

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TANIA ZAMBRANO, an individual,
Plaintiff
vs.

Civil No. 13cv2107-WQH-WMC
ORDER

CARMAX AUTO SUPERSTORES,
LLC, a Virginia Corporation;
CAPITAL ONE, N.A., a business
entity of unknown form; SAFECO
INSURANCE COMPANY OF
AMERICA, a New Hampshire
Corporation; and DOES 1 through 75,
inclusive.

Defendants.

HAYES, Judge:

The matters before the Court are the Motion to Dismiss for Failure to State a Claim pursuant to Federal Rule of Civil Procedure 12(b)(6) (ECF No. 5), and the Motion to Strike Portions of Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(f) (ECF No. 6) filed by Defendants.

I. Background

On July 26, 2013, Plaintiff Tania Zambrano initiated this action against Defendants CarMax Auto Superstores, LLC (“CarMax”), Capital One, N.A. (“Capital One”), and Safeco Insurance Company of America (“Safeco”) by filing the Complaint in the Superior Court of California, County of San Diego. On September 10, 2013, Defendants removed the action to this Court. (ECF No. 1).

1 On September 16, 2013, Defendants filed the Motion to Dismiss for Failure to
2 State a Claim pursuant to Federal Rule of Civil Procedure 12(b)(6) (ECF No. 5), and
3 the Motion to Strike Portions of Plaintiff's Complaint pursuant to Federal Rule of Civil
4 Procedure 12(f) (ECF No. 6). On October 14, 2013, Plaintiff filed a response in
5 opposition. (ECF No. 10). On October 21, 2013, Defendants filed a reply. (ECF No.
6 11).

7 **II. Allegations of the Complaint**

8 CarMax makes extensive use of the term “certified” in its sales, promotions, and
9 advertising. (ECF No. 1-2 ¶ 19). CarMax describes the vehicles it sells as “CarMax
10 Quality Certified,” and describes the inspection it performs on vehicles as “CarMax
11 Quality Inspection,” or “CQI.” *Id.* Plaintiff relied on CarMax’s representations that its
12 vehicles had undergone a 25-point inspection and were “Certified.” *Id.* ¶ 15.

13 On March 2, 2012, Plaintiff purchased a 2007 Volkswagen Passat from CarMax.
14 *Id.* ¶ 16. Plaintiff received a “generic inspection certificate” – the CarMax Certified
15 Quality Inspection (“CQI”) Certificate. *Id.* ¶¶ 17, 22. The CQI Certificate states, “This
16 is to certify that this vehicle has passed the rigorous CarMax Certified Quality
17 Inspection.” *Id.* ¶ 39. It is CarMax’s stated corporate policy to provide a CQI
18 Certificate, which is a “generic list of components that were purportedly inspected,
19 without disclosing the results of the inspection.” *Id.* ¶ 22. Further, “it is CarMax’s
20 stated corporate policy to hide the CQI Certificate inside the glove-box of the vehicle.”
21 *Id.*

22 CarMax did not provide Plaintiff with a completed inspection report indicating
23 all components inspected prior to sale, during the sale, or after the sale. *Id.* ¶ 20.

24 CarMax “actively suppressed and concealed the results of its vehicle inspection.”
25 *Id.* ¶ 23. “It is CarMax’s stated corporate policy that, during the inspection, a ‘CQI/CQI
26 Checklist’ is filled out.” The Checklist is the authentic record of the certification
27 inspection. “It is CarMax’s corporate policy to destroy the ‘CQI/CQI Checklist’ in
28 contravention of 13 C.C.R. 2.72.00, 13 C.C.R. 272.02 and CNCDA best practices.”

1 *Id.* ¶ 23. On information and belief, the “CQI/CQI Checklist” for Plaintiff’s vehicle
2 was destroyed. *Id.* ¶ 24. “... CarMax does not provide consumers with any
3 documentation regarding its inspection of a vehicle – it destroys these documents.” *Id.*
4 ¶ 25.

5 CarMax’s CQI certificate “does not memorialize CarMax’s ‘CQI/CQI Checklist’
6 because the CQI certificate is a generic form, and includes mechanical systems that
7 were impossible to check or certify because they do not exist on Plaintiff’s vehicle (e.g.
8 ‘Manual (starts with clutch only)’, ‘Clutch operation (manual trans)’).” *Id.* ¶ 26.

9 Plaintiff was damaged by CarMax’s conduct in the following ways. First, she
10 “received less than she paid for.” *Id.* ¶ 27. Plaintiff paid for a certified 2007
11 Volkswagen Passat. “What Plaintiff received was an uncertified 2007 Volkswagen
12 Passat.” Second, Plaintiff was damaged because “she suffered opportunity costs due
13 to CarMax’s misrepresentations.” *Id.* ¶ 30. Plaintiff relied on CarMax’s representations
14 that the vehicle was “Certified,” and these misrepresentations “diverted Plaintiff from
15 finding an authentic ‘Certified’ pre-owned vehicle.” *Id.* Third, Plaintiff was damaged
16 by “CarMax’s fraudulent concealment of the true condition of the vehicle and its
17 representations regarding the inspection of the vehicle.” *Id.* ¶ 31.

18 Almost immediately after purchasing the vehicle, Plaintiff experienced problems
19 with the vehicle. First, the air conditioning routinely went out. *Id.* ¶ 32. By September
20 2012, the vehicle would not start and was “undrivable.” *Id.* This was the first of six
21 occasions requiring Plaintiff to contact AAA roadside assistance. *Id.* Plaintiff
22 contacted CarMax, and CarMax told her to take her car to a Volkswagen dealership for
23 repair. *Id.* The last time that Plaintiff took her vehicle to a Volkswagen dealership, she
24 was told there was “an intermittent charge draining the battery and an alternator.” *Id.*
25 ¶ 33.

26 On May 30, 2013, Plaintiff went to CarMax in San Diego and spoke with
27 Michael Proctor about the problems with her vehicle. *Id.* ¶ 34. Proctor stated that the
28 defects were not CarMax’s issue because “they weren’t pre-existing issues.” *Id.* ¶ 34.

1 Complaint asserts the following causes of action: (1) violation of California’s Consumer
2 Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750 *et seq.*, seeking equitable and
3 injunctive relief as to all Defendants except Safeco; (2) violation of the Song-Beverly
4 Consumer Warranty Act, Cal. Civ. Code §§ 1790 *et seq.* as to all Defendants except
5 Safeco; (3) Fraud and Deceit as to all Defendants except Safeco; (4) violation of
6 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.*
7 as to all Defendants except Safeco; (5) violation of Vehicle Code § 11711 as to
8 Defendant Safeco only.

9 **II. Motion to Dismiss**

10 **A. Standard of Review**

11 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state
12 a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Federal Rule of
13 Civil Procedure 8(a) provides that “[a] pleading that states a claim for relief must
14 contain ... a short and plain statement of the claim showing that the pleader is entitled
15 to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal under Rule 12(b)(6) is appropriate where
16 the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable
17 legal theory. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

18 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
19 requires more than labels and conclusions, and a formulaic recitation of the elements
20 of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
21 (quoting Fed. R. Civ. P. 8(a)). “To survive a motion to dismiss, a complaint must
22 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is
23 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*,
24 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
25 content that allows the court to draw the reasonable inference that the defendant is liable
26 for the misconduct alleged.” *Id.* (citation omitted). “[T]he tenet that a court must
27 accept as true all of the allegations contained in a complaint is inapplicable to legal
28 conclusions. Threadbare recitals of the elements of a cause of action, supported by

1 mere conclusory statements, do not suffice.” *Id.* (citation omitted). “When there are
2 well-pleaded factual allegations, a court should assume their veracity and then
3 determine whether they plausibly give rise to an entitlement to relief.” *Id.* at 679. “In
4 sum, for a complaint to survive a motion to dismiss, the non-conclusory factual content,
5 and reasonable inferences from that content, must be plausibly suggestive of a claim
6 entitling the plaintiff to relief.” *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir.
7 2009) (quotations omitted).

8 Claims sounding in fraud or mistake must additionally comply with the
9 heightened pleading requirements of Federal Rule of Civil Procedure 9(b), which
10 requires that a complaint “must state with particularity the circumstances constituting
11 fraud or mistake.” Fed. R. Civ. P. 9(b). Rule 9(b) “requires ... an account of the time,
12 place, and specific content of the false representations as well as the identities of the
13 parties to the misrepresentations.” *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir.
14 2007) (quotation omitted); *see also Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097,
15 1106 (9th Cir. 2003) (averments of fraud must be accompanied by “the who, what,
16 when, where, and how of the misconduct charged”) (quotation omitted).

17 **B. CLRA, UCL, and Fraud Claims**

18 The CLRA “proscribes specified ‘unfair methods of competition and unfair or
19 deceptive acts or practices’ in transactions for the sale or lease of goods to consumers.”
20 *Daugherty v. Am. Honda Motor Co.*, 144 Cal. App. 4th 824 (Cal. Ct. App. 2006)
21 (quoting Cal. Civ. Code § 1770(a)). Such acts and practices include representing that
22 goods have characteristics that they do not have, Cal. Civ. Code § 1770(a)(5), and
23 representing that goods are of a particular standard, quality, or grade, if they are of
24 another, *id.* § 1770(a)(7). Conduct that is “likely to mislead a reasonable consumer”
25 violates the CLRA. *Colgan v. Leatherman Tool Grp.*, 135 Cal. App. 4th 663 (Cal. Ct.
26 App. 2006) (citation omitted).

27 Under the UCL, any person or entity that has engaged “in unfair competition may
28 be enjoined in any court of competent jurisdiction.” Cal. Bus. & Prof. Code §§ 17201,

1 17203. “Unfair competition” includes “any unlawful, unfair or fraudulent business act
2 or practice and unfair, deceptive, untrue or misleading advertising.” *Id.* § 17200. The
3 UCL’s “coverage is sweeping, embracing anything that can properly be called a
4 business practice and that at the same time is forbidden by law.” *Cel-Tech Commc’ns,*
5 *Inc. v. L.A. Cellular Tel. Co.*, 20 Cal.4th 163, 973 P.2d 527, 539 (Cal.1999) (internal
6 quotations and citation omitted). The UCL essentially “borrows violations of other
7 laws and treats them as unlawful practices that the unfair competition law makes
8 independently actionable.” *Id.* at 539–40 (internal quotations and citation omitted).

9 The elements of a fraud claim in California are: (1) misrepresentation (false
10 representation, concealment, or nondisclosure); (2) knowledge of falsity (or “scienter”);
11 (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting
12 damage. *Lazar v. Superior Court*, 12 Cal. 4th 631, 638, 990 P. 2d 981 (1996). “To
13 establish a cause of action for fraud a plaintiff must plead and prove in full, factually,
14 and specifically, all of the elements of the cause of action.” *Conrad v. Bank of America*,
15 45 Cal. App. 4th 133, 156 (1996). There must be a showing “that the defendant thereby
16 intended to induce the plaintiff to act to his detriment in reliance upon the false
17 representation” and “that the plaintiff actually and justifiably relied upon the
18 defendant’s misrepresentation in acting to his detriment.” *Id.* “The absence of any one
19 of these required elements will preclude recovery.” *Wilhelm v. Pray, Price, Williams
& Russell*, 186 Cal. App. 3d 1324, 1332 (1986). Claims for fraud must meet Federal
21 Rule of Civil Procedure 9(b)’s heightened pleading requirements. *Vess v. Ciba-Geigy
Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003).

23 In this case, the Complaint states claims under the CLRA and the UCL, as well
24 as a claim for fraud, based on violation of California Vehicle Code § 11713.18(a)(6) for
25 wrongfully labeling Plaintiff’s vehicle as “Certified,” and false representations about
26 the quality of the vehicle. (ECF No. 10 at 6).

27 **1. Violation of California Vehicle Code Section 11713.18(a)(6)**

28 Plaintiff contends that CarMax violated the California Vehicle Code

1 § 11713.18(a)(6) by labeling Plaintiff's vehicle as "Certified" on the grounds that
2 CarMax did not provide Plaintiff with a completed inspection report indicating all the
3 components inspected prior to, during, or after the sale of the vehicle. (ECF No. 1-2 ¶¶
4 17, 18). Plaintiff contends that this violates the CLRA and the UCL, and constitutes
5 fraud. (ECF No. 10 at 6).

6 Defendants contend that the Complaint improperly asserts that Vehicle Code §
7 11713.18(a)(6) creates "an expansive duty to disclose detailed pre-sale repair history,"
8 when the Vehicle Code does not create such a duty. (ECF No. 6-1 at 18). Defendants
9 contend that the Complaint alleges no facts to support a claim that CarMax has not
10 complied with the requirements of § 11713.18(a)(6).

11 California Vehicle Code § 11713.18(a)(6) provides:

12 It is a violation of this code for the holder of any dealer's license issued
13 under this article to advertise for the sale or sell a used vehicle as
14 'certified' or use any similar descriptive term in the advertisement or the
15 sale of a used vehicle that implies the vehicle has been certified to meet the
terms of a used vehicle certification program if ... [p]rior to sale, the dealer
fails to provide the buyer with a completed inspection report indicating all
the components inspected.

16 A violation of § 11713.18(a)(6) is actionable under the CLRA and the UCL. Cal.
17 Vehicle Code § 11713.18(b).

18 In this case, the Complaint states that CarMax provided Plaintiff with a CarMax
19 Certified Quality Inspection ("CQI") Certificate. *Id.* ¶¶ 17, 20. The CQI Certificate
20 states, 'This is to certify that this vehicle has passed the rigorous CarMax Certified
21 Quality Inspection.' *Id.* ¶ 39. The Complaint states that the CQI Certificate "provide[s]
22 a generic list of components ... that were purportedly inspected...." *Id.* ¶ 82. Plaintiff
23 contends that the CQI Certificate's "generic" list of components inspected and includes
24 "mechanical systems that were impossible to check or certify because they do not exist
25 on Plaintiff's vehicle (e.g., 'Manual (starts w/ clutch in only)', 'Clutch operation
26 (manual trans)')." *Id.* ¶ 26. However, the Complaint does not allege any facts that
27 demonstrate that the CarMax CQI Certificate is not a "completed inspection report
28 indicating all the components inspected." § 11713.18(a)(6). Section 11713.18(a)(6)

1 does not preclude the use of a generic form used for many different vehicles. The Court
2 finds that the Complaint does not set forth sufficient facts to show that the CarMax CQI
3 Certificate does not meet the requirements of § 11713.18(a)(6).

4 **2. False Representations About the Quality of the Vehicle**

5 Plaintiff further contends that CarMax made false representations about the
6 quality of the vehicle. (ECF No. 10 at 6). The Complaint alleges eleven false
7 representations made by CarMax regarding the vehicle and its inspection. (ECF No. 1-
8 2 ¶ 48). The majority of the alleged misrepresentations relate to CarMax's use of the
9 term "Certified" and failing to provide an inspection report. *Id.* (misrepresentations 2,
10 3, 4, 5, 6, 8, 9, 10). As discussed above, Plaintiff has failed to allege facts sufficient to
11 show that the CQI Certificate was not a valid report pursuant to § 11713.18(a)(6). As
12 a result, Plaintiff has failed to allege that CarMax made misrepresentations regarding
13 its use of the term "Certified" and its failure to provide an inspection report
14 (misrepresentations 2, 3, 4, 5, 6, 8, 9, 10).

15 Plaintiff's remaining alleged misrepresentations concern CarMax's inspection of
16 the vehicle. Plaintiff contends that CarMax made the following misrepresentations:

17 (1) misrepresenting that the vehicle had been subject to a thorough 125-
18 point inspection; ... (7) On information and belief, destroying the CQI/CQI
19 Checklist after the CQI/CQI inspection took place in violation of 13
C.C.R. 272.000 and 13 C.C.R. 272.02; ... (11) Actively concealing and
20 suppressing the results of the vehicle inspection when it has a duty to
disclose those results.

21 (ECF No. 1-2 at 13). To plead such false representations, which sound in fraud,
22 Plaintiff must meet the heightened pleading standards of Federal Rule of Civil
23 Procedure 9(b), which "requires ... an account of the time, place, and specific content
24 of the false representations as well as the identities of the parties to the
25 misrepresentations." *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007)
26 (quotation omitted); *see also Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th
27 Cir. 2003) (averments of fraud must be accompanied by "the who, what, when, where,
28 and how of the misconduct charged") (quotation omitted).

1 With regard to the CarMax’s alleged misrepresentation that the vehicle had been
2 subject to a thorough 125-point inspection, the Complaint fails to provide information
3 regarding the time, place, and specific content of the representation, or the identities of
4 the parties to the representation. With regard to Plaintiff’s claim that CarMax actively
5 concealed and suppressed the results of the vehicle inspection, the Complaint fails to
6 provide any facts indicating why CarMax had a duty to disclose the results of the
7 inspection, and how, when, and where CarMax failed to do so. With regard to
8 Plaintiff’s claim on information and belief that CarMax destroyed the CQI/CQI
9 Checklist after the inspection took place, the Complaint fails to any details regarding
10 the basis for Plaintiff’s belief. When allegations are made on information or belief, “a
11 plaintiff must provide, in great detail, all the relevant facts forming the basis for her
12 belief.” *In re Silicon Graphics, Inc. Sec. Litig.*, 183 F.3d 970, 985 (9th Cir. 1999).

13 The Complaint fails to allege all eleven misrepresentations and violations with
14 sufficient particularity to meet the heightened pleading standards of Rule 9(b).

15 **3. Damages**

16 Actual damages are a necessary element to any claim under the CLRA, the UCL,
17 and any fraud claim. Accordingly, if a plaintiff cannot establish that she suffered actual
18 damages, she does not have standing to bring a CLRA, UCL or fraud claim. Plaintiff
19 contends that she was damaged by CarMax’s conduct in three ways. (ECF No. 1-2 ¶
20 27). First, she contends that she paid for a Certified 2007 Volkswagen Passat, but what
21 she received was an uncertified 2007 Volkswagen Passat. *Id.* ¶ 28. Plaintiff contends
22 that “a component of [her] damages is the difference in value between a Certified 2007
23 Volkswagen Passat and an uncertified 2007 Volkswagen Passat.” *Id.* However, the
24 Complaint does not allege sufficient facts to show that CarMax’s CQI Certification was
25 invalid, or that the vehicle Plaintiff purchased was uncertified.

26 Second, Plaintiff contends that she suffered opportunity costs because CarMax’s
27 representations diverted her from finding an authentic “Certified” pre-owned vehicle.
28 *Id.* ¶ 30. However, the Complaint does not allege sufficient facts to show that her

1 vehicle was not a “Certified” pre-owned vehicle.

2 Third, Plaintiff contends that she was damaged by “CarMax’s fraudulent
3 concealment of the Passat and its representations regarding the inspection of the
4 vehicle.” *Id.* ¶ 31. As discussed above, the Complaint fails to meet the heightened
5 pleading standards of Rule 9(b), and Plaintiff has not sufficiently alleged CarMax’s
6 fraudulent concealment or false representations.

7 The Complaint fails to adequately plead actual damages for Plaintiff’s claims
8 under the CLRA, the UCL, and for fraud. The Complaint also fails to plead claims
9 under the CLRA, the UCL, and for fraud with sufficient particularity to meet the
10 heightened pleading standards of Rule 9(b).

11 **C. Implied Warranty of Merchantability Claim**

12 Plaintiff contends that CarMax provided her with a “30 day/1,000 mile express
13 and implied warranty” when she purchased her vehicle. (ECF No. 1-2 ¶ 62). Plaintiff
14 contends that the vehicle she purchased “... was delivered to Plaintiff with serious
15 defects and nonconformities, including but not limited to a defective and
16 malfunctioning engine and charging system.” *Id.* ¶ 63. Plaintiff contends that these
17 defects to the warranty manifested themselves within the implied and express warranty
18 periods, and substantially impaired the use, value, and/or safety of the vehicle, and that
19 CarMax therefore violated the Song-Beverly Consumer Warranty Act, Cal. Civ. Code.
20 § 1792 (“Song Beverly”). *Id.* ¶ 64.

21 Defendants contend that Plaintiff fails to state a claim for breach of the implied
22 warranty of merchantability because the Complaint fails to plead facts to show that the
23 vehicle was unusable for its purpose, now or during the first three months of ownership.
24 (ECF No. 6-1 at 15-16). Defendants contend the facts alleged in the Complaint show
25 that Plaintiff experienced no problems until six months after purchasing the vehicle,
26 which was after the express and implied warranty periods had expired. *Id.* at 16-17.

27 Song-Beverly provides in pertinent part: “Unless disclaimed in the manner
28 prescribed by this chapter, every sale of consumer goods that are sold at retail in

1 [California] shall be accompanied by the manufacturer's and the retail seller's implied
2 warranty that the goods are merchantable." Cal. Civ. Code § 1792. In general, the
3 warranty of merchantability ensures that goods are fit "for the ordinary purpose for
4 which such goods are used." *Mexia v. Rinker Boat Co.*, 174 Cal. App. 4th 1297, 1303
5 (2009). Under Song-Beverly, "the duration of the implied warranty for used goods
6 extends only up to three months after purchase from a distributor or retail seller." *Mui*
7 *Ho v. Toyota Motor Corp.*, 931 F. Supp. 2d 987, 992-93 (N.D. Cal. 2013). An implied
8 warranty of merchantability does not promise a perfect or even problem-free vehicle –
9 it only assures the buyer that the car will at least function for its intended purpose.
10 *American Suzuki Motor Corp. v. Superior Court*, 37 Cal. App. 4th 1291, 1295 n.2
11 (1995). It "does not impose a general requirement that the goods precisely fulfill the
12 expectation of the buyer. Instead it provides for a minimum level of quality." *Id.* at
13 1295-96. To be reasonably suited for its ordinary use, a vehicle need not be perfect in
14 every detail so long as it functions. *Keegan v. Am. Honda Motor Co.*, 838 F. Supp. 2d
15 929, 943-45 (C.D. Cal. 2012).

16 The Court finds that Plaintiff has not sufficiently pled facts to support a claim that
17 CarMax breached its implied warranty. Plaintiff purchased the vehicle from CarMax
18 on March 2, 2012. The Complaint alleges that shortly after purchasing the vehicle, she
19 experienced problems with the air conditioning. (ECF No. 1-2 ¶ 32). The Complaint
20 does not state precisely when these problems began to occur. Plaintiff does not allege
21 that she experienced any problems with the usability of the vehicle until September,
22 2012, when "the vehicle would not start and was undrivable." *Id.* September, 2012 is
23 six months after Plaintiff purchased the vehicle – three months after the implied
24 warranty period expired. September, 2012 is outside the "30 day/1,000 mile express
25 and implied warranty" that Plaintiff states she received from CarMax. The Complaint
26 fails to allege sufficient facts to support a claim that CarMax has breached its implied
27 warranty of merchantability.

28 **D. Vehicle Code § 11711 as to Safeco**

1 Plaintiff contends that CarMax obtained a surety bond from Defendant Safeco
2 in the amount of \$50,000. (ECF No. 1-2 ¶ 100). Plaintiff contends that pursuant to
3 California Vehicle Code § 11711, Safeco “is liable under the bond to CarMax, based
4 on the fraud of CarMax, in the amount of the purchase price of the vehicle....” *Id.* ¶
5 106. The Court finds that the Complaint fails to allege that CarMax committed any
6 fraud, and therefore Plaintiff’s claim under Vehicle Code § 11711 must be dismissed.

7 **III. Motion to Strike**

8 Defendants moves to strike various portions of the Complaint as redundant,
9 immaterial and/or contrary to law pursuant to Federal Rule of Civil Procedure 12(f).
10 (ECF No. 6-1 at 9). Because the Court dismisses the Complaint in its entirety, the
11 Motion to Strike is denied as moot.

12 **IV. Conclusion**

13 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 5) is
14 GRANTED, and the Motion to Strike (ECF No. 6) is DENIED as moot. The
15 Complaint is DISMISSED in its entirety without prejudice. Plaintiff shall file any
16 motion for leave to amend Complaint within thirty (30) days from the date this Order
17 is filed.

18 DATED: January 21, 2014

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20 **WILLIAM Q. HAYES**
21 United States District Judge

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