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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 KELLEY GAINES,
12 Plaintiff,
13 v.
14 GENERAL MOTORS, LLC,
15 Defendant.

Case No.: 17cv1351-LAB (JLB)

**ORDER GRANTING IN PART
AND DENYING IN PART
MOTION FOR LEAVE TO
AMEND**

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17 This is a putative class action arising from the sale of Cadillac SRX vehicles
18 with allegedly defective sunroofs. Plaintiff Kelley Gaines alleges that she bought
19 a Cadillac SRX whose sunroof leaked. She alleges General Motors, through its
20 Cadillac subdivision, improperly refused coverage under the car's warranty. The
21 putative class consists of people who lease or bought model year 2010 through
22 2013 Cadillac SRX vehicles with defective sunroofs. Gaines brings class claims
23 under California law.

24 Gaines has moved for leave to amend, in order to correct the identity of the
25 Defendant, to add a claim under the California Consumer Legal Remedies Act and
26 a claim for unjust enrichment, and most significantly to add five new sets of class
27 claims, along with a class representative for each one. Specifically, the motion
28 asks for leave to add Carol Divis, a Pennsylvania resident; Brian Sirota, a Florida

1 resident; Kathleen Scheffers, a Michigan resident; Christie Oss, a Georgia
2 resident; and Antonio Fusco, a New York resident. The new plaintiffs would be
3 representing new subclasses of plaintiffs whose claims arose in each of those
4 states, under the laws of those states. The motion is now fully briefed and ready
5 for decision.

6 General Motors, LLC acknowledges that Gaines erroneously sued General
7 Motors Company. It does not oppose the amendment naming it as the new
8 Defendant, and has agreed to accept service of the amended complaint when it is
9 filed. It also does not oppose addition of a claim under the California Legal
10 Remedies Act. Its opposition does not mention unjust enrichment, most likely
11 because the complaint already contains such a claim. In the proposed amended
12 complaint, the claim would apply to all the new claims as well.

13 The request to substitute Defendants is **GRANTED** and General Motors,
14 LLC is **SUBSTITUTED** in as Defendant in place of General Motors Company,
15 effective immediately.

16 Under the Class Action Fairness Act, General Motors, LLC (“GM”) is treated
17 as a citizen of both Delaware, under whose law it is organized, and Michigan,
18 where its principal place of business is. See 28 U.S.C. § 1332(d)(10).

19 GM cites the Supreme Court’s recent decision in *Bristol-Myers Squibb Co.*
20 *v. Superior Court of Calif., San Francisco Cty.*, 137 S. Ct. 1773 (2017), and argues
21 that the Court lacks personal jurisdiction over it with respect to claims by the out-
22 of-state classes. Gaines does not argue that the Court could exercise general
23 jurisdiction over GM. Under *Daimler AG v. Bauman*, 571 U.S. 117 (2014), such an
24 argument would be futile. Rather, she argues for specific jurisdiction.

25 In *Bristol-Myers*, a group of plaintiffs, most of whom were not California
26 residents, sued Bristol-Myers in California state court over claims that the drug
27 Plavix had damaged their health. Bristol-Myers, which was not a California citizen,
28 argued the state court lacked specific personal jurisdiction over the non-

1 Californians' claims, sufficient to satisfy constitutional due process. The Supreme
2 Court, noting that the non-Californians' claims did not arise in California or out of
3 any of Bristol-Myers' activities in California, agreed. For a court to exercise specific
4 jurisdiction, there must be an "affiliation between the forum and the underlying
5 controversy, principally [an] activity or an occurrence that takes place in the forum
6 state" *Id.* at 1780 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*,
7 564 U.S. 915, 919 (2011)). Specific jurisdiction is limited to "adjudication of issues
8 deriving from, or connected with, the very controversy that establishes jurisdiction."
9 *Goodyear*, 564 U.S. at 919.

10 Gaines argues that the five new plaintiffs' (and new subclasses') claims arise
11 out of the same controversy. In doing so, however, she broadly defines the
12 controversy as including all claims arising from a common nucleus of operative
13 facts, which she in turn defines as GM's refusal to treat leaking sunroofs as
14 covered by warranties. She then relies on the Ninth Circuit's three-part test for
15 specific personal jurisdiction articulated in *Bancroft & Masters, Inc. v. Augusta*
16 *Nat'l, Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). The salient factor for purposes of
17 this analysis is that the claim must arise out of or result from a defendant's forum-
18 related activities.

19 The claims already included in the complaint did arise out of forum-related
20 activities: Gaines and the class bought their allegedly defective cars here, and
21 suffered injury here. Furthermore, GM allegedly wrongly denied warranty coverage
22 on cars that were located in California for damage that allegedly occurred here.
23 To some extent, the claims might also be said to arise wherever GM designed and
24 manufactured the cars, and made decisions about warranty coverage. But there is
25 no suggestion that occurred here.

26 The claims that Gaines wants to add do not arise out of GM's forum-related
27 activities. Carol Divis' claim, for example, arose from GM's Pennsylvania-related
28 activities. She bought her allegedly defective car there, the sunroof leaked there,

1 and GM denied her warranty coverage there. Nothing that GM did in California
2 contributed to that in any way. Similarly, the other proposed named plaintiffs'
3 claims arose from GM's activities in their respective states. The same is true for
4 most of the respective subclasses.

5 Gaines argues that because GM purposefully directed activities towards
6 California when it sold her a car here and refused to provide warranty coverage
7 here, the Court can exercise jurisdiction over all the new claims as well. No one is
8 challenging the Court's exercise of jurisdiction over Gaines' claims and the claims
9 of a class of California plaintiffs. But whatever GM may have done in directing its
10 activities towards California had nothing to do with claims that arose entirely in
11 other states, and cannot give rise to personal jurisdiction over them. Gaines'
12 argument, if accepted, would effectively erase the distinction between specific and
13 general jurisdiction, and would render *Bristol-Myers* meaningless.

14 Gaines argues that *Bristol-Myers* is distinguishable because that was not a
15 class action. But whether an action is brought as a class action has no real effect
16 on whether a defendant can challenge a court's exercise of personal jurisdiction
17 over it. See *Alvarez v. NBTY, Inc.*, 2017 WL 6059159, slip op. at *5 (S.D. Cal.,
18 Dec. 6, 2017) (“[I]t is well settled law that a defendant can challenge personal
19 jurisdiction relating to each named plaintiff in a class action.”) *Am.'s Health &*
20 *Resource Center, Ltd. v. Promologics, Inc.*, 2018 WL 3474444, slip op. at *2 (N.D.
21 Ill, July 19, 2018) (noting that due process requirements are the same for class
22 and non-class actions). Compare *Fitzhenry-Russell v. Dr. Pepper Snapple Group,*
23 *Inc.*, 2017 WL 4224723, slip. op. at 5 (N.D. Cal., Sept. 22, 2017) (holding that
24 *Bristol-Myers* did not authorize a defendant to challenge personal jurisdiction over
25 claims by unnamed members of a nationwide plaintiff class).

26 But the presence of unnamed plaintiff class members is not the issue here.
27 Though courts seem to be divided as to unnamed parties in class actions, most
28 courts that have had considered the question appear to have concluded that

1 *Bristol-Myers* applies to named parties. See *Roy v. FedEx Ground Package Sys.,*
2 *Inc.*, 2018 WL 2324092, slip op. at *9 (D. Mass., May 22, 2018) (citing cases);
3 *Horowitz v. AT&T Inc.*, 2018 WL 1942525, slip op. at *15 (D. N.J., Apr. 25, 2018)
4 (same).

5 And this is not a case where Gaines could just as easily have sought to
6 represent a nationwide class, as in *Fitzhenry-Russell*. California's consumer
7 protection laws do not create a right of action arising from events that occurred
8 entirely outside California between non-California parties, and with no connection
9 to California. *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 593–94 (9th Cir.
10 2012).

11 *Bristol-Myers* left open the question of whether the same limitations would
12 apply to exercise of personal jurisdiction by a federal court. 137 S. Ct. at 1784.
13 (citing *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 102 n.5 (1987)).
14 But the concerns that gave rise to that caveat — whether a foreign defendant's
15 contacts with the United States as a whole could be aggregated to satisfy due
16 process in a case concerning a federal claim — do not apply with any force here.
17 See *Omni*, 484 U.S. at 102 n.5; *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 369
18 (3d Cir. 2002) (holding that nationwide contacts test applies when appraising
19 personal jurisdiction under certain federal statutes).

20 The Court agrees with the many other federal courts that have found no
21 reason *Bristol-Myers'* limitation on personal jurisdiction would not apply to named
22 parties in putative class actions. Because there is no basis for the Court to
23 exercise personal jurisdiction over the proposed out-of-state named plaintiffs'
24 claims against GM arising entirely from out-of-state activities, leave to amend the
25 complaint to add these claims is denied.

26 **Conclusion and Order**

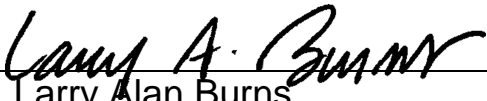
27 The motion for leave to amend is **GRANTED** as to the request to substitute
28 in General Motors LLC as the sole Defendant, and to add the California Consumer

1 Legal Remedies Act claim. Leave to add parties, claims by out-of-state parties,
2 and claims arising under the laws of other states is **DENIED**. The unjust
3 enrichment act already in the complaint can remain, but leave to amend it so that
4 it applies to the other proposed parties is **DENIED AS MOOT**.

5 Gaines may file her amended complaint within 21 calendar days of the date
6 this order is issued.

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8 **IT IS SO ORDERED.**

9 Dated: August 6, 2018

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12 Hon. Larry Alan Burns
13 United States District Judge
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