

1 (“SAC,” ECF No. 49). Plaintiffs are six purchasers of new and used Cadillacs in the State
2 of California. *Id.* ¶¶ 103, 111, 118, 129, 141, 153. Plaintiffs allege, among other things,
3 purported breaches of express and implied warranties and violations of various consumer
4 protections laws based on allegedly defective Cadillac User Experience (“CUE”)
5 navigation and radio touch screen displays in 2013–2017 Cadillac ATS, SRX, and XTS
6 vehicles and 2014–2017 Cadillac CTS, ELR, and Escalade vehicles (collectively, the
7 “Class Vehicles”). *See generally* SAC.

8 Plaintiffs seek to represent all persons and entities who purchased or leased a Class
9 Vehicle equipped with Defendant’s CUE touch screen display in the state of California.
10 *Id.* ¶ 165. Additionally, Plaintiffs seek to represent a Consumers Legal Remedies Act
11 (“CLRA”) Sub-Class of “all members of the Class who are ‘consumers’ within the meaning
12 of California Civil Code Section 1761(d).” *Id.*

13 The CUE “infotainment” system is an audio/visual interface comprised of a touch
14 screen module that provides “entertainment and information delivery to drivers.” *Id.* ¶ 39.
15 The CUE controls the audio, phone, and climate inputs for the car and displays the rear-
16 view camera when the vehicle is in reverse. *Id.* ¶¶ 40–51. The CUE is made of two major
17 components: a projected capacitance touch screen and a plastic cover. *Id.* ¶¶ 56–58.

18 Plaintiffs allege that the CUE is defective. *Id.* ¶ 60. Plaintiffs allege that the “plastic
19 cover is prone to delaminating or separating from the touch screen glass” due to either
20 mechanical or thermal stress. *Id.* ¶¶ 60, 62. When the plastic cover separates, Plaintiffs
21 allege it causes a “spider-web-like pattern on the display” to form, which in turn prevents
22 the CUE from recognizing any touch input from a user (the “Defect”). *Id.* ¶ 60.

23 Plaintiffs allege that the CUE is “defectively designed” because of the placement of
24 the screws and rubberized gasket that hold the plastic cover to the frame of the CUE. *Id.*
25 ¶ 63. The plastic cover is anchored to the touch screen by eight screws. *Id.* ¶ 64. Plaintiffs
26 allege that only two screws are placed on “the bottom portion of the plastic cover, which
27 causes it to flex and move when pressure is applied.” *Id.* According to Plaintiffs, this
28 makes the plastic cover prone to separating from the touch screen glass. *Id.* ¶ 66. Plaintiffs

1 also allege that the rubber gasket is cut in a way that creates excessive space between the
2 touch screen and the plastic cover, which “allows for more flexibility in the plastic cover,
3 which leads to the spider-webbing defect.” *Id.* Plaintiffs further allege that the plastic
4 cover delaminates as a result of temperature fluctuations. *Id.* ¶ 67. The touch screen
5 assembly is “made up of materials with different thermal expansion coefficients.” *Id.* ¶ 68.
6 Plaintiffs allege that this difference in the thermal expansion coefficient between the
7 separate materials can “cause delamination between the plastic cover and the touch screen
8 glass.” *Id.* Plaintiffs maintain that the Defect poses a safety risk and causes unsafe driving
9 by distracting drivers and by not allowing drivers to make use of the backup camera when
10 the vehicle is in reverse. *Id.* ¶¶ 73–78.

11 Plaintiffs allege that Defendant “knew, or should have known, about the Defect
12” *Id.* ¶ 79. In support of this allegation, Plaintiffs cite to four service bulletins and
13 service bulletin updates (“Technical Service Bulletins” or “TSBs”) that Defendant
14 allegedly issued to its dealers in the United States between December 2014 and August
15 2017. *Id.* ¶¶ 82–89. Plaintiffs claim that these Technical Service Bulletins demonstrated
16 that Defendant “was aware of the Defect and recognized it was covered under its
17 Warranty.” *Id.* ¶ 89. These TSBs stated that “[s]ome customers may report that their radio
18 screen appears bubbled, cracked, or is delaminating” and directed dealers to “replace the
19 ICS (Integrated Center Stack) by following the SI replacement procedure.” *Id.* ¶ 83.
20 Plaintiffs also point to various consumer complaints filed with the National Highway
21 Traffic Safety Administration (“NHTSA”) as evidence that Defendant was aware of the
22 Defect. *Id.* ¶ 93. Similarly, Plaintiffs allege that Defendant was aware of the Defect
23 because of complaints made “by consumers on internet forums” that Defendant allegedly
24 monitored. *Id.* ¶¶ 94–99. Plaintiffs argue that Defendant was aware of these complaints
25 because Defendant responded to complaints through its agents by making online postings
26 in the various internet forums. *Id.* Lastly, Plaintiffs allege that Defendant was aware of
27 the Defect “based on the large number of repairs performed to the CUE System’s exhibiting
28 delamination and spiderwebbing at its network of dealerships.” *Id.* ¶¶ 100–02.

LEGAL STANDARD

1
2 Defendant moves to dismiss Plaintiffs' SAC for failure to state a claim under Federal
3 Rule of Civil Procedure 12(b)(6).

4 Federal Rule of Civil Procedure 12(b)(6) permits a party to raise by motion the
5 defense that the complaint "fail[s] to state a claim upon which relief can be granted,"
6 generally referred to as a motion to dismiss. The Court evaluates whether a complaint
7 states a cognizable legal theory and sufficient facts in light of Federal Rule of Civil
8 Procedure 8(a), which requires a "short and plain statement of the claim showing that the
9 pleader is entitled to relief." Although Rule 8 "does not require 'detailed factual
10 allegations,'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*
11 *Twombly*, 550 U.S. 544, 555 (2007)), it does "require[] more than labels and conclusions,
12 and a formulaic recitation of a cause of action's elements will not do," *Twombly*, 550 U.S.
13 at 555 (alteration in original). "Nor does a complaint suffice if it tenders 'naked
14 assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. at 678 (alteration
15 in original) (quoting *Twombly*, 550 U.S. at 557).

16 "To survive a motion to dismiss, a complaint must contain sufficient factual matter,
17 accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting
18 *Twombly*, 550 U.S. at 570); *see also* Fed. R. Civ. P. 12(b)(6). A claim is facially plausible
19 when the facts pled "allow[] the court to draw the reasonable inference that the defendant
20 is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at
21 556). That is not to say that the claim must be probable, but there must be "more than a
22 sheer possibility that a defendant has acted unlawfully." *Id.* (citing *Twombly*, 550 U.S. at
23 556). The Court will grant leave to amend unless it determines that no modified contention
24 "consistent with the challenged pleading . . . [will] cure the deficiency." *DeSoto v. Yellow*
25 *Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (quoting *Schriber Distrib. Co. v. Serv-*
26 *Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)).

27 Additionally, claims sounding in fraud are subject to the heightened pleading
28 requirements of Rule 9(b) of the Federal Rules of Civil Procedure, which requires that a

1 plaintiff alleging fraud “must state with particularity the circumstances constituting
2 fraud.” Fed. R. Civ. P. 9(b); *see Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir.
3 2009). To satisfy the heightened standard under Rule 9(b), the allegations must be
4 “specific enough to give defendants notice of the particular misconduct which is alleged to
5 constitute the fraud charged so that they can defend against the charge and not just deny
6 that they have done anything wrong.” *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir.
7 1985). Thus, claims sounding in fraud must allege “an account of the time, place, and
8 specific content of the false representations as well as the identities of the parties to the
9 misrepresentations.” *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007) (per curiam)
10 (internal quotation marks omitted); *see also Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097,
11 1106 (9th Cir. 2003) (“Averments of fraud must be accompanied by the who, what, when,
12 where, and how of the misconduct charged.” (internal quotation marks omitted)).

13 Where a motion to dismiss is granted, “leave to amend should be granted ‘unless the
14 court determines that the allegation of other facts consistent with the challenged pleading
15 could not possibly cure the deficiency.’” *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d
16 655, 658 (9th Cir. 1992) (quoting *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806
17 F.2d 1393, 1401 (9th Cir. 1986)). In other words, where leave to amend would be futile,
18 the Court may deny leave to amend. *See Desoto*, 957 F.2d at 658; *Schreiber*, 806 F.2d at
19 1401.

20 ANALYSIS

21 I. Plaintiffs’ Fraud Claims

22 Defendant argues that Plaintiffs’ CLRA, unfair competition law (“UCL”), and
23 fraudulent concealment claims should be dismissed based on multiple grounds.
24 Specifically, Defendant argues that (1) the CLRA, UCL, and fraudulent concealment
25 claims sound in fraud and fail to meet Rule 9(b)’s specificity requirements, Mot. at 7–9;
26 (2) the UCL claim is barred by adequate legal remedies, *id.* at 15; (3) the CLRA claim does
27 not properly allege that Defendant had exclusive knowledge of the Defect at the time of
28 sale, *id.* at 9–14, or a duty to disclose the Defect, *id.* at 14–15, and the claim is time-barred

1 with regard to certain Plaintiffs, *id.* at 15–17; and (4) the fraudulent concealment claim is
2 barred by the economic loss doctrine, *id.* at 17–18.

3 **A. Rule 9(b)'s Specificity Requirement**

4 Generally, fraud claims are subject to a heightened pleading standard that requires
5 claims to be pleaded with particularity. *Boschma v. Home Loan Ctr., Inc.*, 198 Cal. App.
6 4th 230, 248 (2011) (“Fraud must be pleaded with specificity rather than with general and
7 conclusory allegations.” (internal quotations and citation omitted)). However, because
8 fraudulent omission alleges “a failure to act instead of an affirmative act,” various district
9 courts in the Ninth Circuit have found that fraudulent omission claims “can succeed
10 without the same level of specificity required by a normal fraud claim.” *Baggett v. Hewlett-*
11 *Packard Co.*, 582 F. Supp. 2d 1261, 1267 (C.D. Cal. 2007) (internal quotations omitted).
12 “Despite this distinction, claims sounding in fraud, even concealment or omission claims,
13 still must be pled with particularity.” *Stewart v. Electrolux Home Prod., Inc.*, 304 F. Supp.
14 3d 894, 906 (E.D. Cal. 2018) (citing *Kearns*, 567 F.3d at 1127 (“[T]he contention that . . .
15 nondisclosure claims need not be pleaded with particularity is unavailing.”)). Here,
16 Plaintiffs must describe “the content of the omission and where the omitted information
17 should or could have been revealed, as well as provide representative samples of
18 advertisements, offers, or other representations that plaintiff relied on to make her purchase
19 and that failed to include the allegedly omitted information.” *Marolda v. Symantec Corp.*,
20 672 F. Supp. 2d 992, 1002 (N.D. Cal. 2009).

21 With these standards in mind, the Court finds that Plaintiffs have met the specificity
22 requirements of Rule 9(b). As an initial matter, Plaintiffs’ consumer fraud claims are based
23 on Defendant’s alleged failure to disclose the Defect. *See, e.g.*, SAC ¶¶ 1–2, 6, 10, 38, 79,
24 114, 122. Defendant mistakenly asserts that “Plaintiffs do not identify a specific
25 misrepresentation in any [of Defendant’s] materials that they relied on,” Mot. at 8, when
26 in fact Plaintiffs’ case is premised on Defendant’s failure to disclose certain information,
27 not an affirmative misrepresentation, *see* Opp’n at 5 (“[S]ince this is an omissions case,
28 there is no specific misrepresentation to allege.”). Plaintiffs allege that Defendant, before

1 the time of sale, failed to disclose “a dangerous defect to its customers who purchased or
2 leased . . . vehicles equipped with GM’s ‘Cadillac User Experience’ touch screen display
3 . . . ,” SAC ¶ 1, that causes the screen “to spontaneously delaminate, bubble or crack in a
4 ‘spider-web’ formation. When this happens, the unit ceases to function properly and is
5 rendered useless,” *id.* ¶ 3. Consequently, the Court finds Plaintiffs have adequately pled
6 the content of the fraudulently omitted information.

7 Defendant argues that Plaintiffs’ descriptions of specific materials and interactions
8 Plaintiffs claim they relied upon in purchasing their vehicle are generic and “[P]laintiffs do
9 not allege any details about the information they reviewed.” Mot. at 8. Because this is a
10 fraud in the omission case, the Court examines whether Plaintiffs describe “where the
11 omitted information should or could have been revealed, as well as provide representative
12 samples of advertisements, offers, or other representations” *Marolda*, 672 F. Supp.
13 2d at 1002.

14 The Court finds that Plaintiffs have sufficiently pled specific information channels
15 where Defendant could have disclosed the Defect but instead omitted the information.
16 Among these channels are: Defendant’s press releases, SAC ¶¶ 80–81; promotional
17 statements in news articles, *id.* ¶¶ 51–52; advertisements in automotive magazines, ¶ 139;
18 window Monroney Stickers, *id.* ¶¶ 38, 114, 122, 139, 151, 163; interactions with authorized
19 dealerships’ salespeople, *id.* ¶¶ 38, 105, 114, 122, 139, 151, 163; and Defendant’s own
20 website, *id.* ¶¶ 36, 122. *See Daniel v. Ford Motor Co.*, 806 F.3d 1217, 1226 (9th Cir. 2015)
21 (“Plaintiffs presented evidence that they interacted with and received information from
22 sales representatives at authorized Ford dealerships prior to purchasing their Focuses. This
23 is sufficient to sustain a factual finding that Plaintiffs would have been aware of the
24 disclosure if it had been made through Ford’s authorized dealerships.”). Plaintiffs further
25 allege they relied on emails and conversations with dealership salespeople, but Defendant
26 argues that Plaintiffs do not “allege the substance of these communications or identify any
27 actual misrepresentations by [Defendant] that they relied on.” Mot. at 8 (citation omitted);
28 *see, e.g.*, SAC ¶ 105 (“Mr. Goldstein also exchanged emails with a Fairfield Cadillac

1 salesperson, and reviewed an email from the Fairfield Cadillac salesperson containing
2 detailed information about the Cadillac SRX’s price and features.”). Once again, in an
3 omission case the Plaintiffs need not identify a specific misrepresentation, merely identify
4 with specificity the channels of information where the omitted information could have
5 appeared. Plaintiffs have done so here. *See, e.g., Precht v. Kia Motors Am., Inc.*, No.
6 SACV141148DOCMANX, 2014 WL 10988343, at *6 (C.D. Cal. Dec. 29, 2014) (finding
7 the plaintiffs adequately plead UCL and CLRA claims under an omission theory when
8 “[t]he FAC also alleges the channels through which Defendant disseminated information
9 regarding its vehicles . . .”). Plaintiffs have sufficiently identified the channels Defendant
10 utilized to disseminate information about the Class Vehicles to meet Rule 9(b)’s specificity
11 requirement.

12 Accordingly, the Court **DENIES** Defendant’s motion to dismiss Plaintiffs’ CLRA,
13 UCL, and fraudulent concealment claims to the extent the motion is based on Plaintiffs’
14 failure to adequately plead fraud with specificity.

15 ***B. UCL***

16 California Business & Professions Code § 17200 prohibits acts of “unfair
17 competition,” including any “unlawful, unfair or fraudulent business act or practice” and
18 “unfair, deceptive, untrue or misleading advertising.” “Because [section 17200] is written
19 in the disjunctive, it establishes three varieties of unfair competition—acts or practices
20 which are unlawful, or unfair, or fraudulent.” *Berryman v. Merit Prop. Mgmt., Inc.*, 152
21 Cal. App. 4th 1544, 1554 (Cal. Ct. App. 2007). “A UCL action is equitable in nature,” and
22 in a private action “[p]revailing plaintiffs are generally limited to injunctive relief and
23 restitution.” *See Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1144
24 (2003).

25 Defendant argues that Plaintiffs cannot pursue equitable remedies for their UCL
26 claim because they have adequate legal remedies for damages in their CLRA and implied
27 warranty claims, and Plaintiffs’ UCL, CLRA, and implied warranty claims are based on
28 the same underlying conduct. Mot at 15. In response, Plaintiffs argue that courts in this

1 District have rejected Defendant’s argument that adequate legal remedies bar a UCL claim
2 in these circumstances. Opp’n at 15 (citing *Eason v. Roman Catholic Bishop of S.D.*, 2019
3 WL 4934188, at *5 (S.D. Cal. Oct. 7, 2019); *Wildin v. FCA US LLC*, 2018 WL 3032986,
4 at *7 (S.D. Cal. June 19, 2018)).

5 Within the Ninth Circuit, “[d]istrict courts are split on whether a plaintiff’s claims
6 for equitable relief should be dismissed at the pleading stage.” *Safransky v. Fossil Grp.,*
7 *Inc.*, No. 17CV1865-MMA (NLS), 2018 WL 1726620, at *14 (S.D. Cal. Apr. 9, 2018)
8 (citing *Covell v. Nine W. Holdings, Inc.*, No. 3:17-cv-01371-H-JLB, 2018 WL 558976, at
9 *8 (S.D. Cal. Jan. 15, 2018)); *Munning v. Gap, Inc.*, 238 F. Supp. 3d 1195, 1204 (N.D. Cal.
10 2017)). In the absence of controlling Ninth Circuit authority, the Court concludes that
11 Plaintiffs’ line of cases reflects the prevailing view within this District and better comports
12 with the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 8(d)(3) (“A party may state
13 as many separate claims . . . as it has, regardless of consistency.”); *Safransky*, 2018 WL
14 1726620, at *15 (declining to dismiss claims for equitable relief at the pleading stage);
15 *Covell*, 2018 WL 558976, at *8 (same). Despite this, Plaintiffs have failed to allege that
16 they and members of the putative class will be irreparably harmed or denied an adequate
17 remedy at law in the absence of equitable relief. *Philips v. Ford Motor Co.*, 726 F. App’x
18 608, 609 (9th Cir. 2018) (affirming dismissal of UCL claim for failing “to plead the
19 inadequacy of their legal remedies”). For this reason, the claim cannot survive.

20 Accordingly, the Court **GRANTS** Defendant’s Motion and **DISMISSES** Plaintiffs’
21 UCL claim for failure to adequately plead that they have no adequate remedy at law.

22 **C. CLRA**

23 The CLRA prohibits “unfair methods of competition and unfair or deceptive acts or
24 practices.” Cal. Civ. Code § 1770. Plaintiffs rely on sections 1770(a)(5) and 1770(a)(7)
25 of the CLRA, which respectively prohibit “[r]epresenting that goods or services have
26 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they
27 do not have” and “[r]epresenting that goods or services are of a particular standard, quality,
28 or grade, or that goods are of a particular style or model, if they are of another.”

1 1. *Defendant’s Knowledge of the Defect at the Time of Sale*

2 Defendant contends that Plaintiffs do not allege plausible facts establishing that
3 Defendant had exclusive knowledge of the Defect at the time of sale. Mot. at 9. Plaintiffs
4 allege Defendant had knowledge of the Defect based on (1) Technical Service Bulletins
5 Defendant issued to its dealers, and/or (2) consumer complaints made to Defendant, the
6 NHTSA, and on third-party websites. *See generally* SAC ¶¶ 90–99.

7 “[U]nder the CLRA, plaintiffs must sufficiently allege that a defendant was aware
8 of a defect at the time of sale to survive a motion to dismiss.” *Wilson v. Hewlett-Packard*
9 *Co.*, 668 F.3d 1136, 1145 (9th Cir. 2012). For fraud-based claims, heightened pleading
10 does not apply to allegations regarding a defendant’s knowledge or state of mind. Fed. R.
11 Civ. P. 9(b) (“Malice, intent, knowledge, and other conditions of a person’s mind may be
12 alleged generally.”); *see Odom v. Microsoft Corp.*, 486 F.3d 541, 554 (9th Cir. 2007)
13 (holding that where a plaintiff must make “a showing of the defendants’ state of mind,
14 general rather than particularized allegations are sufficient”).

15 a. Technical Service Bulletins

16 Defendant argues that the four TSBs that Defendant issued to its dealers between
17 December 2014 and August 2017 do not plausibly support that Defendant had pre-sale
18 knowledge of the Defect because the TSBs do not mention “safety hazards.” Mot. at 10.
19 Defendant contends that because the TSBs do not mention the responsiveness or
20 functionality of the CUE system, the TSBs “did not reference the symptom plaintiffs
21 complain about in their vehicles,” and therefore do not support finding that Defendant had
22 pre-sale knowledge of the Defect. *Id.* at 10–11.

23 Viewed in the light most favorable to Plaintiffs, it is plausible that Defendant was
24 aware of the Defect in the CUE system based on the TSBs. *See MacDonald v. Ford Motor*
25 *Co.*, 37 F. Supp. 3d 1087, 1093 (N.D. Cal. 2014) (“One plausible inference that can be
26 drawn from the three TSBs is that Ford was generally aware of problems with the coolant
27 pump, and that despite this awareness it continued to sell vehicles containing the defective
28 part.”).

1 The cases where TSBs did not support a finding of knowledge are distinguishable.
2 In *Mandani v. Volkswagen Group of America, Inc.*, for example, the “TSB noted
3 ‘[c]lacking or knocking noises,’” but the plaintiff “claimed that his car began ‘bucking and
4 jerking’” No. 17-CV-07287-HSG, 2019 WL 652867, at *7 (N.D. Cal. Feb. 15, 2019).
5 The nature of the defect plaintiff asserted in *Mandani* was different than the problem
6 identified in the TSB; such is not the case here. Rather, the Defect described by Plaintiffs
7 closely matches the language of the TSBs. The TSBs stated that “[s]ome customers may
8 report that their radio screen appears bubbled, cracked, or is delaminating,” SAC ¶ 83, and
9 the Plaintiffs describe the Defect as causing the CUE to “spontaneously delaminate, bubble
10 or crack in a ‘spider-web’ formation,” *id.* ¶ 3. This near-identical recitation of the Defect
11 in the TSBs is sufficient to allege Defendant had pre-sale knowledge of the Defect.

12 Defendant argues that the TSBs were issued after Plaintiffs Uyenoyama and Wilder
13 purchased their vehicles; therefore, there is no evidence Defendant knew of the Defect at
14 the time of their purchases. Mot. at 11. Plaintiff Uyenoyama purchased a Class Vehicle
15 in September 2012, and Plaintiff Wilder purchased a Class Vehicle in 2014 without
16 identifying a purchase month. SAC ¶¶ 118, 129. The first TSB was issued in December
17 2014. *Id.* ¶ 83. Some courts have found TSBs issued after a plaintiff’s purchase can
18 support an inference of pre-sale knowledge. See *MacDonald*, 37 F. Supp. 3d at 1094
19 (finding TSBs issued five and nine months after the plaintiffs’ purchases “plausibly give
20 rise to the inference that Ford knew of the issue prior to their issuance”); *Parrish v.*
21 *Volkswagen Grp. of Am., Inc.*, 463 F. Supp. 3d 1043, 1058 (C.D. Cal. 2020) (“Because a
22 manufacturer must receive complaints or data raising an issue and then must investigate
23 the issue before issuing a [technical tip (“]TT[”)] or TSB, it is reasonable to infer that
24 manufacturers know of the issue prior to the release of the TT or TSB. The Court finds a
25 five-month period between knowledge of the Defect and release of the TT to be plausible
26 at this stage.”).

27 In this case, however, the Court finds Plaintiffs have not plead sufficient facts to
28 infer that Defendant knew of the Defect at the time of Plaintiffs Uyenoyama and Wilder’s

1 purchases. Without identifying the month of Plaintiff Wilder’s purchase, it is impossible
2 for the Court to evaluate the proximity of his purchase to the issuance of the first TSB and
3 determine whether there is a plausible inference Defendant knew of the Defect at that time.
4 Plaintiff Uyenoyama purchased her vehicle more than two years before the issuance of the
5 first TSB. The remoteness of Plaintiff Uyenoyama’s purchase does not give rise of a
6 reasonable inference that Defendant knew of the Defect at the time of her purchase based
7 on the TSBs.

8 b. Consumer Complaints

9 Defendant argues that the consumer complaints made to Defendant, NHTSA, and
10 on a third-party website are inadequate to establish Defendant’s knowledge of the Defect.
11 Mot. at 11–12 (citing SAC ¶¶ 8, 93, 95).

12 The earliest complaints Plaintiffs allege were filed with the NHTSA, CM “Cadillac
13 Customer Care” representatives, and general complaints on the Cadillac Owner/Enthusiast
14 Website and Forum were all from 2016. *See* SAC ¶¶ 93(a), 96(a), 98(a). Therefore, these
15 complaints cannot plausibly support a finding of pre-sale knowledge for Plaintiffs
16 Uyenoyama and Wilder’s purchases in September 2012 and 2014, respectively. *See id.*
17 ¶¶ 118, 129.

18 Plaintiffs have identified several complaints on Cadillacforums.com from 2014. *See*
19 *id.* ¶ 95(a)–(f). Without a month of purchase for Plaintiff Wilder, it is impossible to
20 evaluate whether these complaints give rise to a reasonable inference of pre-sale
21 knowledge for Plaintiff Wilder’s claims. Therefore, the Court finds that Plaintiffs
22 Uyenoyama and Wilder have not identified with specificity any complaints that predate
23 their purchases.

24 Accordingly, the Court **GRANTS** Defendant’s motion to dismiss as to Plaintiffs
25 Uyenoyama and Wilder’s CLRA claims based on an inadequate showing of pre-sale
26 knowledge and otherwise **DENIES** Defendant’s motion to dismiss as to the other Plaintiffs
27 on this ground, as the TSBs and consumer complaints are adequate to establish Defendant’s
28 knowledge of the Defect as to them.

1 2. *Defendant’s Duty to Disclose the Defect*

2 Defendant argues that Plaintiffs do not allege facts establishing that Defendant had
3 a duty to disclose the Defect based on its “superior knowledge” or active concealment of
4 the Defect. Mot. at 14 (citing SAC ¶¶ 79, 222).

5 Under the CLRA, a manufacturer cannot be found liable for failure to disclose a
6 defect “unless such omission (1) is ‘contrary to a representation actually made by the
7 defendant’ or (2) pertains to a ‘fact the defendant was obligated to disclose.’” *Smith v.*
8 *Ford Motor Co.*, 462 F. App’x 660, 662 (9th Cir. 2011) (quoting *Daugherty v. Am. Honda*
9 *Motor Co., Inc.*, 144 Cal. App. 4th 824, 835 (Cal. Ct. App. 2006)). A duty to disclose may
10 arise if a plaintiff alleges “physical injury or . . . safety concerns posed by the defect.”
11 *Daugherty*, 144 Cal. App. 4th at 836 (citing *Bardin v. Daimlerchrysler Corp.*, 136 Cal.
12 App. 4th 1255, 1261–62 (Cal. Ct. App. 2006)). “[A] fact can give rise to a duty to disclose
13 and an actionable omission if it implicates safety concerns that a reasonable consumer
14 would find material.” *Mui Ho v. Toyota Motor Corp.*, 931 F. Supp. 2d 987, 997 (N.D. Cal.
15 2013) (citing *Falk v. General Motors Corp.*, 496 F. Supp. 2d 1088, 1096–97 (N.D. Cal.
16 2007); *Daugherty*, 144 Cal. App. 4th at 836).

17 Defendant argues that “[P]laintiffs’ thread-bare allegations of superior knowledge
18 are unsupported,” Mot. at 14, which is an argument that the Court has already addressed
19 and disposed of in Section I.C.1. Defendant goes on to argue that Plaintiffs “have not
20 alleged any facts to support an affirmative act of concealment by [Defendant]; they do not
21 identify who specifically at [Defendant] was purportedly aware of any concealed facts, the
22 source of that knowledge, or any actions [Defendant] took to conceal any facts.” *Id.*
23 Plaintiffs argue that Defendant actively concealed the Defect by implementing a practice
24 of “replacing a defective part with an equally defective part.” Opp’n at 14. Plaintiffs give
25 examples of Defendant replacing the CUE with an equally defective part. *See, e.g.*, SAC
26 ¶¶ 94c (“[The CUE screen] was replaced once before when I was still under warranty and
27 now it’s happened again.”). This is sufficient to plead active concealment. *See Falk*, 496
28 F. Supp. 2d at 1097 (finding active concealment adequately pled when the defendant

1 replaced broken speedometers with equally defective ones, which “suggests that [the
2 defendant] tried to gloss over the problems . . . [by] giving the impression that any defects
3 were unique cases.”).

4 Additionally, Plaintiffs allege that the Defect “poses a serious safety risk to drivers,
5 who can become dangerously distracted.” SAC ¶ 4. Plaintiffs claim the CUE display is
6 the only method “for a driver to access and use the vehicle’s safety, navigation,
7 communications, and entertainment features.” *Id.* ¶ 42. Additionally, the CUE is how a
8 driver uses the “rear Vision Camera” when the vehicle is in reverse. *Id.* ¶ 50. The Court
9 finds that Plaintiffs successfully showed that the Defect posed a genuine safety risk because
10 the CUE’s malfunctioning or failure while driving could distract the car’s driver, and
11 therefore put the car’s occupants in danger.

12 Accordingly, the Court finds that Plaintiffs have adequately alleged that Defendant
13 had a duty to disclose the Defect.

14 3. *Timeliness*

15 Defendant argues that Plaintiffs Goldstein, Sutton, Wilder, Uyenoyama, and
16 Guzman’s CLRA claims, and Plaintiffs Wilder and Uyenoyama’s UCL claims, are time-
17 barred because they did not bring their claims within the required three- and four-year
18 period after purchase. Mot. at 16; *see* Cal. Civ. Code § 1783 (setting a three-year statute
19 of limitations for actions under the CLRA); Cal. Bus. & Prof. Code § 17208 (setting a four-
20 year statute of limitations for actions under the UCL). Because the Court has already
21 dismissed Plaintiffs Wilder and Uyenoyama’s UCL and CLRA claims, *see supra* Sections
22 I.B, I.C.1, the Court will only consider the timeliness of Plaintiffs Goldstein, Sutton, and
23 Guzman’s CLRA claims. Plaintiff Goldstein purchased his vehicle in or around June 2016,
24 SAC ¶ 103, Plaintiff Sutton purchased his vehicle on or around September 6, 2016, *id.*
25 ¶ 111, and Plaintiff Guzman purchased his vehicle on March 31, 2016, *id.* ¶ 153. Plaintiffs
26 argue that the discovery rule postpones the accrual of these Plaintiffs’ CLRA claims.
27 Opp’n at 16–19.

28 ///

1 “In order to invoke [the delayed discovery exception] to the statute of limitations,
2 the plaintiff must specifically plead facts which show (1) the time and manner of discovery
3 and (2) the inability to have made earlier discovery despite reasonable diligence.” *In re*
4 *Conseco Ins. Co. Annuity Mktg. & Sales Practices Litig.*, No. C–05–04726 RMW, 2008
5 WL 4544441, *8 (N.D. Cal. Sept. 30, 2008) (quoting *Saliter v. Pierce Bros. Mortuaries*,
6 81 Cal. App. 3d 292, 296 (Ct. App. 1978)). “The delayed discovery rule is available to toll
7 the statute of limitations under the CLRA, UCL, and FAL.” *Plumlee v. Pfizer, Inc.*, No.
8 13-CV-414-LHK, 2014 WL 695024, at *8 (N.D. Cal. Feb. 21, 2014). “This rule applies
9 even where plaintiff is prosecuting a class action.” *Yumul v. Smart Balance, Inc.*, 733 F.
10 Supp. 2d 1117, 1131 (N.D. Cal. 2010) (citing *McKelvey v. Boeing N. Am., Inc.*, 74 Cal.
11 App. 4th 141, 160–61 (Ct. App. 1999) (applying the standard to a class action)).

12 Defendant argues that “Plaintiffs do not plead sufficient facts to invoke the discovery
13 rule.” Mot. at 16; *see Garcia v. Gen. Motors LLC*, No. 118CV01313LJOBAM, 2018 WL
14 6460196, at *4 (E.D. Cal. Dec. 10, 2018) (“The discovery related facts should be pleaded
15 in detail to allow the court to determine whether the fraud should have been discovered
16 sooner.” (quoting *Cansino v. Bank of Am.*, 224 Cal. App. 4th 1462, 1472 (2014))).

17 Plaintiff Guzman alleges that “[a]t the time of purchase, [his] vehicle’s CUE
18 touchscreen did not exhibit any cracks or spider-webbing.” SAC ¶ 155. He alleges that
19 “[i]n or around January 2018, [he] first noticed spiderwebbing on the lower-right side of
20 the CUE touchscreen.” *Id.* ¶ 156. Similarly, Plaintiff Goldstein alleges that “[s]ince mid-
21 2018,” his CUE System was “unresponsive and . . . entirely inoperative from the screen.”
22 SAC ¶ 106. These facts are sufficiently detailed to provide Defendants notice of the time
23 at and manner in which Plaintiffs Guzman and Goldstein discovered the Defect. *See In re*
24 *Gen. Motors LLC CP4 Fuel Pump Litig.*, 393 F. Supp. 3d 871, 884 (N.D. Cal. 2019)
25 (discovery rule tolled CLRA claims where “[p]laintiffs did not have reason to discover the
26 defects in their vehicles until they experienced adverse effects resulting from those
27 defects”).

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1 Plaintiff Sutton, however, alleges he “delivered his vehicle” to a dealership for repair
2 “[o]n or around August 2, 2019” because his “radio screen [was] not working” SAC
3 ¶ 115. He complained that the screen “had cracked and bubbled.” *Id.* Plaintiff Sutton
4 does not allege when he first experienced issues with his CUE system. *Id.* Without more
5 specific facts to identify when Plaintiff Sutton first discovered the issue, his CLRA claim
6 is time-barred. *See Aberin v. Am. Honda Motor Co.*, 2018 WL 1473085, at *9 (N.D. Cal.
7 Mar. 26, 2018) (finding allegations insufficient to invoke discovery rule where plaintiffs
8 failed to allege when they discovered the defect).

9 Based on the foregoing, the Court **GRANTS** Defendant’s motion to dismiss Plaintiff
10 Sutton’s CLRA claim and **DENIES** Defendant’s motion to dismiss Plaintiffs Guzman and
11 Goldstein’s CLRA claim.

12 ***D. Fraudulent Concealment***

13 The elements of a claim for fraudulent concealment are:

14 (1) the defendant must have concealed or suppressed a material
15 fact; (2) the defendant must have been under a duty to disclose
16 the fact to the plaintiff; (3) the defendant must have intentionally
17 concealed or suppressed the fact with intent to defraud the
18 plaintiff; (4) the plaintiff must have been unaware of the fact and
19 would have acted otherwise if he had known of the concealed or
suppressed fact; and (5) as a result of the concealment or
suppression of the fact, the plaintiff sustained damage.

20 *In re Ford Motor Co. DPS6 Powershift Transmission Prod. Liab. Lit.*, No. 17-cv-06656,
21 2019 WL 3000646, at *5 (C.D. Cal. May 22, 2019). Actual reliance is an essential element
22 for a fraudulent omission claim. *Daniel*, 806 F.3d at 1225 (citations omitted). Plaintiffs
23 may prove that the omission was a substantial factor in their decision by proving “that, had
24 the omitted information been disclosed, one would have been aware of it and behaved
25 differently.” *Id.* (citing *Mirkin v. Wasserman*, 858 P.2d 568, 574 (Cal. 1993)).

26 Defendant argues that the economic loss doctrine prohibits Plaintiffs from asserting
27 a claim for fraudulent concealment to recover purely economic losses for the purchase of
28 an allegedly defective product. Mot. at 17–18. Plaintiffs claim that their allegations are

1 based on Defendant’s “intentional misrepresentations and omissions,” and that “[t]he
2 economic loss doctrine is inapplicable where ‘the contract was fraudulently induced.’”
3 Opp’n at 21 (quoting *Robinson Helicopter v. Dana Corp.*, 34 Cal. 4th 979, 989–90 (2004)).

4 Under the economic loss doctrine, “plaintiffs may recover in tort for physical injury
5 to person or property, but not for ‘purely economic losses that may be recovered in a
6 contract action.’” *Lusinyan v. Bank of Am., N.A.*, No. CV-14-9586 DMG (JCX), 2015 WL
7 12777225, at *4 (C.D. Cal. May 26, 2015) (quoting *S.F. Unified Sch. Dist. v. W.R. Grace*
8 *& Co.*, 37 Cal. App. 4th 1318, 1327 (1995)). “California courts recognize several
9 exceptions to the economic loss rule, including violations of certain duties independent of
10 the parties’ contractual duties.” *Arechiga v. Ford Motor Co.*, No.
11 SACV1701915AGDFMX, 2018 WL 5904283, at *4 (C.D. Cal. Apr. 23, 2018) (citing
12 *United Guar. Mortg. Indem. Co. v. Countrywide Fin. Grp.*, 660 F. Supp. 2d 1123, 1180
13 (C.D. Cal. 2009)). Fraud claims based on affirmative misrepresentations may not be
14 subject to the economic loss rule. *Robinson Helicopter*, 34 Cal. 4th at 989–93.

15 The narrowly tailored exception to the economic loss rule articulated in *Robinson*
16 *Helicopter* does not extend to fraudulent omission claims. *Id.* at 993 (holding the “narrow”
17 exception to the economic loss rule is “limited to a defendant’s *affirmative*
18 *misrepresentations* on which a plaintiff relies and which expose a plaintiff to liability for
19 personal damages.” (emphasis added)). Plaintiffs have stated that this is a fraud in the
20 omission case, and therefore the exception based on intentional misrepresentations does
21 not apply. See Opp’n at 5 (“[S]ince this is an omissions case, there is no specific
22 misrepresentation to allege.”); *In re Ford Motor Co. DPS6 Powershift Transmission Prod.*
23 *Liab. Litig.*, 2020 WL 5267567, at *8 n.5 (collecting cases that applied the economic loss
24 rule to fraudulent omission claims, all of which found the narrow *Robinson Helicopter*
25 exception inapplicable).

26 Here, Plaintiffs have not alleged affirmative misrepresentations. The economic loss
27 doctrine therefore bars Plaintiffs’ fraudulent concealment claim. Defendant’s motion is
28 **GRANTED** as to this claim.

1 **II. Plaintiffs’ Implied Warranty Claims**

2 **A. Lack of Privity**

3 Defendant moves to dismiss Plaintiffs’ implied warranty claims under California
4 Commercial Code § 2314 for failure to properly allege vertical privity between Defendant
5 and Plaintiffs. Mot. at 18. Plaintiffs argue that California courts have recognized an
6 exception to the privity requirement for third-party beneficiaries, and that privity is not
7 required when a plaintiff “relies on written labels or advertisements of a manufacturer.”
8 Opp’n at 22–23.

9 “Under California Commercial Code section 2314 . . . a plaintiff asserting breach of
10 warranty claims must stand in vertical contractual privity with the defendant.” *Clemens v.*
11 *DaimlerChrysler Corp.*, 534 F.3d 1017, 1023 (9th Cir. 2008). A buyer and seller stand in
12 privity if they are in adjoining links of the distribution chain. *Osborne v. Subaru of Am.*
13 *Inc.*, 198 Cal. App. 3d 646, 656 n.6 (1988). “California district courts are split on the
14 application of the third-party beneficiary exception to the rule of privity.” *Snyder v.*
15 *TAMKO Bldg. Prod., Inc.*, No. 1:15-CV-01892-TLN-KJN, 2019 WL 4747950, at *7 (E.D.
16 Cal. Sept. 30, 2019) (citations omitted). “Some courts have declined to recognize the third-
17 party beneficiary exception because *Clemens* did not expressly recognize it and refused to
18 create any new exceptions to privity.” *Bhatt v. Mercedes-Benz USA, LLC*, No. CV 16-
19 03171-TJH (RAOx), 2018 WL 5094932, at *2–*3 (C.D. Cal. Apr. 16, 2018) (citations
20 omitted). The Ninth Circuit has recognized several exceptions to this privity requirement,
21 such as when “the plaintiff relies on written labels or advertisements of a manufacturer,”
22 and certain cases involving “foodstuffs, pesticides, and pharmaceuticals, and where the end
23 user is an employee of the purchaser.” *Clemens*, 534 F.3d at 1017.

24 The Court previously dismissed Plaintiffs’ UCC claim for failure to properly allege
25 privity, holding that “the Ninth Circuit has made it clear that under California Commercial
26 Code § 2314 a plaintiff asserting breach of warranty claims must stand in vertical
27 contractual privity with the defendant.” Order at 20 (ECF No. 48). However, Plaintiffs
28 have now adequately pled reliance on Defendant’s advertisements and written labels such

1 that the exceptions articulated in *Clemens* applies. *See* SAC ¶ 38. Plaintiffs allege that
2 they received “brochures and other similar materials with important, material information
3 regarding the vehicles from [Defendant].” *Id.*

4 Accordingly, the Court **DENIES** Defendant’s motion to dismiss Plaintiffs’ implied
5 warranty claims based on failure to properly allege vertical privity between Defendant and
6 Plaintiffs.

7 ***B. Plaintiffs Uyenoyama and Wilder***

8 Next, Defendant moves to dismiss Plaintiffs Uyenoyama and Wilder’s implied
9 warranty claims under the Song-Beverly Consumer Warranty Act and California
10 Commercial Code § 2314, arguing that they are time-barred. Mot. at 18. Plaintiffs argue
11 that they have now pled “sufficient facts for tolling under fraudulent concealment.” Opp’n
12 at 24. The Court disagrees with Plaintiffs and finds the claims time-barred as pled.

13 Song-Beverly’s statute of limitations is four years, and the discovery rule does not
14 apply to toll the statute of limitations. *Mexia v. Rinker Boat Co.*, 95 Cal. Rptr. 3d 285,
15 291–92 (Cal. Ct. App. 2009). California Commercial Code § 2314’s statute of limitations
16 is also four years. *See* Cal. Com. Code § 2725.

17 Plaintiffs argue that these limitations should be tolled because Plaintiffs have
18 adequately pled fraudulent concealment. Opp’n at 24. Under the doctrine of fraudulent
19 concealment, “the defendant’s fraud in concealing a cause of action against him tolls the
20 applicable statute of limitations, but only for that period during which the claim is
21 undiscovered by plaintiff or until such time as plaintiff, by the exercise of reasonable
22 diligence, should have discovered it.” *Sanchez v. South Hoover Hospital*, 18 Cal. 3d 93,
23 99 (1976). The purpose of this doctrine is “to disarm a defendant who, by his own
24 deception, has caused a claim to become stale and a plaintiff dilatory.” *Regents of Univ.*
25 *of Cal. v. Superior Court*, 20 Cal. 4th 509, 533 (1999). Where a plaintiff relies on
26 fraudulent concealment to toll the statute of limitations, “the plaintiff must show (a) the
27 substantive elements of fraud, and (b) an excuse for late discovery of the facts.” *Investors*
28 *Equity Life Holding Co. v. Schmidt*, 195 Cal. App. 4th 1519, 1533 (2011). Courts have

1 utilized the doctrine of fraudulent concealment to toll the statute of limitations for claims
2 brought under both Song-Beverly and California Commercial Code § 2314. *Roberts v.*
3 *Electrolux Home Products, Inc.*, CV 12-1644 CAS VBKX, 2013 WL 7753579 (C.D. Cal.
4 Mar. 4, 2013) (tolling claims under § 2314 due to fraudulent concealment); *Philips v. Ford*
5 *Motor Co.*, 14-CV-02989-LHK, 2016 WL 1745948 (N.D. Cal. May 3, 2016) (tolling
6 claims under Song-Beverley).

7 Here, the Court has already determined that Plaintiffs have not adequately pled the
8 substantive elements of fraudulent concealment for Plaintiffs Uyenoyama and Wilder. *See*
9 *supra* Section I.C.1; *see also Mui Ho*, 931 F. Supp. 2d at 999 (stating the elements of fraud
10 by omission and violation of the CLRA are the same). Accordingly, the Court concludes
11 that Plaintiffs have not pled sufficient facts to toll the statute of limitations and **GRANTS**
12 Defendant’s motion to dismiss Plaintiffs Uyenoyama and Wilder’s implied warranty
13 claims under Song-Beverly and California Commercial Code § 2314.

14 **III. Plaintiffs’ Unjust Enrichment Claim**

15 Defendant argues that Plaintiff’s unjust enrichment claim is not available because
16 there is an adequate legal remedy. Mot. at 20–21. Plaintiffs counter that they “may plead,
17 at this early stage, alternative avenues of relief.” Opp’n at 25.

18 The elements of an unjust enrichment claim are: (1) receipt of a benefit, and (2)
19 unjust retention of the benefit at the expense of another. *Lectrodryer v. SeoulBank*, 77 Cal.
20 App. 4th 723, 726 (2000). However, “[u]njust enrichment is an equitable rather than a
21 legal claim,” and “[i]t is a basic doctrine of equity jurisprudence that courts of equity should
22 not act . . . when the moving party has an adequate remedy at law[.]” *McKesson HBOC,*
23 *Inc. v. N.Y. State Common Retirement Fund*, 339 F.3d 1087, 1091 (9th Cir. 2003); *Mort v.*
24 *United States*, 86 F.3d 890, 892 (9th Cir. 1996) (quoting *Morales v. Trans World Airlines,*
25 *Inc.*, 504 U.S. 374, 381 (1992)) (alterations in original).

26 At this early stage, the Court is inclined to allow Plaintiffs to plead alternative
27 avenues for relief. *See* Fed. R. Civ. P. 8(d)(3) (“A party may state as many separate claims
28 . . . as it has, regardless of consistency.”); *see, e.g., Colucci v. ZonePerfect Nutrition Co.*,

1 No. 12-2907-SC, 2012 WL 6737800, at *10 (N.D. Cal. Dec. 28, 2012) (“[C]laims for
2 restitution or unjust enrichment may survive the pleadings stage when pled as an alternative
3 avenue of relief, though the claims, as alternatives, may not afford relief if other claims
4 do.”). However, similar to Plaintiffs’ UCL claim, *see supra* Section I.B, Plaintiffs have
5 failed to show entitlement to equitable relief. Plaintiffs do not allege that their legal claims
6 would not provide them with an adequate remedy. *See, e.g., Drake v. Toyota Motor Corp.*,
7 No. 2:20-CV-01421-SB-PLA, 2020 WL 7040125, at *14 (C.D. Cal. Nov. 23, 2020) (“[A]
8 party does not avoid federal equitable principles merely because the equitable claim is pled
9 in the alternative.” (citing *Loo v. Toyota Motor Sales, USA, Inc.*, No. 8:19-cv-00750-VAP
10 (ADSx), 2020 WL 4187918, at *8 (C.D. Cal. Apr. 10, 2020))).

11 Accordingly, the Court **GRANTS** Defendant’s motion to dismiss Plaintiffs’ unjust
12 enrichment claim.

13 **CONCLUSION**

14 Based on the foregoing, the Court **GRANTS IN PART** and **DENIES IN PART**
15 Defendant’s Motion to Dismiss. Specifically, the Court rules as follows:

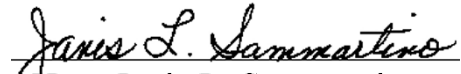
- 16 1. Defendant’s motion to dismiss Plaintiffs’ UCL claim (Count 4) is
17 **GRANTED**.
- 18 2. Defendant’s motion to dismiss Plaintiffs’ CLRA claim (Count 1) is
19 **GRANTED** as to Plaintiffs Uyenoyama, Wilder, and Sutton, and **DENIED**
20 as to Plaintiffs Goldstein, Rodriguez, and Guzman.
- 21 3. Defendant’s motion to dismiss Plaintiffs’ fraudulent concealment claim
22 (Count 5) is **GRANTED**.
- 23 4. Defendant’s motion to dismiss Plaintiffs’ implied warranty claims (Counts 2
24 and 3) is **DENIED** as to Plaintiffs Goldstein, Sutton, Rodriguez, and Guzman
25 and **GRANTED** as to Plaintiffs Uyenoyama and Wilder.
- 26 5. Defendant’s motion to dismiss Plaintiffs’ unjust enrichment claim (Count 6)
27 is **GRANTED**.

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1 All claims dismissed in this order are dismissed **WITHOUT PREJUDICE**.
2 Plaintiffs may file an Amended Complaint within thirty (30) days of the date on which this
3 Order is electronically docketed.

4 **IT IS SO ORDERED.**

5 Dated: February 3, 2021


6 Hon. Janis L. Sammartino
7 United States District Judge

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