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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NAD KARIM,

Plaintiff,

No. C 12-5240 PJH

v.

**ORDER DENYING MOTION FOR  
CLASS CERTIFICATION AND  
DENYING MOTIONS TO SEAL**

HEWLETT-PACKARD COMPANY,

Defendant.

\_\_\_\_\_ /

Plaintiff Nad Karim’s motion for class certification came on for hearing before this court on December 11, 2013. Plaintiff Nad Karim (“plaintiff”) appeared through his counsel, Jenelle Welling. Defendant Hewlett-Packard (“defendant” or “HP”) appeared through its counsel, Samuel Liversidge and Blaine Evanson. Having read the papers filed in conjunction with the motion and carefully considered the arguments and the relevant legal authority, and good cause appearing, the court hereby DENIES plaintiff’s motion as follows.

**BACKGROUND**

Plaintiff Nad Karim (“plaintiff”) brings this putative nationwide class action on behalf of purchasers of certain of defendant’s laptop computers. Plaintiff alleges that HP made misrepresentations regarding the computers’ wireless card (used to connect to the Internet). Plaintiff asserts two causes of action, for breach of express warranty and violation of California’s Consumers Legal Remedies Act (“CLRA”), but seeks class certification as to only the warranty claim.

Plaintiff alleges that, on November 22, 2010, he visited HP’s website (specifically, HP’s “Home and Home Office Store,” or “HHO”), which allows customers to customize and purchase computers directly from HP. Complaint, ¶ 10-11. When choosing the customizable components, customers may click on a “help me decide” button that provides more detailed information about the choices available to the customer. Plaintiff started to

**United States District Court**  
For the Northern District of California

1 go through the customization process, and was prompted to select a wireless card for  
2 wireless Internet connection. The website represented that the available wireless cards  
3 could connect to wireless networks operating on two different frequencies - the 2.4 GHz  
4 frequency and the 5.0 GHz frequency. Complaint, ¶ 7. Specifically, the website  
5 represented that the wireless card would allow users to connect to the 802.11a, 802.11b,  
6 802.11g, and 802.11 draft N infrastructures – and the 802.11a infrastructure operates only  
7 in the 5.0 GHz band. Id. Computers running on the 5.0 GHz band generally operate  
8 faster, both because the 5.0 GHz band inherently allows more data throughput per second,  
9 and because the 2.4 GHz band suffers from interference from other devices (including  
10 cordless phones, microwave ovens, and baby monitors), which congests the band and  
11 slows down the transfer of data.

12 Plaintiff alleges that “[w]hen he got to the section to select a wireless card, he read  
13 HP’s description of the wireless card.” Complaint, ¶ 11. Plaintiff clicked on the “help me  
14 decide” link, which provided two options from which plaintiff could choose, both of which  
15 used this identical language: “This technology allows flexibility to connect to most available  
16 industry standard base WLAN (802.11b, 802.11a, 802.11g, and 802.11 draft N)  
17 infrastructures.” See Dkt. 52-5 (Welling Decl., Ex. 4). Because the 802.11a protocol  
18 operates only on the 5.0 GHz band, and the 802.11b and 802.11g protocols operate on the  
19 2.4 GHz band, plaintiff understood the wireless card to be dual-band. Complaint, ¶ 7.

20 Plaintiff selected the wireless card to be included in his customized computer. When  
21 plaintiff received the computer that he ordered, it was equipped with an “Intel Centrino-N  
22 1000 802.11 b/g/n wireless card,” which operates only on the 2.4 GHz frequency.  
23 Complaint, ¶ 12.

24 After receiving his computer, plaintiff unsuccessfully attempted to connect his  
25 computer to his home wireless network, which operates on the 5.0 GHz frequency. He  
26 then called HP’s technical support team (sometime in January 2011) to inquire about the  
27 problem. HP’s team told plaintiff to buy a new wireless card, specifically recommending the  
28 Broadcom 4322 card, which did have dual-band capability. Complaint, ¶ 15. HP’s team

1 assured plaintiff that the new wireless card would be compatible with his computer. Plaintiff  
2 purchased the new card, but found that the computer would not properly install it, and  
3 instead gave plaintiff an error message “warning of an incompatible or unsupported  
4 wireless device.” Id., ¶ 16. Plaintiff alleges that his computer was configured to function  
5 only with single-band wireless cards, and would not function with any dual-band wireless  
6 card. Id. HP computers are equipped with a “white list,” a comprehensive list of all  
7 components that are compatible with the computer. Whenever an HP computer boots up,  
8 it verifies that all connected components are included on this “white list.” If any component  
9 is not on the white list, the computer will send an error message to the user. Plaintiff  
10 alleges that “HP’s white list for the laptops at issue here did not include authorization for  
11 any dual-band wireless cards.” Id., ¶ 14.

12 Plaintiff alleges that he “would have paid less for the computer or would not have  
13 purchased it had he known that neither it nor the wireless card with which it would be  
14 equipped could operate on both the 2.4 GHz and 5.0 GHz frequencies.” Complaint, ¶ 18.  
15 Plaintiff further alleges that he would not have purchased the replacement wireless card  
16 had he known that the computer would not permit the card to function. Id.

17 On August 22, 2012, plaintiff filed suit in Santa Clara County Superior Court, and on  
18 October 10, 2012, HP removed the case to this court. As stated above, plaintiff’s complaint  
19 asserts two causes of action (breach of express warranty, and violation of CLRA), but  
20 plaintiff seeks class certification as to only the warranty claim. Specifically, plaintiff seeks to  
21 certify the following class:

22 All persons residing in the United States who, between October 18, 2009 and  
23 April 11, 2011, customized and purchased from HP’s website one of the  
24 following computers: Compaq Mini CQ10, Compaq Presario CQ61z, Compaq  
25 Presario CQ62z, HP Mini 110, HP Mini 210, HP Mini 210 HD, HP Mini 210  
26 Vivienne Tam Edition, HP Pavilion dm1z, HP Pavilion dm3t, HP Pavilion  
27 dm3z, HP Pavilion dm4t, HP Pavilion dm4z, HP Pavilion dv4i, HP Pavilion  
28 dv4t, HP Pavilion dv5t, HP Pavilion dv6t, HP Pavilion dv6t Select Edition, HP  
Pavilion dv6z, HP Pavilion dv6z Select Edition, HP Pavilion dv7t, HP Pavilion  
dv7t Select Edition, HP G42t, HP G60t, HP G62t, HP G71t, HP G72t, or HP  
TouchSmart tm2t.

Excluded from the class are purchasers who returned their computers and purchasers

1 whose computers were equipped with a dual-band wireless card.

2 **DISCUSSION**

3 A. Legal standard

4 “Before certifying a class, the trial court must conduct a ‘rigorous analysis’ to  
5 determine whether the party seeking certification has met the prerequisites of Rule 23.”  
6 Mazza v. American Honda Motor Co., Inc., 666 F.3d 581, 588 (9th Cir. 2012) (citation and  
7 quotation omitted).

8 The party seeking class certification bears the burden of affirmatively demonstrating  
9 that the class meets the requirements of Federal Rule of Civil Procedure 23. Wal-Mart  
10 Stores, Inc. v. Dukes, \_\_\_ U.S. \_\_\_, 131 S.Ct. 2541, 2551 (2011). In order for a class action  
11 to be certified, plaintiffs must prove that they meet the requirements of Federal Rule of Civil  
12 Procedure 23(a) and (b).

13 Rule 23(a) requires that plaintiffs demonstrate numerosity, commonality, typicality  
14 and adequacy of representation in order to maintain a class. First, the class must be so  
15 numerous that joinder of all members individually is “impracticable.” See Fed. R. Civ. P.  
16 23(a)(1). Second, there must be questions of law or fact common to the class. Fed. R.  
17 Civ. P. 23(a)(2). Third, the claims or defenses of the class representative must be typical  
18 of the claims or defenses of the class. Fed. R. Civ. P. 23(a)(3). And fourth, the class  
19 representative must be able to protect fairly and adequately the interests of all members of  
20 the class. Fed. R. Civ. P. 23(a)(4). The party moving for class certification bears the  
21 burden of establishing that the Rule 23(a) requirements are satisfied. Gen'l Tel. Co. of  
22 Southwest v. Falcon, 457 U.S. 147, 156 (1982); see also Dukes, 131 S.Ct. at 2551.

23 If all four prerequisites of Rule 23(a) are satisfied, the court then determines whether  
24 to certify the class under one of the three subsections of Rule 23(b), pursuant to which the  
25 named plaintiff must establish that either 1) that there is a risk of substantial prejudice from  
26 separate actions; or 2) that declaratory or injunctive relief benefitting the class as a whole  
27 would be appropriate; or 3) that common questions of law or fact common to the class  
28 predominate and that a class action is superior to other methods available for adjudicating

1 the controversy at issue. See Fed. R. Civ. P. 23(b)(3).

2 The court does not make a preliminary inquiry into the merits of plaintiffs' claims in  
3 determining whether to certify a class. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 177  
4 (1974). The court will, however, scrutinize plaintiffs' legal causes of action to determine  
5 whether they are suitable for resolution on a class-wide basis. See, e.g., Moore v. Hughes  
6 Helicopters, Inc., 708 F.2d 475, 480 (9th Cir. 1983). Making such a determination will  
7 sometimes require examining issues that overlap with the merits. See Dukes, 131 S.Ct. at  
8 2551-52 (acknowledging that court's "rigorous analysis" will frequently entail some overlap  
9 with merits of plaintiff's underlying claim).

10 The court will consider matters beyond the pleadings, if necessary, in order to  
11 ascertain whether the asserted claims or defenses are susceptible of resolution on a class  
12 wide basis. See McCarthy v. Kleindienst, 741 F.2d 1406, 1419 n.8 (D.C. Cir. 1984).

13 B. Legal Analysis

14 The court will first address the four requirements of Rule 23(a), and then will  
15 separately discuss Rule 23(b).

16 Numerosity

17 Plaintiff submits evidence that 350,000 computers were shipped without the dual-  
18 band wireless card (where dual-band functionality was described on the "help me decide"  
19 screen), and HP does not present any argument regarding numerosity. Thus, the court  
20 finds that this requirement is met.

21 Commonality

22 Plaintiff identifies two common questions: (1) whether HP's description of the  
23 wireless cards created an express warranty by description, and (2) whether HP breached  
24 that express warranty. Plaintiff argues that HP included the same "help me decide"  
25 description for all relevant laptop models, and included the same single-band wireless card  
26 in all relevant computers, so the commonality requirement is met.

27 HP raises a number of challenges to plaintiff's argument. First, HP argues that  
28 plaintiff cannot prove "exposure" on a classwide basis. HP argues that plaintiff has not

1 provided evidence that class members were “uniformly exposed to the challenged ‘802.11a’  
2 statement,” and HP provides its own evidence that less than 4.3% of all website visitors  
3 visited any of the 20 different “help me decide” screens, and that of that 4.3%, the average  
4 person visited only 2.1 of the “help me decide” screens. See Dkt. 64 at 9. But, importantly,  
5 HP does not provide any evidence showing what percentage of actual purchasers (i.e.,  
6 putative class members) visited the “help me decide” screens. Plaintiff provides his own  
7 evidence that only 2.5% of visitors to HP’s website ultimately purchased any product. See  
8 Dkt. 69-2 at 7. In other words, out of all visitors to the relevant HP website, the evidence  
9 indicates that the number of people who viewed a “help me decide” screen was higher than  
10 the number of people who made a purchase – leaving open the possibility that most (or  
11 even all) of actual notebook purchasers did visit a “help me decide” screen. Thus, while  
12 defendant argues that the reasoning of Sevidal v. Target Corp. should apply, the court finds  
13 Sevidal distinguishable from the present case.

14 In Sevidal, the defendant presented statistical evidence showing that “approximately  
15 80 percent of the proposed class falls within this category – individuals who purchased an  
16 item without viewing the country-of-origin information.” 189 Cal.App.4th 905, 921 (2010)  
17 (emphasis added). If defendant had presented evidence showing that most notebook  
18 purchasers did not view a “help me decide” screen, then defendant would have a stronger  
19 argument that the reasoning of Sevidal should apply here. But because defendant  
20 presented no statistical evidence specifically regarding the putative class members – and  
21 instead presented evidence regarding the larger pool of HP website visitors – the court  
22 cannot reach the conclusion reached in Sevidal, that “the essence of [plaintiff’s] allegation  
23 is based on an alleged false representation to which the majority of class members were  
24 never exposed.” Id. at 928.

25 Next, HP argues that “plaintiff’s claim turns on his highly individualized interpretation”  
26 of the “help me decide” language. HP makes two arguments here: (1) plaintiff ignored the  
27 “most” qualifier in the language regarding 802.11 compatibility, and (2) plaintiff had a  
28 sophisticated understanding of the technology that is not shared among the class. The

1 court finds that both of these arguments lack merit. As to (1), the “help me decide”  
2 language states that: “This technology allows flexibility to connect to most available industry  
3 standard base WLAN (802.11b, 802.11a, 802.11g, and 802.11 draft N) infrastructures.” In  
4 context, the statement means that the wireless card can connect to “most” infrastructures  
5 writ large, but the inclusion of specific protocols in the parenthesis can lead to only one  
6 conclusion – that the word “most” includes at least all of those specifically-named protocols,  
7 and may include other (but not all) unnamed protocols. HP’s argument regarding the word  
8 “most” is therefore rejected.

9 Argument (2) is based on the questionable contention that, if some customers do not  
10 understand a representation, then the representation no longer needs to be true. Notably,  
11 HP does not argue that its statement regarding 802.11 compatibility was true, it argues that  
12 only plaintiff (and other similarly sophisticated class members) would have the ability to  
13 understand that the statement was false. However, “section 2313 focuses on the seller’s  
14 behavior and obligation – his or her affirmations, promises, and descriptions of the goods.”  
15 Weinstat v. Dentsply Int’l, Inc., 180 Cal.App.4th 1213, 1228 (2010). The court thus rejects  
16 any contention that plaintiff needs to provide evidence showing that a certain percentage of  
17 class members understood HP’s representation in the same manner that he did.

18 HP then argues that a plaintiff is required to show reliance to establish a breach of  
19 warranty claim, and that reliance cannot be shown on a classwide basis. HP makes two  
20 related arguments here; first, that the class members did not actually rely on the “help me  
21 decide” language, and second, that the issue of reliance is not subject to common proof.  
22 Here, HP cites a number of cases finding “reasonable reliance” to be an element of a  
23 breach of express warranty claim. While it is a fairly long list<sup>1</sup> (including a number of cases  
24 from this district), plaintiff does appear to be correct that all of the cited cases stem from  
25 one California appeals court decision, Williams v. Beechnut Nutrition, 185 Cal.App.3d 135

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27 <sup>1</sup>See, e.g., Castro Valley Union 76, Inc. v. Vapor Systems Tech., Inc., 2012 WL  
28 5199458 (N.D. Cal. Oct. 22, 2012); Mance v. Mercedes-Benz USA, 901 F.Supp.2d 1147 (N.D.  
Cal. 2012); Lam v. General Mills, Inc., 859 F.Supp.2d 1097, 1106 (N.D. Cal. 2012).

1 (1986). And, notably, the Williams opinion does not discuss the basis for imposing a  
2 “reasonable reliance” element, and instead contains only a brief recitation of the elements  
3 of an express warranty claim, and a citation to the California Supreme Court’s opinion in  
4 Burr v. Sherwin Williams Co., 42 Cal.2d 682 (1954). Burr, in turn, cites to “Cal. Civil Code §  
5 1732” (the predecessor to Cal. Com. Code § 2313), which provided that “[a]ny affirmation  
6 of fact or any promise by the seller relating to the goods is an express warranty if the  
7 natural tendency of such affirmation or promise is to induce the buyer to purchase the  
8 goods, and if the buyer purchases the goods relying thereon.” See Burr, 42 Cal.2d at 696  
9 n.5 (quoting Cal. Civil Code § 1732).

10 However, after Burr was decided, California Commercial Code § 2313 came into  
11 effect, which represented “a significant change in the law of warranties,” according to the  
12 California Supreme Court. Hauter v. Zogarts, 14 Cal.3d 104, 115 (1975). “Whereas  
13 plaintiffs in the past have had to prove their reliance upon specific promises made by the  
14 seller,” section 2313 “requires no such proof.” Id. Specifically, section 2313 removed any  
15 reference to “reliance,” and instead provided that “[a]ny affirmation of fact or promise made  
16 by the seller to the buyer which relates to the goods and becomes part of the basis of the  
17 bargain creates an express warranty that the goods shall conform to the affirmation or  
18 promise.” Cal. Com. Code § 2313. The Hauter court also cited to section 2313’s  
19 comments, which stated that “all of the statements of the seller [become part of the basis of  
20 the bargain] unless good reason is shown to the contrary.” Id. (brackets and emphasis  
21 added by the Hauter court). The Hauter court did acknowledge some ambiguity regarding  
22 the impact of section 2313, with some commentators arguing that “the basis of the bargain  
23 requirement merely shifts the burden of proving non-reliance to the seller,” and others  
24 contending that “the code eliminates the concept of reliance altogether.” Id. at 115-16.  
25 While the Hauter court saw no need to definitively resolve the reliance question, its opinion  
26 made clear that a plaintiff no longer needed to affirmatively establish reliance as an  
27 element of his or her express warranty claim.

28 While the California Supreme Court has not further addressed the issue, a number



1 of California state appeals courts have found that “[a] warranty statement made by a seller  
2 is presumptively part of the basis of the bargain, and the burden is on the seller to prove  
3 that the resulting bargain does not rest at all on the representation.” Keith v. Buchanan,  
4 173 Cal.App.3d 13, 23 (1985); see also Weinstat, 180 Cal.App.4th at 1229 (“Any  
5 affirmation, once made, is part of the agreement unless there is ‘clear affirmative proof’ that  
6 the affirmation has been taken out of the agreement.”). Based on Hauter, Keith, and  
7 Weinstat, the court finds that plaintiff is correct that he need not establish reliance as an  
8 element of his express warranty claim, and thus, need not establish reliance on a classwide  
9 basis. Instead, reliance becomes relevant only as an affirmative defense, assuming that  
10 defendant can affirmatively show that the representation was not part of the “basis of the  
11 bargain” (either because the putative class members did not see the representation, or  
12 because they knew the actual condition of the product before purchasing it). And because,  
13 as discussed above, defendant has failed to provide evidence showing what percentage of  
14 putative class members actually saw the relevant “help me decide” screen, the court finds  
15 that the “help me decide” content is still presumptively part of the basis of the bargain.  
16 Further, because plaintiff need not affirmatively establish reliance on the part of the class  
17 members, the fact that reliance cannot be shown by common proof does not defeat  
18 commonality here. As discussed above, plaintiff need only show that the warranty  
19 statement was made by HP in order for it to be presumed part of the basis of the bargain,  
20 and defendant does not challenge plaintiff’s ability to show, by common proof, that the  
21 statement was made by HP to the putative class members.

22       Next, HP argues that plaintiff cannot establish a common injury to the proposed  
23 class. HP argues that most customers did not know what a dual-band wireless card was,  
24 or did not have a dual-band router to enable use of the dual-band wireless card. But while  
25 it is true that some class members would place a higher value on the dual-band  
26 functionality, plaintiff has presented a number of methods for calculating common damages  
27 across the class (either the price differential between the single and dual-band cards, or the  
28 cost of a universal wireless card). HP’s argument, taken to its logical conclusion, would

1 preclude class certification in nearly every case, as it is rare to find any feature of a  
2 consumer product that is equally utilized by all purchasers. Overall, the court finds that the  
3 damages argument does not defeat commonality.

4 HP then argues that plaintiff cannot establish the “notice” element with common  
5 proof. Specifically, HP argues that Cal. Com. Code § 2607(3) requires a buyer to, “within a  
6 reasonable time after he or she discovers or should have discovered any breach, notify the  
7 seller of breach or be barred from any remedy.” HP argues that plaintiff’s demand letter  
8 was not sent until January 12, 2012, which is not “within a reasonable time” as to all class  
9 members, because the class runs from October 2009 to April 2011. HP also argues that  
10 different “reasonable time” standards apply to retail versus commercial purchasers, and  
11 that plaintiff provided notice only as to the model of computer that he ordered (the dv7t).  
12 Plaintiff counters by arguing that the notice is either sufficient or it is not, but either way, the  
13 sufficiency is common to all class members. Plaintiff further points out that HP is incorrect  
14 in assuming that any purchase of two computers suggests a commercial buyer, especially  
15 since the purchases were made from HP’s “Home and Home Office” website, separate  
16 from HP’s website for commercial purchasers. Plaintiff does not directly address the third  
17 of HP’s arguments (whether the notice applies to all products involved in the suit), but  
18 plaintiff does argue that all computer models contained the same representation regarding  
19 wireless cards, so the court agrees there is a common issue as to all computers with the  
20 same representation. That said, HP argues (in a footnote) that one of the models (the  
21 dvt5) had “materially different” language in its “help me decide” screen. If true, purchasers  
22 of that model should not be included in the class, but the issue was not given full treatment  
23 in this motion. Overall, the court agrees with plaintiff that, even if the notice is not sufficient,  
24 the sufficiency issue would be common to the entire class. The court further finds that  
25 defendant’s “commercial buyer” argument is unduly speculative. For these reasons, the  
26 court finds that the notice requirement does not defeat commonality.

27 Finally, HP argues that its individual defenses to certain class members’ claims  
28 defeats commonality, the court finds that hypothetical defenses cannot be enough to defeat

1 commonality.

2 Thus, the court finds that plaintiff has identified issues of law and fact that are  
3 common to the class.

4 Typicality and Adequacy

5 HP argues that plaintiff is atypical and inadequate for the same reasons that it  
6 argues that plaintiff had an “individualized interpretation” of the “help me decide” language.  
7 Essentially, HP argues that plaintiff’s sophisticated knowledge of networking technology  
8 renders him different from the rest of the class. The court again rejects this argument,  
9 because plaintiff’s knowledge is irrelevant to whether his claims are typical of the class, and  
10 irrelevant to whether he is an adequate representative.

11 Superiority of class treatment

12 HP essentially incorporates its “commonality” arguments here, and separately  
13 argues that plaintiff has not proposed a trial plan. But plaintiff cites authority showing that  
14 he need not present a formal trial plan at this time, and the court finds that class treatment  
15 is the superior option in this case.

16 Predominance of common questions over individual questions

17 Defendant’s primary challenge to the “predominance” prong of Rule 23(b)(3) is  
18 based on plaintiff’s proposed application of California law to a nationwide class. Here, the  
19 court relies on the guidance provided in Mazza v. American Honda Motor Co., Inc., 666  
20 F.3d 581, 589 (9th Cir. 2012).

21 In Mazza, the court first addressed the threshold constitutional inquiry, noting that  
22 “the class action proponent bears the initial burden to show that California has ‘significant  
23 contact or significant aggregation of contacts’ to the claims of each class member.” 666  
24 F.3d at 589 (quoting Washington Mutual Bank v. Superior Court, 24 Cal.4th 906, 921  
25 (2001)). To satisfy that initial burden, plaintiff argues that the presence of HP’s  
26 headquarters in California, and the presence of the HHO website team in California  
27 (including the author of the “help me decide” content at issue) do give California “significant  
28 contact” with the claims of each class member. The court agrees, and finds that plaintiff

1 has shown that California has significant contact to the claims of each class member.

2 After plaintiff satisfies the initial burden, “the burden shifts to the other side to  
3 demonstrate that foreign law, rather than California law, should apply to class claims.” 666  
4 F.3d at 590 (citing Washington Mutual at 921). California law may be used on a classwide  
5 basis only if the interests of other states in having their own laws applied does not outweigh  
6 California’s interest in applying its law. To compare the various states’ interests, courts use  
7 a three-part test<sup>2</sup>:

8 First, the court determines whether the relevant law of each of the potentially  
9 affected jurisdictions with regard to the particular issue in question is the  
10 same or different.

11 Second, if there is a difference, the court examines each jurisdiction’s interest  
12 in the application of its own law under the circumstances of the particular  
13 case to determine whether a true conflict exists.

14 Third, if the court finds that there is a true conflict, it carefully evaluates and  
15 compares the nature and strength of the interest of each jurisdiction in the  
16 application of its own law to determine which state’s interest would be more  
17 impaired if its policy were subordinated to the policy of the other state, and  
18 then ultimately applies the law of the state whose interest would be more  
19 impaired if its law were not applied.

20 Mazza, 666 F.3d at 590 (citing McCann v. Foster Wheeler LLC, 48 Cal.4th 68, 81-82  
21 (2010)).

22 As to the first prong, defendant argues that the laws of different states vary as to  
23 “when a statement becomes part of the ‘basis of the bargain.’” Defendant argues that  
24 “many states require an affirmative showing of consumer reliance,” or require consumers to  
25 “show knowledge of the statement prior to purchase,” whereas other states employ a  
26 burden-shifting method based on rebuttable presumptions. The court does note that a

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27 <sup>2</sup>Plaintiff argues that the three-step “governmental interest” test does not apply, and  
28 instead argues that Cal. Com. Code § 1301(b) provides the relevant analysis, which does not  
involve weighing the interests of the various states in applying their own laws. However,  
plaintiff provides the court with no reason for avoiding the three-part test articulated in Mazza,  
and the court finds that the Mazza test does indeed apply.

1 number of states (including Texas, Louisiana, Iowa, and Minnesota)<sup>3</sup> do require plaintiffs to  
2 make an affirmative showing of reliance.

3 Plaintiff responds by arguing that defendant has not met its burden to identify  
4 differences in states' laws. Plaintiff points out that, in Mazza, the defendant "exhaustively  
5 detailed the ways in which California law differs from the laws of the 43 other jurisdictions in  
6 which class members reside." Plaintiff argues that HP has merely provided "examples" of  
7 different state laws, and then "generically asserts that each state has an interest in applying  
8 its own law."

9 While plaintiff may be correct that HP's list of differences in state laws is not as  
10 "exhaustive" as the Mazza defendant's list, it does not need to be. HP need only show  
11 "material" differences in state law, and given the court's previous finding that California's  
12 express warranty law does not require a showing of reliance, the court does find that the  
13 differences in state laws regarding "reliance" are material. In fact, the Mazza court  
14 specifically stated that, in certain instances, "the reliance requirement will spell the  
15 difference between the success and failure of the claim." 666 F.3d at 591. The court finds  
16 that the reliance requirement is similarly critical to the class claims here, and thus,  
17 defendant has met its burden to identify differences in the laws of the various states.

18 Next, the court examines each jurisdiction's interest in the application of its own law  
19 to determine whether a true conflict exists. As mentioned above, Mazza directly addressed  
20 the differences in states' laws regarding "reliance," and found that the differences would be  
21 dispositive in many instances. Mazza then went on to find that "each state has an interest  
22 in setting the appropriate level of liability for companies conducting business within its  
23 territory," and that those foreign states' "strong interest in the application of their laws to

24 \_\_\_\_\_  
25 <sup>3</sup>See, e.g., McManus v. Fleetwood Enterprises, Inc., 320 F.3d 545, 550 (5th Cir. 2003)  
26 (holding that Texas law requires reliance as an element of an express warranty claim); Evans  
27 v. Ford Motor Co., 484 F.3d 329, 336 (5th Cir. 2007) ("To prevail on an express warranty claim  
28 under Louisiana law, someone injured by using a product must adduce evidence that he or she  
had read or was aware of the express warranty and was induced to use the product because  
of it"); Hendricks v. Callahan, 972 F.2d 190, 194 (8th Cir. 1992) (holding that Minnesota law  
requires plaintiffs to "show some form of reliance on the warranty to succeed").

1 transactions between their citizens and corporations doing business within their state”  
2 outweighed California’s “attenuated” interest in applying its own laws to residents of foreign  
3 states. 666 F.3d at 594. The court finds that Mazza controls here, and thus, the court finds  
4 that a true conflict does exist, and that the interests of foreign states in applying their own  
5 laws does outweigh California’s interest in applying its laws on a nationwide basis. Thus,  
6 because California law cannot be used on a classwide basis, the court finds that common  
7 questions do not predominate over individual questions, and for that reason, the  
8 court DENIES plaintiff’s motion for class certification. Because neither party addressed the  
9 possibility of certifying an alternate class consisting of only California residents, the court  
10 does not address any such alternative here.

11 Finally, there are three motions to seal pending before the court. The first, filed by  
12 plaintiff on August 16, 2013, seeks the sealing of (1) the parties’ “stipulation regarding  
13 summary of electronic data” and (2) portions of plaintiff’s motion for class certification. See  
14 Dkt. 53. Defendant filed a (untimely) supporting declaration on August 23, 2013, arguing  
15 that the stipulation summarizes the sales data provided to plaintiff, which contained “the  
16 names, addresses, email addresses, and other information about putative class members’  
17 purchases from HP.” See Dkt. 56. Defendant further argues that its “practice is not to  
18 disclose such granular sales, customer, and WLAN component information, and the  
19 disclosure of this information would harm HP’s competitive interests.” Id. While the court  
20 agrees that actual customer information would warrant sealing, the parties’ stipulation  
21 contains no such “granular” information, and is (as the title suggests) merely a summary of  
22 customer data, listing only the raw numbers of computers sold. The court finds this type of  
23 generalized sales information unsuitable for sealing, and DENIES plaintiff’s motion to seal.  
24 Plaintiff is directed to file these documents (including an unredacted version of his opening  
25 motion for class certification) in the public record.

26 The second motion to seal was filed by defendant on October 18, 2013, and seeks  
27 the sealing of (1) the parties’ “second stipulation regarding summary of electronic data,” (2)  
28 portions of defendant’s opposition to the motion for class certification, and (3) portions of


1 the declaration of Girish Srinivasan. See Dkt. 63. As to (1), the court finds that the parties'  
2 second stipulation contains the same type of generalized sales information as the first  
3 stipulation, and thus, the court finds it unsuitable for sealing. As to (3), the court finds that  
4 the Srinivasan declaration does describe the number of visitors to HP's "help me decide"  
5 screens and the number of "clicks" on those screens, but does not disclose anything about  
6 the functioning or design of HP's website. Thus, the court disagrees that disclosure of such  
7 information would harm HP's competitive interests. And because neither (1) nor (3) provide  
8 any basis for sealing, the court also finds unsuitable for sealing the portions of defendant's  
9 opposition which reference the underlying information contained in (1) or (3). Accordingly,  
10 the court DENIES defendant's motion to seal. Defendant is directed to re-file these  
11 documents (including an unredacted version of its opposition to class certification) in the  
12 public record.

13 The third motion to seal was filed by plaintiff on November 21, 2013, and seeks the  
14 sealing of portions of the declaration of Michael Belch. See Dkt. 72. Defendant purported  
15 to file a supporting declaration on the same day, but it appears that defendant simply re-  
16 filed the declaration in support of its own motion to seal. Regardless, it appears that the  
17 Belch declaration includes certain information about HP's website that was contained in the  
18 Srinivasan declaration. The court thus DENIES plaintiff's motion to seal for the same  
19 reasons that it denied defendant's motion to seal portions of the Srinivasan declaration  
20 itself. Plaintiff is directed to re-file an unredacted version of the Belch declaration.

21 All unsealed and unredacted documents shall be filed by **February 18, 2014**.

22 **IT IS SO ORDERED.**

23 Dated: February 10, 2014

24   
25 \_\_\_\_\_  
26 PHYLLIS J. HAMILTON  
27 United States District Judge  
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