 <sup>2</sup>The subject "makes and models" are identified in the SAC as "[a]ll BMW-designed  
28 X5 series vehicles (from 1999 to 2008), X3 series vehicles (from 2003 to 2010), and 5  
series vehicles (from 2004 to 2010)." (See SAC ¶ 32.)

1 she was moving at highway speeds from 55 mph to 65 mph”; Sharma was able to drive her  
2 vehicle “towards the shoulder of the highway” and had it towed to a BMW dealership. (See  
3 SAC ¶ 11.) Plaintiffs allege the dealership “determined that the rear sunroof drains of  
4 [Sharma’s] vehicle were clogged and had caused the right and left pockets of the trunk  
5 space to flood,” which in turn caused a “catastrophic electrical malfunction that occurred  
6 when water accumulated around the electronic modules in the trunk” (see SAC ¶ 12); the  
7 dealership “drained the water out of . . . Sharma’s trunk and replaced the corroded wiring,  
8 but did not otherwise move the electronics in her trunk or undertake any attempts to make  
9 them watertight” (see SAC ¶ 13). According to plaintiffs, although Sharma asked BMW to  
10 “cover the cost of draining her trunk and replacing the corroded wiring,” BMW “refused and  
11 continues to refuse to pay the amount she paid to repair the vehicle.” (See SAC ¶ 15.)

12 In March 2010, plaintiff Anderson purchased a “certified pre-owned 2007 BMW E60  
13 530i.” (See SAC ¶ 16.) Plaintiffs allege that, in 2012, while Anderson’s vehicle was parked  
14 outside in the rain, “water which should have drained off of the roof through the panoramic  
15 sunroof’s drain tubes wept into the car’s trunk” (see SAC ¶ 19), which water “pool[ed] and  
16 collect[ed]” around electrical components in the trunk (see SAC ¶ 20). As a result, plaintiffs  
17 allege, Anderson “experienced difficulties with some of the car’s electronic components,  
18 expressed as a failure to start.” (See SAC ¶ 21.) According to plaintiffs, a BMW dealership  
19 repaired the “problem” by “permanently sealing two of the four sunroof drain tubes,” by “re-  
20 locating the electronic components from the lowest point in the vehicle’s trunk to a higher  
21 point in the vehicle via the use of Velcro and wire ties,” and by “drill[ing] drainage weep  
22 holes in the floor pan of the trunk.” (See SAC ¶¶ 21-22.) Plaintiffs allege that BMW  
23 “refuse[d]” Anderson’s request to cover the cost of the repairs he paid. (See SAC ¶¶ 23-  
24 24.)

25 Based on the above, plaintiffs assert seven state law Claims for Relief, on their own  
26 behalf and on behalf of a putative class consisting of “[a]ll persons in California who  
27 currently own or lease, or who have owned or leased, any [of the subject BMW] vehicles.”  
28 (See SAC ¶ 69.)

1 **DISCUSSION**

2 In its motion to dismiss, BMW argues plaintiff Sharma lacks standing to seek  
3 injunctive relief, and, additionally, that plaintiffs have failed to state a claim upon which relief  
4 can be granted. In its motion to strike, BMW argues that plaintiffs' class action allegations  
5 should be stricken on the ground that none of plaintiffs' claims are suitable for  
6 determination on a classwide basis.

7 **A. Motion to Dismiss**

8 **1. Standing**

9 Plaintiffs seek, inter alia, injunctive relief on behalf of plaintiff Sharma (see SAC,  
10 Prayer for Relief, ¶ B), specifically, an order "requiring BMW to issue corrective actions  
11 including notification, recall, and repair of the Class Vehicles, or the establishment of a fund  
12 or program to repair the Class Vehicles" (see SAC, Prayer for Relief, ¶ D). BMW argues  
13 Sharma lacks standing to seek injunctive relief.

14 "To satisfy Article III's standing requirements, a plaintiff must show (1) [he/she] has  
15 suffered an injury in fact that is (a) concrete and particularized and (b) actual or imminent,  
16 not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of  
17 the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be  
18 redressed by a favorable decision." Maya v. Centex Corp., 658 F.3d 1060, 1067 (9th Cir.  
19 2011) (internal quotation, citation, and alteration omitted).

20 Plaintiffs, as noted, allege the asserted defect in Sharma's vehicle caused her  
21 vehicle to stop while she was driving at a high speed on a highway, and that the repairs the  
22 dealership performed did not correct the defect. BMW does not argue that plaintiffs'  
23 allegations are insufficient to support a finding that Sharma has standing to seek injunctive  
24 relief. Rather, BMW argues, plaintiffs cannot establish the truth of those allegations.

25 In particular, relying on notes apparently taken by service advisors at a dealership  
26 where Sharma took her vehicle on two occasions (see Yoshino Decl., filed March 17, 2014,  
27 Exs. A, B), BMW contends that plaintiffs cannot establish Sharma's vehicle stopped  
28 operating while she was driving it, and, further, that plaintiffs cannot establish any problem

1 with the electrical system in Sharma’s vehicle was the result of a design defect as opposed  
2 to Sharma’s failure to maintain the sunroof drains.

3 BMW’s arguments are misplaced. “[T]he threshold question of whether [a] plaintiff  
4 has standing (and the court has jurisdiction) is distinct from the merits of his claim.” Maya,  
5 658 F.3d at 1068. A “standing analysis, which prevents a claim from being adjudicated for  
6 lack of jurisdiction,” cannot “be used to disguise merits analysis, which determines whether  
7 a claim is one for which relief can be granted if factually true.” See id. (internal quotation  
8 and citation omitted). Whether Sharma’s vehicle stopped operating while she was driving it  
9 and whether any vehicle failure was the result of a design defect are issues going to the  
10 merits of Sharma’s claims, not whether she has standing to seek injunctive relief.

11 Accordingly, BMW has failed to show Sharma lacks standing to pursue her claim for  
12 injunctive relief.

## 13 **2. Failure to State a Claim**

14 A dismissal for failure to state a claim can be based on the lack of a cognizable legal  
15 theory or the absence of sufficient facts alleged under a cognizable legal theory. See  
16 Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990). Rule 8(a)(2), however,  
17 “requires only ‘a short and plain statement of the claim showing that the pleader is entitled  
18 to relief.’” See Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Fed. R.  
19 Civ. P. 8(a)(2)). Consequently, “a complaint attacked by a Rule 12(b)(6) motion to dismiss  
20 does not need detailed factual allegations.” See id. Nonetheless, “a plaintiff’s obligation to  
21 provide the grounds of his entitlement to relief requires more than labels and conclusions,  
22 and a formulaic recitation of the elements of a cause of action will not do.” See id. (internal  
23 quotation, citation, and alteration omitted).

24 In analyzing a motion to dismiss, a district court must accept as true all material  
25 allegations in the complaint, and construe them in the light most favorable to the  
26 nonmoving party. See NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). “To  
27 survive a motion to dismiss, a complaint must contain sufficient factual material, accepted  
28 as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S.

1 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). “Factual allegations must be enough  
2 to raise a right to relief above the speculative level[.]” Twombly, 550 U.S. at 555. Courts  
3 “are not bound to accept as true a legal conclusion couched as a factual allegation.” See  
4 Iqbal, 556 U.S. at 678 (internal quotation and citation omitted).

5 Here, as noted, the FAC contains seven Claims for Relief, which the Court next  
6 addresses in the sequence in which they are discussed in the parties’ respective  
7 memoranda of points and authorities.

8 **a. Seventh Claim for Relief: Breach of Express Warranty**

9 In the Seventh Claim, titled “Breach of Express Warranty,” plaintiffs allege their  
10 respective vehicles were covered by one or more warranties under which BMW warrants  
11 “against defects in materials or workmanship.” (See SAC ¶ 43.)

12 Sharma’s vehicle is alleged to have been covered by a “New SAV Limited Warranty  
13 – 2008 X5” (see Def.’s Req. for Judicial Notice Ex. A), and Anderson’s vehicle is alleged to  
14 have been covered by a “New Vehicle Limited Warranty – 2007 Models (see id. Ex. B).<sup>3</sup>  
15 Under both new vehicle warranties, BMW, for a period of 48 months or 50,000 miles,  
16 whichever occurs first, warrants “against defects in materials or workmanship to the first  
17 retail purchaser, and each subsequent purchaser.” (See Def.’s Req. for Judicial Notice Ex.  
18 A at 29, Ex. B at 32). Both vehicles are alleged to have been covered by a “Certified Pre-  
19 Owned Warranty” (“CPOW”), which warranty provides coverage upon expiration of the new  
20 vehicle warranty and thereafter for a period of two years or 50,000 miles, whichever occurs  
21 first (see id. Ex. C, second page);<sup>4</sup> under the CPOW, BMW likewise warrants “against

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23 <sup>3</sup>BMW’S request, unopposed by plaintiffs, that the Court take judicial notice of the  
24 contents of the new vehicle warranties is hereby GRANTED. See Branch v. Tunnell, 14  
25 F.3d 449, 454 (9th Cir. 1994) (holding court may take judicial notice of documents whose  
26 contents are alleged in complaint and whose authenticity no party questions).

27 <sup>4</sup>BMW’S request that the Court take judicial notice of the contents of the CPOW is  
28 hereby GRANTED. Although each plaintiff denies having received a copy of the CPOW  
submitted by BMW, such denial does not preclude judicial notice of its content. See Davis  
v. HSBC Bank Nevada, N.A., 691 F.3d 1152, 1161 (9th Cir. 2012) (holding where “party  
opposing incorporation by reference argues only that he did not review or have access to  
the proffered copies, this does not amount to a challenge to those documents’  
authenticity”).

1 defects in materials or workmanship” (see Def.’s Req. for Judicial Notice Ex. C, third page;  
2 see also SAC ¶ 43 (alleging CPOW “provides protection from defects in materials or  
3 workmanship”).)

4 Plaintiffs allege BMW breached the warranties by failing to cover the costs incurred  
5 by plaintiffs to repair their vehicles. BMW argues the language in the warranties forecloses  
6 plaintiffs’ claim.

7 As noted, under each of the subject warranties, BMW warranted against defects in  
8 “materials or workmanship.” Under California law, a warranty that provides protection  
9 against “defects in materials or workmanship” does not cover design defects. See Moss v.  
10 Smith, 181 Cal. 519, 520 (1919) (affirming judgment for plaintiff on breach of warranty  
11 claim, where warranty covered “any part that is defective in material or workmanship” and  
12 evidence supported trial court’s “conclusion that the defective operation of the car was due,  
13 not to the imperfect design of the engine, but to faulty workmanship in its construction”);  
14 Paduano v. American Honda Motor Co., 169 Cal. App. 4th 1453, 1467-68 (2009) (affirming  
15 summary judgment for defendant on breach of warranty claim, where plaintiff failed to offer  
16 evidence to show his “low gas mileage [was] the result of a mechanical defect”); see also  
17 Troup v. Toyota Motors Corp., 545 Fed. Appx. 668, 668-69 (9th Cir. 2013) (noting, “[i]n  
18 California, express warranties covering defects in materials and workmanship exclude  
19 defects in design”).<sup>5</sup>

20 A “design defect” exists “when the product is built in accordance with its intended  
21 specifications, but the design itself is inherently defective.” See McCabe v. American  
22 Honda Motor Co., 100 Cal. App. 4th 1111, 1120 (2002). By contrast, a “manufacturing  
23 defect exists when an item is produced in a substandard condition,” i.e., where a  
24 manufacturer “fail[s] to comply with its own design specifications,” and is “often

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26 <sup>5</sup>Plaintiffs’ reliance on Marsikian v. Mercedes Benz USA, LLC, 2009 WL 8379784  
27 (C.D. Cal. May 4, 2009), is unavailing. Although the plaintiffs therein alleged their vehicles  
28 had a “design defect,” and the district court denied a motion to dismiss their breach of  
express warranty claim, the defendant, as the court noted, had “not argued” design defects  
fall outside of materials and workmanship provisions. See id. at \*4.

1 demonstrated by showing the product performed differently from other ostensibly identical  
2 items of the same product line.” See id. (internal citation omitted).

3 BMW argues the alleged defect identified in the SAC is one of design. Plaintiffs, by  
4 contrast, argue it is premature at the pleading stage to determine whether the alleged  
5 defect is one of design or of manufacturing.

6 According to the SAC, “the Class Vehicles were designed in such a way that makes  
7 them unsafe and susceptible to flooding.” (See SAC ¶ 82.) More specifically, the defect  
8 challenged by plaintiffs is that “critical modules and electronic components are located in  
9 the lowest point of the trunk”; because of said location, plaintiffs allege, the subject modules  
10 and components are “prone to damage and failure due to water exposure,” as “[w]ater can  
11 enter the trunk through normal use of the vehicle and [through] clogs in the sunroof drains.”  
12 (See SAC ¶ 33.) Consistent therewith and with plaintiffs’ allegations that said “defect”  
13 exists in “all Class Vehicles” (see SAC ¶¶ 32-33), and that “BMW decided” to place the  
14 electrical components in said location (see SAC ¶ 1), the SAC repeatedly refers to the  
15 alleged defect as one of “design” (see SAC ¶¶ 1, 2, 14, 20, 23, 52, 54, 55, 57, 58, 59, 60,  
16 72, 73.f, 73.g, 75, 82, 92).

17 Nonetheless, plaintiffs argue, resolution of whether the alleged defect they have  
18 identified is one of design or manufacturing should not be addressed at the pleading stage.  
19 The Court disagrees. Although, as plaintiffs contend, it may be appropriate to defer such  
20 determination where, “at the pleading stage[,] . . . sufficient facts are alleged to assert both”  
21 a design defect and a manufacturing defect, see Alin v. American Honda Motor Co., 2010  
22 WL 1372308, at \*6 (D. N.J. March 31, 2010), here, the SAC includes no facts to support a  
23 theory that, at the time plaintiff’s respective vehicles were manufactured, BMW did not  
24 make them “in accordance with [BMW’s] intended specifications.” See McCabe, 100 Cal.  
25 App. 4th at 1120.

26 Accordingly, the Seventh Claim is subject to dismissal.

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1                   **b. Second Claim for Relief: Consumers Legal Remedies Act (“CLRA”)**

2           In the Second Claim, plaintiffs allege violations of the CLRA.

3           The CLRA, Cal. Civ. Code §§ 1750-1784, prohibits “unfair or deceptive acts or  
4 practices undertaken by any person in a transaction intended to result or which results in  
5 the sale or lease of goods or services to any consumer.” See Cal. Civ. Code § 1770(a). In  
6 the SAC, plaintiffs allege BMW engaged in the following prohibited practices identified in  
7 the CLRA: “[r]epresenting that goods . . . have . . . characteristics [or] . . . benefits . . .  
8 which they do not have,” see Cal. Civ. Code § 1770(a)(5); “[r]epresenting that goods . . .  
9 are of a particular standard, quality, or grade . . . if they are of another,” see Cal. Civ. Code  
10 § 1770(a)(7), and “[a]dvertising goods . . . with intent not to sell them as advertised,” see  
11 Cal. Civ. Code § 1770(a)(9). According to plaintiffs, BMW engaged in those practices by  
12 “actively conceal[ing] and fail[ing] to disclose” to plaintiffs that they “were entering into a  
13 sale for a vehicle prone to flooding and damage due to defectively-placed electronic  
14 component parts, as well as defectively-designed sunroof drains.” (See SAC ¶¶ 91-92.)

15           Where, as here, a plaintiff bases a CLRA claim on a failure to disclose a product  
16 defect, the plaintiff must allege the defect poses “an unreasonable safety hazard,” see  
17 Wilson v. Hewlett-Packard Co., 668 F.3d 1136, 1142-43 (9th Cir. 2012), and that the  
18 defendant “was aware of [the] defect at the time of sale,” see id. at 1145. BMW argues that  
19 plaintiffs have failed to allege sufficient facts to support a finding that the defect poses an  
20 unreasonable safety hazard and that BMW was aware of any such defect.

21           With respect to the issue of safety, the Court finds plaintiffs have pleaded sufficient  
22 facts to support a finding that the alleged defect poses an unreasonable safety hazard.  
23 Specifically, plaintiffs allege that the power in Sharma’s vehicle “suddenly, without warning,  
24 . . . completely shut down while she was moving at highway speeds from 55 mph to 65  
25 mph” (see SAC ¶ 11) and that the “steering” on a Class Vehicle owned by another person  
26 “locked” as the driver was about to enter a turnpike (see SAC ¶ 47).

27           With respect to the issue of BMW’s knowledge, however, the Court finds plaintiffs’  
28 allegations deficient. Plaintiffs allege BMW “knew” of the subject defect in light of

1 “numerous consumer complaints and repair orders.” (See SAC ¶ 53.) Even assuming  
2 consumer complaints could be sufficient to provide a manufacturer with notice of a defect,  
3 however, see Wilson, 668 F.3d at 1147 (observing “[s]ome courts have expressed doubt  
4 that customer complaints in and of themselves adequately support an inference that a  
5 manufacturer was aware of a defect”), plaintiffs fail to allege any facts suggesting such  
6 complaints were made prior to the dates on which plaintiffs purchased their respective  
7 vehicles, see id. at 1148 (holding, where plaintiffs relied on fourteen customer complaints  
8 to establish notice, plaintiffs’ allegations failed to “support an inference that [defendant]  
9 was aware of the defect at the time it sold the [subject products],” in that twelve complaints  
10 were “undated” and remaining two were made after dates on which plaintiffs made  
11 purchases).

12 Accordingly, the Second Claim is subject to dismissal.

13 **c. Third Claim for Relief: Bus. & Prof. Code § 17200**

14 In the Third Claim, plaintiffs allege violations of § 17200 of the Business and  
15 Professions Code.

16 Plaintiffs’ § 17200 claim is based in part on the same allegations as those that  
17 support their Second Claim, specifically, that BMW failed to disclose to plaintiffs that the  
18 asserted design defect posed a safety risk. (See SAC ¶ 97.) Consequently, to the extent  
19 the Third Claim is derivative of the Second Claim, the claim is deficient for the reason  
20 stated above with respect to the Second Claim, specifically, a failure to allege sufficient  
21 facts to support a finding that BMW knew of the asserted defect at the time Sharma and  
22 Anderson bought their respective vehicles.

23 The § 17200 claim is also based on an allegation that BMW’s failure to disclose the  
24 defect to plaintiffs was “fraudulent.” (See SAC ¶ 99.) To the extent the Third Claim is  
25 based on such a theory, the claim likewise is deficient, given that such a claim, like a CLRA  
26 claim, requires a showing that the defendant “was aware of the alleged defect at the time  
27 the [products] were sold.” See Wilson, 668 F.3d at 1145-46.

28 Accordingly, the Third Claim is subject to dismissal.

1 **d. Fourth Claim for Relief: Negligence**

2 In the Fourth Claim, titled “Negligence,” plaintiffs allege BMW had a “duty to  
3 disclose” the “safety risks posed by the Class Vehicles,” but failed to do so, and had a “duty  
4 not to put the defective Class Vehicles on the market, or to recall the defective Class  
5 Vehicles,” but failed to comply with such duty. (See SAC ¶¶ 109, 110, 112.) BMW argues  
6 the Fourth Claim is subject to dismissal in light of California’s economic loss rule.

7 Under California law, “[t]he economic loss rule requires a purchaser to recover in  
8 contract for purely economic loss due to disappointed expectations, unless he can  
9 demonstrate harm above and beyond a broken contractual promise.” Robinson Helicopter  
10 Corp. v. Dana Corp., 34 Cal. 4th 979, 988 (2005). “Economic loss consists of damages for  
11 inadequate value, costs of repair and replacement of the defective product or consequent  
12 loss of profits – without any claim of personal injury or damages to other property.” Id. at  
13 988-89 (internal quotation and citation omitted). Under the economic loss rule, where a  
14 plaintiff alleges a claim for negligence based on a defective product, “a manufacturer’s  
15 liability is limited to damages for physical injuries and there is no recovery for economic  
16 loss alone.” See Seely v. White Motor Co., 63 Cal. 2d 9, 18 (1965); see also East River  
17 Steamship Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 867, 871, 875-76 (1986)  
18 (adopting California’s economic loss rule for federal maritime claims; holding where plaintiff  
19 alleged defective component located within turbine “damaged only the turbine,” plaintiff  
20 could not proceed with either strict products liability or negligence claims).

21 Here, plaintiffs allege that, as a result of the assertedly defective design of their  
22 vehicles, they each incurred repair costs (see SAC ¶¶ 10, 15, 23), and may incur such  
23 repair costs in the future (see SAC ¶ 63 (alleging plaintiffs “have suffered actual damages  
24 in that the electronic component parts located in the Class Vehicles’ trunks are  
25 experiencing continuous and progressive failure problems”)). Plaintiffs, however, do not  
26 allege they incurred any physical injury or damage to property other than to their vehicles,  
27 and, consequently, fail to allege sufficient facts to support a negligence claim. See, e.g.,  
28 Callaghan v. BMW, 2014 WL 1340085, at \*1, \*6 (N.D. Cal. April 2, 2014) (dismissing

1 negligence claim in light of economic loss rule, where plaintiffs alleged defendant “failed to  
2 disclose a material safety defect” in their vehicles but alleged no damage other than  
3 “expensive repairs” and “loss of value in their vehicles”).

4 Accordingly, the Fourth Claim is subject to dismissal.

5 **e. Fifth Claim for Relief: Negligent Failure to Recall/Retrofit**

6 The Fifth Claim alleges a negligence claim based on BMW’s alleged “fail[ure] to  
7 recall Class Vehicles or warn of the dangers of the Class Vehicles despite a duty to do so.”  
8 (See SAC ¶ 126.)

9 For the reasons stated above with respect to the Fourth Claim, the Fifth Claim is  
10 subject to dismissal in light of the economic loss rule. Moreover, as pleaded, the Fifth  
11 Claim is duplicative of the Fourth Claim.

12 **f. Sixth Claim for Relief: Injunctive Relief**

13 In the Sixth Claim, titled “Injunctive Relief,” plaintiff Sharma seeks injunctive relief in  
14 the form of “corrective action to avoid the safety risk the Class Vehicles pose.” (See SAC  
15 ¶ 137.)

16 BMW argues the Sixth Claim is subject to dismissal because “injunctive relief” is not  
17 a claim, but, rather, a remedy. The Court agrees. See County of Del Norte v. City of  
18 Crescent City, 71 Cal. App. 4th 965, 973 (1999) (holding “[a] permanent injunction is an  
19 equitable remedy, not a cause of action, and thus it is attendant to an underlying cause of  
20 action”); see also Mangindin v. Washington Mut. Bank, 637 F. Supp. 2d 700, 709 (N.D. Cal.  
21 2009) (dismissing cause of action for injunctive relief on ground it does not state  
22 independent claim).<sup>6</sup>

23 Accordingly, the Sixth Claim is subject to dismissal.

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27 <sup>6</sup>Although, under some circumstances, a plaintiff may be entitled to injunctive relief  
28 as a remedy for a violation of the CLRA, see Cal. Civ. Code § 1780(a)(2), or for a violation  
of § 17200, see Cal. Bus. & Prof. Code § 17203, here, as discussed above, plaintiffs’ CLRA  
and § 17200 claims are subject to dismissal.

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**g. First Claim for Relief: Declaratory Relief**

In the First Claim, titled “Declaratory Relief,” plaintiffs seek a declaration in their favor as to the parties’ asserted controversy “concerning the existence of defects in the Class Vehicles and whether the repair of such defects should be covered under the Class Vehicle’s [w]arranty.” (See SAC ¶¶ 80, 83.)

For the reasons stated above with respect to the Seventh Claim, plaintiffs are not entitled to a declaration that the asserted defects are covered under the warranties applicable to their respective vehicles. Moreover, the First Claim identifies no controversy other than that presented by plaintiffs’ substantive claims for relief, and, consequently, is subject to dismissal for such additional reason. See Swartz v. KPMG LLP, 476 F.3d 756, 765-66 (9th Cir. 2007) (holding “[t]o the extent [plaintiff] seeks a declaration of defendants’ liability for damages sought for his other causes of action, the claim is merely duplicative and [is] properly dismissed”). Finally, even if any of plaintiffs’ claims had been sufficiently alleged, the issue of whether any such claim may be brought on behalf of a class is determined in the context of a motion to certify a class, see Fed. R. Civ. P. 23, and not a claim for declaratory relief.

Accordingly, the First Claim is subject to dismissal.

**B. Motion to Strike**

As noted, BMW seeks an order striking from the SAC allegations pertaining to plaintiffs’ assertion that their claims may be brought on behalf of a class.

As discussed above, the SAC will be dismissed for failure to state a claim.

Accordingly, the motion to strike will be denied as moot.

**CONCLUSION**

For the reasons stated above,


1. BMW’s motion to dismiss is hereby GRANTED, and the SAC is hereby DISMISSED for failure to state a claim.
2. BMW’s motion to strike is hereby DENIED as moot.

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1           3. If plaintiffs wish to file a Third Amended Complaint for purposes of curing any or  
2 all of the deficiencies identified above with respect to the Second, Third, Fourth, Fifth,  
3 and/or Seventh Claims for Relief, any such Third Amended Complaint shall be filed no later  
4 than July 3, 2014. Plaintiffs may not, however, add new causes of action, new plaintiffs, or  
5 new defendants without obtaining leave of court. See Fed. R. Civ. P. 15(a)(2).

6           **IT IS SO ORDERED.**

7  
8 Dated: June 19, 2014

  
MAXINE M. CHESNEY  
United States District Judge

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