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

IRIS GONZALEZ, ET AL.,  
Plaintiffs,  
v.  
MAZDA MOTOR CORPORATION, et al.,  
Defendants.

Case No. [16-cv-02087-MMC](#)

**ORDER GRANTING IN PART,  
DENYING IN PART, AND DEFERRING  
RULING IN PART ON DEFENDANTS'  
MOTION TO DISMISS; SETTING  
SUPPLEMENTAL BRIEFING  
SCHEDULE**

Before the Court is defendants Mazda Motor Corporation and Mazda Motor of America, Inc.'s (collectively, "Mazda") motion, filed September 23, 2016, by which Mazda seeks, under Rule 12(b)(6) of the Federal Rules of Civil Procedure, an order dismissing certain of the claims alleged in the First Amended Complaint. Plaintiffs Megan Humphrey and Matthew Ochmanek (collectively, "California Plaintiffs") and plaintiffs Iris Gonzalez, Charles Bunch, Anne Stom, David Woodward, Greg Thomason, Lisa Massa, Dan Carney, Lorie Bender, Andrew Bauer, Linda Foley, Lou Graziani (collectively, "Non-California Plaintiffs")<sup>1</sup> have filed opposition, to which Mazda has replied. The matter came on regularly for hearing on December 2, 2016. Bryan L. Clobes and Daniel Oswaldo Herrera of Cafferty Clobes Meriwether Sprengel LLP appeared on behalf of plaintiffs. Michael Lawrence Mallow of Sidley Austin LLP appeared on behalf of Mazda.

The Court, having considered the parties' respective written submissions and the arguments of counsel at the hearing, rules as follows.

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<sup>1</sup> The Court hereinafter refers to each plaintiff individually by his or her surname.

1           **A. First Cause of Action (California Consumer Legal Remedies Act)<sup>2</sup>**

2           Mazda moves to dismiss the claims of the Non-California Plaintiffs<sup>3</sup> on the ground  
3 such claims “should be governed by the consumer protection laws of the jurisdiction[s] in  
4 which the transaction[s] took place.” (See Mot. at 4:25-5:5 (quoting Mazza v. Am. Honda  
5 Co., 666 F.3d 581, 594 (9th Cir. 2012))). In response, plaintiffs contend the resolution of  
6 such issue at this time would be premature. The Court, for the reasons stated on the  
7 record at the hearing, finds “this is not a case in which further development of the factual  
8 record is reasonably likely to materially impact the choice of law determination,” see Cover  
9 v. Windsor Surry Co., No. 14-CV-05262-WHO, 2016 WL 520991, at \*5 (N.D. Cal. Feb. 20,  
10 2016), and, consequently, finds it appropriate to make such determination at this stage of  
11 the proceedings.<sup>4</sup> The sole remaining issue is the whether there are “material differences”  
12 between California law and the laws of the states in which the transactions took place.  
13 See Mazza, 666 F.3d at 590. Although plaintiffs confined their opposition to the first of the  
14 above-referenced two issues, prematurity, given the significance of the second, material  
15 differences, the Court will afford plaintiffs the opportunity to file supplemental briefing, and  
16 hereby DEFERS ruling thereon until such briefing is complete.<sup>5</sup>

17 \_\_\_\_\_  
18           <sup>2</sup> The First, Second, Third, Fourth, and Fourteenth Causes of Action are brought  
19 on behalf of all plaintiffs. The remaining causes of action are brought on behalf of certain  
of the plaintiffs as indicated below.

20           <sup>3</sup> Mazda has withdrawn its motion to the extent the First Cause of Action is brought  
21 on behalf of Ochmanek, one of the California Plaintiffs (see Reply at 6:20 n.7), and,  
accordingly, the Court does not address such claim herein.

22           <sup>4</sup> To the extent Mazda moves to dismiss the First, Second, Fifth, Sixth, Seventh,  
23 Eighth, Ninth, Eleventh, and Twelfth Causes of Action on the ground that the allegations  
of fraud set forth therein are not pleaded with the particularity required by Rule 9(b) of the  
24 Federal Rules of Civil Procedure, the motion, for the reasons stated on the record at the  
hearing, is hereby DENIED.

25           <sup>5</sup> Although Mazda argues such additional briefing is unnecessary, pointing out that  
26 the Ninth Circuit in Mazza reviewed an appendix purporting to reflect the differences  
between the consumer protection laws of California and 43 other states, see Mazza, 666  
27 F.3d at 591, said appendix was submitted by the defendant therein to the district court,  
see Def.’s State Law Variations Appendix in Support of Opp. to Pl.’s Renewed Mot. for  
28 Class Cert., Mazza v. Am. Honda Motor Co., 254 F.R.D. 610 (C.D. Cal. 2008), and there  
is no indication its accuracy was challenged.

1           **B. Second Cause of Action (California Unfair Competition Law)**

2           Mazda moves to dismiss the claims of the Non-California Plaintiffs on the same  
3 ground as set forth above with regard to the First Cause of Action. The Court, contrary to  
4 plaintiffs' argument, finds a determination thereon is not premature at this stage of the  
5 proceedings and hereby DEFERS ruling pending supplemental briefing on the remaining  
6 issue.

7           **C. Third Cause of Action (California Song-Beverly Act)**

8           Mazda moves to dismiss the claims of the Non-California Plaintiffs on the ground  
9 the Song-Beverly Act does not apply extraterritorially, and plaintiffs agree to dismiss  
10 those claims. (See Opp. at 2:10 n.2). Accordingly, as to the Non-California Plaintiffs, the  
11 motion is hereby GRANTED without leave to amend.

12           Mazda moves to dismiss plaintiff Ochmanek's claim on the ground such claim fails  
13 in light of the one-year durational period of the Song-Beverly Act. See Cal. Civ. Code  
14 § 1791.1(c). The Court is not persuaded. See Mexia v. Rinker Boat Co., Inc., 174 Cal.  
15 App. 4th 1297, 1310 (2009) (noting "[t]here is nothing [in the statute] that suggests a  
16 requirement that the purchaser discover and report to the seller a latent defect within [the  
17 one-year] time period"); id. at 1305 (holding "[i]n the case of a latent defect, a product is  
18 rendered unmerchantable, and the warranty of merchantability is breached, by the  
19 existence of the unseen defect"); see also Daniel v. Ford Motor Co., 806 F.3d 1217, 1223  
20 (9th Cir. 2015) (holding ruling in Mexia must be followed, "[a]bsent convincing evidence  
21 that the California Supreme Court would decide the issue . . . differently").

22           Although, as Mazda points out, the district court's reasoning in Peterson v. Mazda  
23 Motor of Am., Inc., 44 F. Supp. 3d 965 (C.D. Cal. 2014) has some persuasive force, see  
24 id. at 971-72 (holding plaintiff "need not allege that she discovered the . . . defect within  
25 [the one-year durational period], but there should at least be allegations that symptoms of  
26 the defect manifested during the warranty period"; observing, "if Mexia were not limited,  
27 Mexia would render the duration provision of the Song-Beverly Act meaningless because  
28 every defect that arises could conceivably be tied to an imperfection existing during the

1 implied warranty period”) (internal quotation, citation, and alteration omitted), the Court  
2 notes that Peterson was decided prior to the Ninth Circuit’s decision in Daniel, which, on  
3 facts similar to those presented here, adds no such limitation. See Daniel, 806 F.3d at  
4 1221-23 (applying holding in Mexia to claims based on alignment defect resulting in  
5 premature tire wear outside one-year period).

6 Accordingly, as to plaintiff Ochmanek, the motion, for the reasons stated above  
7 and on the record at the hearing, is hereby DENIED.

8 **D. Fourth Cause of Action (California Secret Warranty Law)**

9 Mazda moves to dismiss the claims of the Non-California Plaintiffs on the ground  
10 the California Secret Warranty Law does not apply extraterritorially, and plaintiffs agree to  
11 dismiss those claims. (See Opp. at 2:10 n.2). Accordingly, as to the Non-California  
12 Plaintiffs, the motion is hereby GRANTED without leave to amend.

13 To the extent Mazda moves to dismiss the claims of the California Plaintiffs, the  
14 motion, for the reasons stated on the record at the hearing, is hereby GRANTED with  
15 leave to amend to allege facts sufficient to plead an adjustment program.

16 **E. Sixth Cause of Action (Florida Deceptive & Unfair Trade Practices Act)**

17 The Sixth Cause of Action is brought solely on behalf of plaintiff Woodward.  
18 Mazda moves to dismiss Woodward’s claim on the ground it lacks the requisite facts  
19 pertaining to the circumstances under which the vehicle was purchased. The motion is,  
20 for the reasons stated on the record at the hearing, hereby GRANTED with leave to  
21 amend to plead such additional factual support.

22 **F. Ninth Cause of Action (Pennsylvania Unfair Trade Practices and  
23 Consumer Protection Law)**

24 The Ninth Cause of Action is brought solely on behalf of plaintiffs Massa and  
25 Bauer. Mazda’s motion to dismiss such claims on the ground they are barred by the  
26 economic loss doctrine, is, for the reasons stated on the record at the hearing, hereby  
27 DENIED. See Knight v. Springfield Hyundai, 81 A.3d 940, 952 (Pa. Super. Ct. 2013)  
28 (holding “[t]he economic loss doctrine is inapplicable” to “statutory claims brought

1 pursuant to the [Pennsylvania] UTPCPL”).

2 **G. Tenth Cause of Action (Connecticut Unfair Trade Practices Act)**

3 The Tenth Cause of Action is brought solely on behalf of plaintiff Carney. Mazda  
4 moves to dismiss Carney’s claim on the ground the allegations in support thereof are not  
5 sufficient to plead an adjustment program. The motion is, for the reasons stated on the  
6 record at the hearing, hereby GRANTED with leave to amend to plead additional facts in  
7 support thereof.

8 **H. Twelfth Cause of Action (Ohio Consumer Sales Practices Act)**

9 The Twelfth Cause of Action is brought solely on behalf of plaintiff Graziani.  
10 Mazda moves to dismiss Graziani’s claim on the ground it is time-barred, and plaintiffs  
11 agree to dismiss the claim. (See Opp. at 2:10 n.2). Accordingly, Mazda’s motion to  
12 dismiss said claim is hereby GRANTED without leave to amend.

13 **I. Thirteenth Cause of Action (Breach of Express Warranty)**

14 The Thirteenth Cause of Action is brought solely on behalf of plaintiffs Gonzalez,  
15 Bunch, Woodward, Thomason, Massa, Humphrey, Ochmanek, Bauer and Foley. Mazda  
16 moves to dismiss the claim of plaintiff Woodward on the ground such claim fails to plead  
17 facts triggering coverage under the warranty, and moves to dismiss the claim of plaintiff  
18 Bunch on the ground such claim is time-barred absent facts supporting application of the  
19 future performance exception. The motion is, for the reasons stated on the record at the  
20 hearing, hereby GRANTED with leave to amend to plead the requisite facts.

21 **J. Fourteenth Cause of Action (Breach of Implied Warranty)**

22 Mazda moves to dismiss the claims of plaintiffs Thomason, Carney, Stom, Foley,  
23 Graziani, Bauer, Bender, Bunch, and Ochmanek on the grounds such claims are time-  
24 barred and/or fail for lack of privity, and plaintiffs agree to dismiss those claims. (See  
25 Opp. at 2:10 n.2). Accordingly, as to the above-referenced plaintiffs, the motion is hereby  
26 GRANTED without leave to amend.

27 Mazda moves to dismiss the claim of plaintiff Humphrey on the ground such claim  
28 fails under the California Commercial Code for lack of privity and, in response to plaintiffs’

1 argument that the claim falls within an exception for third-party beneficiaries, cites to  
2 Clemens v. DaimlerChrysler Corp., 534 F.3d 1017 (9th Cir. 2008). See id. at 1023-24  
3 (holding “California courts have painstakingly established the scope of the privity  
4 requirement under [the] California Commercial Code . . . , and a federal district court  
5 sitting in diversity is not free to create new exceptions to it”). The Court acknowledges  
6 district courts have disagreed as to whether California recognizes a third-party  
7 beneficiary exception to the privity requirement. Compare, e.g., In re MyFord Touch  
8 Consumer Litigation, 46 F.Supp.3d 936, 984 (N.D. Cal. 2014) (holding “the third-party  
9 beneficiary exception remains viable under California law”), with Xavier v. Philip Morris  
10 USA Inc., 787 F.Supp.2d 1075, 1083 (N.D. Cal. 2011) (holding “[n]o reported California  
11 decision has held that the purchaser of a consumer product may dodge the privity rule by  
12 asserting that he or she is a third-party beneficiary of the distribution agreements linking  
13 the manufacturer to the retailer who ultimately made the sale”), and Long v. Graco  
14 Children’s Products Inc., No. 13-cv-01257-WHO, 2013 WL 4655763, at \*12 (N.D. Cal.  
15 Aug. 26, 2013) (holding “district court cases that allegedly allowed a third-party  
16 beneficiary exception . . . are not binding on the Court whereas Clemens is”). Having  
17 reviewed the relevant available authority, the Court is persuaded by the reasoning of  
18 those cases that have declined to extend the list of exceptions to encompass asserted  
19 third-party beneficiaries. Accordingly, as to Humphrey’s claim, Mazda’s motion is hereby  
20 GRANTED without leave to amend.

21 To the extent Mazda moves to dismiss the claim of plaintiff Woodward, the motion  
22 is, for the reasons stated on the record at the hearing, hereby GRANTED with leave to  
23 amend to add facts bearing on the question of privity.

24 **K. Fifteenth Cause of Action (Breach of Written Warranty under the**  
25 **Magnuson-Moss Warranty Act)**

26 The Fifteenth Cause of Action is brought solely on behalf of plaintiffs Gonzalez,  
27 Bunch, Woodward, Thomason, Massa, Humphrey, Ochmanek, Bauer and Foley, and the  
28 parties are in agreement that the viability of such claims is dependent on the merits of

1 plaintiffs' express warranty claims. Accordingly, to the extent Mazda moves to dismiss  
2 the claims of plaintiffs Woodward and Bunch, the motion is, for the reasons stated above  
3 with respect to the Thirteenth Cause of Action, hereby GRANTED with leave to amend.

4 **CONCLUSION**

5 For the reasons stated,

6 1. Mazda's motion to dismiss is hereby GRANTED in part and DENIED in part  
7 as set forth above.

8 2. With respect to the claims as to which the Court has deferred ruling,  
9 specifically, the First and Second Causes of Action brought by the Non-California  
10 Plaintiffs, the Court sets the following briefing schedule:

11 a. No later than January 20, 2017, plaintiffs shall file a supplemental  
12 opposition brief, not to exceed 10 pages in length.

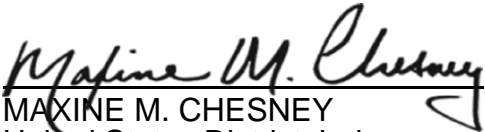
13 b. No later than January 27, 2017, Mazda shall file a supplemental reply  
14 brief, not to exceed 7 pages in length.

15 c. As of January 27, 2017, said matters will stand submitted.

16 3. To the extent leave to amend is granted as set forth above, any Second  
17 Amended Complaint shall be filed no later than two weeks from the date the Court issues  
18 an order on the deferred part of Mazda's motion.

19  
20 **IT IS SO ORDERED.**

21  
22 Dated: January 5, 2017

23   
24 MAXINE M. CHESNEY  
25 United States District Judge