UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**SACV 17-1079 JGB (DFMx)**	Date	October 3, 2023
Title	***Dennis MacDougall, et al. v. American Honda Motor Co., Inc.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order GRANTING Plaintiffs' Motion for Class Certification (Dkt. No. 147) (IN CHAMBERS)

Before the Court is Plaintiffs Dennis MacDougall, Ray Seow, Prabhanjan Kavuri, Joseph Ryan Parker, and Bryan Lentz's (collectively, "Plaintiffs") motion for class certification pursuant to Federal Rule of Civil Procedure 23 ("Motion," Dkt. No. 147). The Court determines this matter appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering all papers filed in support of and in opposition to the Motion, the Court **GRANTS** the Motion.

I. BACKGROUND

Since the parties are familiar with this case's extensive procedural history, the Court provides only the background necessary to understand the Motion. On June 21, 2017, Plaintiffs filed a complaint against Defendants American Honda Motor Co., Inc. and Honda North America, Inc. (jointly, "Defendants"). ("Complaint," Dkt. No. 1.) In the Complaint, Plaintiffs allege twelve causes of action: (1) breach of express warranty; (2) breach of implied warranty of merchantability; (3) violations of the Magnuson-Moss Warranty Act ("MMWA"); (4) violations of the California Song-Beverly Consumer Warranty Act; (5) violations of Pennsylvania's Unfair Trade Practices and Consumer Protection Law; (6) violations of California's Consumer Legal Remedies Act; (7) violations of California's Unfair Competition Law; (8) violations of New Jersey's Consumer Fraud Act; (9) violations of Florida's Deceptive and Unfair Trade Practices

Act; (10) equitable injunctive and declaratory relief; (11) declaratory relief under the Declaratory Judgment Act; and (12) unjust enrichment. (Id.)

On September 15, 2017, Defendants filed a motion to dismiss the Complaint. ("MTD," Dkt. No. 35.) On December 4, 2017, U.S. District Judge Andrew J. Guilford granted-in-part and denied-in-part Defendants' motion to dismiss the Complaint. ("MTD Order," Dkt. No. 53.) The MTD Order dismissed Plaintiffs' MMWA claim as well as consumer protection claims based on a theory of misrepresentation, with leave to amend. (See id. at 5–9.) Plaintiffs did not file an amended complaint. On December 26, 2017, Defendants answered the Complaint. ("Answer," Dkt. No. 57.) On February 5, 2020, this case was reassigned from Judge Guilford to this Court. (Dkt. No. 225.)

On May 13, 2019, Plaintiffs filed a motion for class certification. (Motion.) In support of the Motion, Plaintiffs filed a declaration of Gary E. Mason ("Mason Decl.," Dkt. No. 147-1) and various exhibits ("Mason Exs. A–L," Dkt. No. 147-2–13). On June 21, 2019, Defendants opposed the Motion. ("Opposition," Dkt. No. 167.) In support of the Opposition, Defendants filed a declaration of Michael B. Shortnacy ("Shortnacy Decl.," Dkt. No. 167-1) and various exhibits ("Shortnacy Exs. 1–48," Dkt. Nos. 167-2–6). On July 19, 2019, Plaintiffs replied. ("Reply," Dkt. No. 186.) In support of the Reply, Plaintiffs filed a second declaration of Gary E. Mason ("2d Mason Decl.," Dkt. No. 186-1) and additional exhibits ("Mason Exs. M–S," Dkt. Nos. 186-2–7, 198-1).

On June 3, 2019, Defendants filed a motion for summary judgment and a motion to strike the testimony of Plaintiffs' mechanical engineering expert, Dr. Robert Parker ("Dr. Parker"). ("MSJ," Dkt. No. 155-1; "Parker MTS," Dkt. No. 151; see also "Parker Report," Dkt. No. 161-5.) On June 21, 2019, Defendants filed a motion to strike the testimony of Plaintiffs' damages expert, Stefan Boedeker ("Mr. Boedeker"). ("Boedeker MTS," Dkt. No. 166; see also "Boedeker Report," Dkt. No. 166-2.) On September 11, 2020, the Court granted Defendants' Boedeker MTS and MSJ, and denied as moot Defendants' Parker MTS and Plaintiffs' Motion for class certification. (Dkt. No. 241.) On December 21, 2021, the Ninth Circuit reversed the Court's September 11, 2020 order and remanded. ("Ninth Circuit Order," Dkt. No. 250.)

On March 7, 2023, the Court denied Defendants' Boedeker MTS and Parker MTS, and granted-in-part and denied-in-part Defendants' MSJ.[1] ("MSJ Order," Dkt. No. 278.) The Court also ordered supplemental briefing regarding class certification. (Id.) Specifically, the Court requested that Plaintiffs explain: (1) whether some Plaintiffs are now former owners of Class Vehicles; (2) whether the proposed classes include former owners; (3) how Plaintiffs who are former owners satisfy the Rule 23 requirements, particularly typicality, commonality, and predominance; and (4) how damages may be calculated on a class-wide basis as to former owners. (Id. at 15.)

[1] In the MSJ Order, the Court dismissed Honda North America, Inc. as a defendant and Richard Frick as a plaintiff. (See id.)

On March 20, 2023, Plaintiffs filed a supplemental memorandum in support of their Motion for class certification. ("Pl. Supp.," Dkt. No. 281.) On March 31, 2023, remaining Defendant American Honda Motor Co. ("Defendant" or "Honda") filed a supplemental memorandum in response. ("Def. Supp.," Dkt. No. 282.) In support, Honda filed a declaration of Michael B. Shortnacy ("2d Shortnacy Decl.," Dkt. No. 282-1) and two exhibits ("Shortnacy Exs. A–B," Dkt. No. 282-2–3).

II. FACTS

This action concerns Honda's alleged failure to repair defective transmissions in certain model year 2012 to 2016 Honda Odyssey vehicles ("Class Vehicles") sold or leased to consumers, including Plaintiffs. (See Complaint ¶ 2; Motion at 1.) The Class Vehicles were sold or leased pursuant to express and implied warranties. (Complaint ¶ 3.) Every vehicle was backed by a 36-month/36,000-mile New Vehicle Basic Limited Warranty ("Limited Warranty") and a 60-month/60,000-mile Powertrain Limited Warranty ("Powertrain Warranty"). (Id.) These warranties expressly covered the cost of any repairs needed to correct defects in materials or workmanship and specifically covered the transmission. (Id.) Honda allegedly breached its express and implied warranties because at the time each Class Vehicle was sold or leased, it was equipped with a defective transmission. (Id. ¶ 4.)

Plaintiffs allege that the transmissions in all Class Vehicles are defective ("Transmission Defect"). (Id. ¶ 5.) The transmissions cause sudden, unexpected shaking and jerking, commonly referred to as "juddering" or "shuddering," when drivers attempt to accelerate Class Vehicles and shift into second, third, or fourth gear. (Id.) The transmissions also hesitate, surge, or cause a hard downshift or clunk when drivers slow down or accelerate at low speeds (symptoms collectively, "Atypical Vibrations"). (Id.) Plaintiffs allege that the Transmission Defect creates an unreasonable safety hazard. (Id.)

Each Plaintiff purchased a model year 2014 Honda Odyssey vehicle with a six-speed ("6AT") transmission from a Honda dealership. (See id. ¶¶ 63, 71, 75, 84, 89.) Each Plaintiff experienced Atypical Vibrations while driving his vehicle. (See id. ¶¶ 64–65, 72, 76, 86, 90.) Plaintiffs presented their vehicles to authorized Honda service centers and reported the Atypical Vibrations to technicians and customer service. (See id. ¶¶ 66–69, 73, 77, 87, 91–92.) Some Plaintiffs received temporary repairs, but Honda has not yet developed a permanent fix to the Transmission Defect.[2] (See id. ¶¶ 69–70, 73, 78, 87–88, 92; Motion at 5; Opposition at 6–7.)

[2] On June 20, 2017, Honda released Technical Service Bulletin ("TSB") 17-043, which recommended a software update and a flush of the automatic transmission fluid ("ATF") as countermeasures for Atypical Vibrations. (See Opposition at 6–7; Shortnacy Ex. 11.) The parties dispute whether these and other countermeasures have permanently fixed the Transmission Defect. (See "MSJ Opposition," Dkt. No. 174, at 5–6 ("Honda offers no internal data on the effectiveness of its TSBs.").)

At the time of Plaintiffs' purchases, Honda knew that Class Vehicles contained the Transmission Defect but failed to disclose this material fact. (Complaint ¶ 59; see Motion at 3–8; see generally Parker Report.) Had Honda disclosed the defect, Plaintiffs would not have purchased the Class Vehicles or would have paid significantly less for it. (Complaint ¶ 61.) Honda breached its warranties for the Class Vehicles by designing, manufacturing, selling, and leasing Class Vehicles with the Transmission Defect, refusing to recognize the defect, and/or failing to effectively repair the defect in a timely manner. (Id. ¶ 57.)

III. LEGAL STANDARD

Federal Rule of Civil Procedure 23 ("Rule 23") governs the litigation of class actions. A party seeking class certification must establish the following prerequisites under Rule 23(a):

> (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a); Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992), overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011).

After satisfying the four prerequisites of numerosity, commonality, typicality, and adequacy, a party must also demonstrate one of the following under Rule 23(b): (1) a risk that separate actions would create incompatible standards of conduct for the defendant or prejudice individual class members not parties to the action; (2) the defendant has treated the members of the class as a class, making appropriate injunctive or declaratory relief with respect to the class as a whole; or (3) common questions of law or fact predominate over questions affecting individual members and that a class action is a superior method for fairly and efficiently adjudicating the action. See Fed. R. Civ. P. 23(b)(1)–(3).[3]

Because "Rule 23 does not set forth a mere pleading standard," a "party seeking class certification . . . must be prepared to prove that there are ***in fact*** sufficiently numerous parties, common questions of law or fact, etc." Dukes, 564 U.S. at 350 (emphasis in original). Plaintiffs bear the burden of proving every Rule 23 requirement "by a preponderance of the evidence." Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC, 31 F.4th 651, 665 (9th Cir.

[3] While some circuits have adopted an "ascertainability" prerequisite to certification, the Ninth Circuit has not. Briseno v. ConAgra Foods, Inc., 844 F.3d 1121, 1124 n.4 (9th Cir. 2017) (noting that the Ninth Circuit has not "adopted an 'ascertainability' requirement" and has, instead, "addressed the types of alleged definitional deficiencies other courts have referred to as 'ascertainability' issues . . . through analysis of Rule 23's enumerated requirements").

2022), cert. denied sub nom. StarKist Co. v. Olean Wholesale Grocery Coop., Inc., 143 S. Ct. 424 (2022).

A trial court has broad discretion over whether to grant or deny class certification. Bateman v. Am. Multi-Cinema, Inc., 623 F.3d 708, 712 (9th Cir. 2010). This is because class certification is a procedural mechanism, and "[d]istrict courts are in the best position to consider the most fair and efficient procedure for conducting any given litigation." Id. (internal quotation marks and citation omitted). Even so, a district court must conduct a "rigorous analysis" that frequently "will entail some overlap with the merits of the plaintiff's underlying claim." Dukes, 564 U.S. at 351. The court "need only consider 'material sufficient to form a reasonable judgment on each [Rule 23(a)] requirement.'" Sali v. Corona Reg'l Med. Ctr., 909 F.3d 996, 1005 (9th Cir. 2018) (alteration in original) (quoting Blackie v. Barrack, 524 F.2d 891, 901 (9th Cir. 1975)).

IV. DISCUSSION

Plaintiffs seek to certify the following classes:

> California Class: All persons or entities who purchased or leased model year 2012 Touring and Touring Elite Honda Odysseys with VINs in the range 5FNRL5H…CB053446 through 5FNRL5H…CB148157, model year 2013 Touring and Touring Elite Honda Odysseys, and model year 2014 to 2016 Honda Odysseys (collectively, "Class Vehicle(s)") in California from American Honda Motor Company or through an American Honda Motor Company dealership. The California Class seeks certification of claims for: (a) violation of the California Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750, et seq.; (b) violation of the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, et seq.; (c) breach of the California Song-Beverly Consumer Warranty Act ("Song-Beverly Act"), Cal. Civ. Code § 1790, et seq.; (d) breach of implied warranty under state law; (e) breach of express warranty under state law; (f) unjust enrichment under state law; and (g) injunctive and declaratory relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, and state law. Plaintiffs move for the appointment of Ray Seow and Bryan Lentz as the class representatives for the California Class.
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> Pennsylvania Class: All persons or entities who purchased or leased a Class Vehicle in Pennsylvania from American Honda Motor Company or through an American Honda Motor Company dealership. The Pennsylvania Class seeks certification of claims for: (a) breach of implied warranty under state law; (b) breach of express warranty under state law; (c) unjust enrichment under state law; and (d) injunctive

> and declaratory relief under the Declaratory Judgment Act and state law.[4] Plaintiffs move for the appointment of Dennis MacDougall as the class representative for the Pennsylvania Class.
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> New Jersey Class: All persons or entities who purchased or leased a Class Vehicle in New Jersey from American Honda Motor Company or through an American Honda Motor Company dealership. The New Jersey Class seeks certification of claims for: (a) violation of the New Jersey Consumer Fraud Act ("NJCFA"), N.J. Stat. Ann. § 56:8-1, et seq.; (b) breach of implied warranty under state law; (c) breach of express warranty under state law; (d) unjust enrichment under state law; and (e) injunctive and declaratory relief under the Declaratory Judgment Act and state law. Plaintiffs move for the appointment of Prabhanjan Kavuri as the class representative for the New Jersey Class.
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> Florida Class: All persons or entities who purchased or leased a Class Vehicle in Florida from American Honda Motor Company or through an American Honda Motor Company dealership. The Florida Class seeks class certification of claims for: (a) violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201, et seq.; (b) breach of implied warranty under state law; (c) breach of express warranty under state law; (d) unjust enrichment under state law; and (e) injunctive and declaratory relief under the Declaratory Judgment Act and state law. Plaintiffs move for the appointment of Joseph Ryan Parker as the class representative for the Florida Class.

(Notice of Motion at 2–3.)

A. Standing

As a threshold matter, Honda argues that Plaintiffs lack standing to represent the proposed classes because their own vehicles do not have Atypical Vibrations. (See Opposition at 14; see generally "Arst Report," Dkt. No. 166-8.) While Plaintiffs have raised a triable issue as to whether their vehicles manifested Atypical Vibrations (see MSJ Order), a manifested defect is not required for standing. See In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Pracs., & Prod. Liab. Litig., 754 F. Supp. 2d 1145, 1161–62 (C.D. Cal. 2010). Where the plaintiffs' injuries consist of economic losses (i.e., the diminished value of their vehicles due to an undisclosed defect), the plaintiffs need not have ***experienced*** the defect to have standing. See id. at 1161. Here, Plaintiffs proceed on a "benefit of the bargain" theory. That is, Plaintiffs seek recovery for the "overpayment, loss in value, or loss of usefulness" of their allegedly defective vehicles. Id. at 1162; see also id. ("If a defect . . . manifest[s] itself in a small percentage of . . .

[4] The Pennsylvania Class apparently does not seek certification for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 Pa. Cons. Stat. § 201-1, et seq. (See "Notice of Motion," Dkt. No. 147, at 2; but see Complaint ¶¶ 146–61.)

vehicles, it makes sense that people would be less willing to buy or use those vehicles on the off-chance that they might experience" the defect). As alleged in the Complaint, "[h]ad Honda disclosed the defect, Plaintiffs would not have purchased the class vehicle or would have paid significantly less for it." (Complaint ¶ 61.) Plaintiffs' alleged economic injuries are sufficient to confer Plaintiffs standing in this case.

B. Rule 23(a) Factors

1. Numerosity

A proposed class satisfies the numerosity requirement if the "class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). To be impracticable, joinder must be difficult or inconvenient, but need not be impossible. Keegan v. Am. Honda Motor Co., 284 F.R.D. 504, 522 (C.D. Cal. 2012). While there is no numerical cutoff used to determine sufficient numerosity, forty or more members will generally satisfy numerosity. See id. According to the company's internal records, Honda sold 475,682 model year 2012 to 2015 Honda Odysseys. (See Mason Ex. L-3.) Honda does not dispute that Plaintiffs satisfy this requirement. Thus, numerosity is met.

2. Commonality

Commonality requires "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). A common question "must be of such a nature that it is capable of classwide resolution—which means that the determination of its truth or falsity will resolve an issue that is central to the validity of each of the claims in one stroke." Dukes, 564 U.S. at 350. "By contrast, an individual question is one where members of a proposed class will need to present evidence that varies from member to member." Olean Wholesale Grocery Coop., 31 F.4th at 663. "The commonality requirement is construed liberally, and the existence of some common legal and factual issues is sufficient." In re NJOY, Inc. Consumer Class Action Litig., 120 F. Supp. 3d 1050, 1096 (C.D. Cal. 2015).

Here, Plaintiffs "easily satisfy the commonality requirement" because the "claims of all prospective class members involve the same alleged defect, covered by the same warranty, and found in vehicles of the same make and model." Wolin v. Jaguar Land Rover N. Am., LLC, 617 F.3d 1168, 1172 (9th Cir. 2010); see also Parkinson v. Hyundai Motor Am., 258 F.R.D. 580, 588 (C.D. Cal. 2008) ("In automobile defect cases, commonality is often found when the most significant question concerns the existence of a defect."). Common questions of law or fact in this case include: whether the Class Vehicles have a Transmission Defect; whether Honda was aware of the defect; whether it had a duty to disclose its knowledge and failed to do so; whether it breached its express and implied warranties; and whether class members are entitled to damages or other relief as a result of Honda's alleged actions. See Wolin, 617 F.3d at 1172; Chamberlan v. Ford Motor Co., 402 F.3d 952, 962 (9th Cir. 2005) ("[The district court] provided detailed, substantive examples of the common issues: (1) whether the design of the plastic intake manifold was defective; (2) whether Ford was aware of alleged design defects; (3) whether Ford had a duty

to disclose its knowledge; (4) whether it failed to do so; (5) whether the facts that Ford allegedly failed to disclose were material; and (6) whether the alleged failure to disclose violated the CLRA."). These common core questions are sufficient to satisfy the commonality requirement.

3. Typicality

Typicality requires that the named Plaintiffs' claims are typical of those of the class members they seek to represent. Fed. R. Civ. P. 23(a)(3). "The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class." Wolin, 617 F.3d at 1175 (quoting Hanon, 976 F.2d at 508). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." Id. (internal quotation marks and citation omitted). Representative claims are typical "if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." Castillo v. Bank of Am., NA, 980 F.3d 723, 729 (9th Cir. 2020) (internal quotation marks and citation omitted).

Here, each of the named Plaintiffs "purchased their Class Vehicle in the state whose class they seek to represent, without any disclosure of the alleged defect, at a price that they would not have paid if they had known about the defect." Sonneveldt v. Mazda Motor of Am., Inc., 2022 WL 17357780, at *36 (C.D. Cal. Oct. 21, 2022). Plaintiffs allege the same injury as other putative class members, and they allege that the injury is a result of a course of conduct that is not unique to any of them. See Parsons v. Ryan, 754 F.3d 657, 687 (9th Cir. 2014); Wolin, 617 F.3d at 1175 ("[Plaintiffs] allege that they, like all prospective class members, were injured by a defective alignment geometry in the vehicles. [Plaintiffs] and the class seek to recover pursuant to the same legal theories: violation of consumer protection laws, breach of warranty, and unjust enrichment. Land Rover has identified no defenses that are unique to [plaintiffs] that would make class certification inappropriate."); In re Toyota Motor Corp., 2012 WL 7802852, at *3 ("[A]ll the class members allege they have suffered the same injuries based on a common course of Toyota's conduct.").

Honda variously argues that Plaintiffs' claims are not typical because Plaintiffs' vehicles do not have Atypical Vibrations; Plaintiffs' model year 2014 vehicles differ from other model years; and Plaintiffs Lentz, Parker, and Seow have sold their vehicles. (See Opposition at 15–17; Def. Supp. at 2, 10.) However, none of these arguments defeat typicality. First, "[t]ypicality can be satisfied despite different factual circumstances surrounding the manifestation of the defect." Wolin, 617 F.3d at 1175. Plaintiffs allege that they, like all prospective class members, were injured by a Transmission Defect in their vehicles ***at the time of purchase***, whether or not those vehicles later manifested Atypical Vibrations. (Motion at 13–14.) In other words, Plaintiffs "may have a viable claim regardless of the manifestation of the defect." Wolin, 617 F.3d at 1175.

Second, the Court has previously held that Plaintiffs' vehicles are sufficiently similar to the other Class Vehicles. (See MSJ Order at 13.) Although Honda contends that different model years have "different combinations of transmission components, power control modules, torque

converters and software," Honda itself grouped Class Vehicles together to troubleshoot the Transmission Defect. (See, e.g., Mason Ex. L-3; Shortnacy Ex. 47 (TSB 16-060 applied to all Class Vehicles except model year 2016 Odysseys); Shortnacy Ex. 48 (TSB 17-044 applied to all model year 2014 to 2017 Odysseys); see also Parker Report (Honda's internal records refer to 6AT vehicles, including Class Vehicles, as a group).) Such documents "constitute evidence that there is a classwide problem," even if they are "not conclusive proof that a common defect affects all the vehicles in question." Cholakyan v. Mercedes-Benz, USA, LLC, 281 F.R.D. 534, 554–55 (C.D. Cal. 2012).

Finally, Honda argues that Plaintiffs Lentz, Parker, and Seow are atypical of the classes they seek to represent because they have sold their vehicles. (Def. Supp. at 2.) Plaintiffs clarify in their supplemental briefing that their proposed classes include both current and former owners and lessees, and assert that any post-sale events are irrelevant to class certification because Plaintiffs seek benefit of the bargain damages. (See Pl. Supp. at 2–3.) Under this theory, current and former owners alike were injured at the time of purchase by the same course of conduct. Whether or not Plaintiffs later sold those vehicles does not affect Honda's liability for the initial injury. None of the named Plaintiffs are "subject to unique defenses which threaten to become the focus of the litigation." Sonneveldt, 2022 WL 17357780, at *35 (quoting Hanon, 976 F.2d at 508). The Court finds that Plaintiffs' claims are reasonably coextensive with those of absent class members. Thus, the typicality requirement is met.

4. Adequacy

Adequacy requires that the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). The adequacy of representation inquiry involves two questions: "(1) Do the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" Staton v. Boeing Co., 327 F.3d 938, 957 (9th Cir. 2003). Plaintiffs and their counsel do not have any conflicts of interest with other class members. Plaintiffs have actively participated in this litigation by permitting their vehicles to be tested, submitting declarations and documents, and making themselves available for deposition testimony. See Keegan, 284 F.R.D. at 526. In addition, Plaintiffs' counsel have provided evidence of their qualifications to represent the class and experience in litigating class actions. (See Mason Ex. A.) Honda does not dispute that Plaintiffs and their counsel satisfy this requirement. Thus, adequacy is met.

5. Ascertainability

As discussed above, the Ninth Circuit has not adopted an ascertainability requirement. Briseno, 844 F.3d at 1124 n.4. Nevertheless, the Court briefly addresses ascertainability. "A class is sufficiently defined and ascertainable if it is 'administratively feasible for the court to determine whether a particular individual is a member.'" Keegan, 284 F.R.D. at 521 (quoting O'Connor v. Boeing N. Am., Inc., 184 F.R.D. 311, 319 (C.D. Cal. 1998)). Here, Plaintiffs' class definitions are straightforward, requiring only that a person purchased or leased certain model

year 2012 to 2016 Honda Odysseys through Honda or a Honda dealership. (Motion at 10.) As such, class members are ascertainable through Honda's internal records and/or through self-identification. (Id.); see also Melgar v. CSK Auto, Inc., 2015 WL 9303977, at *8 (N.D. Cal. Dec. 22, 2015) (noting that courts in this circuit have found proposed classes ascertainable even when the only way to determine class membership is with self-identification through affidavits). "Plaintiffs' class definitions rely on objective criteria that are verifiable through documentation of a purchase or lease of a Class Vehicle." Keegan, 284 F.R.D. at 521–22; see also Parkinson, 258 F.R.D. at 594 (finding a proposed class ascertainable where the class definition identifies a particular make, model, and production period for the class vehicle). Honda does not dispute that Plaintiffs satisfy ascertainability. Thus, the proposed classes are sufficiently ascertainable.

C. Rule 23(b)(3) Factors

Having concluded that the Rule 23(a) requirements are met, the Court turns to Rule 23(b)(3). In order to certify a class under Rule 23(b)(3), a court must find that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

1. Predominance

The predominance requirement under Rule 23(b)(3) is "far more demanding" than the commonality requirement of Rule 23(a). Sonneveldt, 2022 WL 17357780, at *19. The predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Id. (citation omitted). If common questions "present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication," then "there is clear justification for handling the dispute on a representative rather than on an individual basis," and the predominance test is satisfied. Keegan, 284 F.R.D. at 526 (citation omitted). "If the main issues in a case require the separate adjudication of each class member's individual claim or defense, however, a Rule 23(b)(3) action would be inappropriate." Id. (internal quotation marks, alterations, and citation omitted). "Considering whether questions of law or fact common to class members predominate begins, of course, with the elements of the underlying cause of action." Olean Wholesale Grocery Coop., 31 F.4th at 665 (internal quotation marks, alterations, and citation omitted).

a. California CLRA and UCL

The CLRA prohibits "unfair methods of competition and unfair or deceptive practices" in transactions for the sale or lease of goods to consumers. Cal. Civ. Code §1770(a). Unlawful practices include "[r]epresenting that goods or services have . . . characteristics . . . uses, benefits, or quantities that they do not have," id. § 1770(a)(5), and "[r]epresenting that goods or services are of a particular standard, quality, or grade," id. § 1770(a)(7). Similarly, the UCL prohibits "any unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200. Because the statute is written in the disjunctive, the UCL allows for separate theories of

liability under the "unlawful," "unfair," and "fraudulent" prongs. See Hodsdon v. Mars, Inc., 891 F.3d 857, 865 (9th Cir. 2018); Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co., 973 P.2d 527, 540 (Cal. 1999).

Plaintiffs rely on a fraudulent omission theory of consumer fraud. (See Motion at 17–21.) Fraudulent omissions are actionable under both the CLRA and the UCL. See Daniel v. Ford Motor Co., 806 F.3d 1217, 1225 (9th Cir. 2015) ("Daniel I"). To be actionable, an omission must be "contrary to a representation actually made by the defendant, or an omission of a fact the defendant was obliged to disclose." Hodsdon, 891 F.3d at 865 (quoting Daugherty v. Am. Honda Motor Co., 51 Cal. Rptr. 3d 118, 126 (Cal. Ct. App. 2006)). A defendant has a duty to disclose when the alleged defect relates to an unreasonable safety hazard or is central to the product's function, and the plaintiff alleges one of the four LiMandri factors. Hammerling v. Google LLC, 543 (Cal. Ct. App. 1997)). The LiMandri factors are:

> (1) the defendant is in a fiduciary relationship with the plaintiff; (2) the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) the defendant actively conceals a material fact from the plaintiff; or (4) the defendant makes partial representations but also suppresses some material facts.

Id. (citing LiMandri, 60 Cal. Rptr. 2d at 543).

In addition to a duty to disclose, a plaintiff must demonstrate actual reliance. Daniel I, 806 F.3d at 1225. To prove reliance on an omission, a plaintiff must show that "had the omitted information been disclosed, one would have been aware of it and behaved differently." Id. (quoting Mirkin v. Wasserman, 858 P.2d 568, 574 (Cal. 1993)). That one would have behaved differently can be inferred when the omission is material. Id. An omission is material "if a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question." Keegan, 284 F.R.D. at 529 (citation omitted). "As long as plaintiff can prove that this omission was material, therefore, they will have met their burden of proving causation [and reliance] as to the entire class." Id. at 531; see Guido v. L'Oreal, USA, Inc., 2013 WL 3353857, at *11 (C.D. Cal. July 1, 2013) ("Under the CLRA, plaintiffs may prove causation on a classwide basis by demonstrating the materiality of the omissions.").

Here, Plaintiffs' theory of liability is that all Class Vehicles have the Transmission Defect, even if not every vehicle manifests Atypical Vibrations, and that a reasonable consumer would have behaved differently had he or she known about the defect (i.e., paid less for the car or not bought the car). See id. at 532. Under this theory, common questions include whether Honda knew or should have known, and failed to disclose, information about the defect and whether that information would have been material to the reasonable consumer.[5] "Because materiality is

[5] Honda does not dispute that Plaintiffs were exposed to its omissions on a class-wide basis. (Compare Opposition at 20–21 with Motion at 19–20.) As in Keegan, "all class members

governed by an objective 'reasonable person' standard under California law, an inquiry that is the same for every class member, a finding that the defendant has failed to disclose information that would have been material to a reasonable person who purchased the defendant's product gives rise to a rebuttable inference of reliance as to the class." Edwards v. Ford Motor Co., 603 F. App'x 538, 541 (9th Cir. 2015). Such common questions predominate over individual ones.

b. New Jersey Consumer Fraud Act

The New Jersey Consumer Fraud Act ("NJCFA"), N.J. Stat. Ann. § 56:8-1, et seq., protects "against knowing misrepresentations, omissions of material fact, and violations of administrative regulations, whether or not the merchant acts in bad faith." Furst v. Einstein Moomjy, Inc., 860 A.2d 435, 440 (N.J. 2004). To bring a claim under the NJCFA, a plaintiff must demonstrate three elements: (1) unlawful conduct by defendant; (2) an ascertainable loss by plaintiff; and (3) a causal relationship between the unlawful conduct and the ascertainable loss. Bosland v. Warnock Dodge, Inc., 964 A.2d 741, 749 (N.J. 2009). An "ascertainable loss" is "either an out-of-pocket loss or a demonstration of loss in value" that is "quantifiable or measurable." Marcus v. BMW of N. Am., LLC, 687 F.3d 583, 606 (3d Cir. 2012) (quoting Thiedemann v. Mercedes-Benz USA, LLC, 872 A.2d 783, 792–93 (N.J. 2005)). In other words, "a plaintiff is not required to show monetary loss, but only that he purchased something and received less than what was promised." Id. (internal quotation marks and citation omitted). While the NJCFA does not require proof of reliance, the alleged unlawful practice must be a proximate cause of a plaintiff's ascertainable loss. Id.

As with the California consumer protection claims, common questions predominate over individual ones regarding Plaintiffs' NJCFA claim. (See Motion at 22.) Common questions include whether Honda failed to disclose the Transmission Defect in Class Vehicles before selling them to Plaintiff Kavuri and the New Jersey Class; whether Plaintiff Kavuri and the New Jersey Class suffered an ascertainable loss in the diminished value of their vehicles; and whether there was a causal nexus between Honda's alleged unlawful practice and the ascertainable loss. Plaintiffs need only prove that Honda's conduct was "a cause of damages," not that it was "the sole cause of loss." Varacallo v. Mass. Mut. Life Ins. Co., 752 A.2d 807, 816 (N.J. 2000). Plaintiffs can demonstrate, using common evidence such as Honda's internal records, that Honda's omission of a material fact caused them damages. (See Motion at 22–23.) Further, Plaintiffs can demonstrate, using Mr. Boedeker's expert testimony, ascertainable loss on a class-wide basis—that is, the diminution in value of Class Vehicles with the Transmission Defect. Cf. Neale v. Volvo Cars of N. Am., LLC, 2021 WL 3013009, at *12 (D.N.J. July 15, 2021) (denying class certification where the plaintiffs lacked "expert testimony demonstrating that the Sunroof Defect skewed the market for Class Vehicles, or some other method for proving diminution of value on a class-wide basis"). Accordingly, the Court concludes that the NJCFA claim is appropriate for class-wide resolution.

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received the same information from [Defendant] regarding the purported defect—which is to say, no information . . . ." 284 F.R.D. at 533.

c. Florida Deceptive and Unfair Trade Practices Act

Similarly, the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201, et seq., protects against business practices that offend established public policy and are "immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers." Stewart Agency, Inc. v. Arrigo Enters., Inc., 266 So.3d 207, 209–10 (Fla. Dist. Ct. App. 2019) (quoting PNR, Inc. v. Beacon Prop. Mgmt., Inc., 842 So.2d 773, 777 (Fla. 2003)). To bring a claim under the FDUTPA, a plaintiff must establish three elements: (1) a deceptive act or unfair practice; (2) causation; and (3) actual damages. Id. at 212. "The Florida Supreme Court has noted that 'deception occurs if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.'" Zlotnick v. Premier Sales Grp., Inc., 480 F.3d 1281, 1284 (11th Cir. 2007) (quoting PNR, Inc., 842 So.2d at 777). A plaintiff asserting a FDUTPA claim "need not show actual reliance on the representation or omission at issue." Carriuolo v. Gen. Motors Co., 823 F.3d 977, 985 (11th Cir. 2016) (quoting Davis v. Powertel, Inc., 776 So.2d 971, 973 (Fla. Dist. Ct. App. 2000)). Further, "FDUTPA damages are measured according to 'the difference in the market value of the product or service in the condition in which it was delivered and its market value in the condition in which it should have been delivered according to the contract of the parties.'" Id. at 986 (quoting Rollins, Inc. v. Butland, 951 So.2d 860, 869 (Fla. Dist. Ct. App. 2006)).

Carriuolo is directly on point. 823 F.3d at 985–89. In Carriuolo, motor vehicle purchasers and lessees brought a putative class action alleging violations of the FDUTPA based on General Motors' alleged misrepresentation of the safety ratings of its vehicles. Id. at 985. The Eleventh Circuit found that common questions predominate because the elements of a FDUTPA claim are ***objective***. Id. For the deceptive practice, "the factfinder must only determine whether a [ ] sticker that inaccurately states a vehicle had received perfect safety ratings in three categories would deceive an objectively reasonable observer when in fact no safety ratings had been issued." Id. at 986. Whether each class member was subjectively deceived is irrelevant. Id. at 985–86. Since "the injury is not determined by the plaintiffs' subjective reliance on the alleged inaccuracy, causation and damages may also be amenable to class-wide resolution." Id. at 986. For damages, the inquiry is not "how much the erroneous sticker may have reduced the vehicle's perceived value for any individual purchaser or lessee," but rather "the difference between the market value of a [vehicle] with perfect safety ratings for three standardized categories and the market value of a [vehicle] with no safety ratings." Id. This benefit of the bargain model allows for a class-wide damages figure because any class member's out-of-pocket payment is immaterial. Id.

As with the other state consumer protection claims, common questions predominate regarding Plaintiffs' FDUTPA claim. (See Motion at 23–24.) Common questions include whether Honda's failure to disclose the Transmission Defect would deceive the reasonable consumer; whether Honda caused Plaintiff Parker and the Florida Class damages in the diminished value of their vehicles; and how much the damages are, as measured by the difference in the market value of Class Vehicles with no Transmission Defect and the market value of Class

Vehicles with the defect. As discussed above, Plaintiffs can demonstrate these elements using common evidence. (See Motion at 23–24.) The FDUTPA claim is appropriate for class-wide resolution.

d. Breach of Express Warranty

Plaintiffs seek certification of separate statewide classes under the express warranty laws of California, New Jersey, Florida, and Pennsylvania. (See Motion at 24.) All of these states have adopted the Uniform Commercial Code's ("UCC") express warranty provisions. See UCC § 2-313; Cal. Com. Code § 2313; N.J. Stat. Ann. § 12A:2-313; Fla. Stat. § 672.313; 13 Pa. Cons. Stat. § 2313. Plaintiffs allege that each Class Vehicle was backed by a Limited Warranty and a Powertrain Warranty, which warranted that Honda would repair or replace any defects in materials and workmanship in the Class Vehicles. (Complaint ¶ 110.) The Powertrain Warranty specifically applied to the "Transmission and Transaxle . . . Case and all internal parts, torque converter, transfer case and all internal parts, transmission/powertrain control module, seals and gaskets." (Id. ¶ 111.) Under the Powertrain Warranty, Honda expressly warranted that it "will repair or replace any part that is defective in material or workmanship under normal use" for 60 months or 60,000 miles, whichever comes first. (Id.) Honda does not dispute that an express warranty covers the Transmission Defect; rather, it argues that it has fulfilled its warranty obligations by offering free repairs and replacements. (See Opposition at 28–29.)

The Court finds that Plaintiffs' breach of express warranty claims are amenable to class-wide resolution. In Wolin, the Ninth Circuit held that common issues predominated regarding Land Rover's obligations under its Limited Warranty. 617 F.3d at 1174. The Ninth Circuit reasoned that "all of the proposed class members here are covered by a Limited Warranty that provides for the repair or replacement of defects, and all of the proposed class members allege that their vehicles suffer from the same defect." Id. As such, "[t]hese claims require common proof of the existence of the defect and a determination whether Land Rover violated the terms of its Limited Warranty." Id. Here too, all of the proposed class members purchased or leased vehicles with the same Transmission Defect such that the existence of the defect can be proven with common evidence. (See Motion at 12.)

Further, Plaintiffs allege that Honda's express warranty "fail[ed] its essential purpose" because Honda refused to "permanently repair the defect" and/or "replace the transmission with a different, functional transmission." (Complaint ¶¶ 113–15; see also Reply at 18 (Plaintiffs' claim for breach of express warranty is premised on "Honda's inability to provide a timely repair.").) Plaintiffs brought their vehicles in for repair, but Honda was allegedly unable to develop a fix for the Transmission Defect for at least five years. (See Complaint ¶ 112; Reply at 18.) The Ninth Circuit has held that "a repair or replace remedy fails of its essential purpose only if repeated repair attempts are unsuccessful within a reasonable time." Spindler v. Gen. Motors, LLC, 616 F. Supp. 3d 943, 948 (N.D. Cal. 2022) (quoting Philippine Nat. Oil Co. v. Garrett Corp., 724 F.2d 803, 808 (9th Cir. 1984)). Whether Honda's countermeasures were timely and effective, and whether class members were injured in the diminished value of their vehicles, are common questions that predominate over individual ones. See, e.g., In re MyFord

Touch Consumer Litig., 2016 WL 7734558, at *26 (N.D. Cal. Sept. 14, 2016) (certifying breach of express warranty claims under California and Washington law). Thus, the breach of express warranty claims are proper for certification.

e. Breach of Implied Warranty

Plaintiffs also seek certification of separate statewide classes under the implied warranty laws of California, New Jersey, Florida, and Pennsylvania. (See Motion at 25.) All of these states have adopted the Uniform Commercial Code's ("UCC") implied warranty provisions. See UCC § 2-314; Cal. Com. Code § 2314; N.J. Stat. Ann. § 12A:2-314; Fla. Stat. § 672.314; 13 Pa. Cons. Stat. § 2313. The California Class seeks certification of two implied warranty claims: one pursuant to California Commercial Code § 2314 and another pursuant to the Song-Beverly Act.[6] (See Motion at 26.)

In the automobile context, the implied warranty of merchantability "requires only that a vehicle be reasonably suited for ordinary use." Brand v. Hyundai Motor Am., 173 Cal. Rptr. 3d 454, 460 (Cal. Ct. App. 2014) (quoting Keegan v. Am. Honda Motor Co., 838 F. Supp. 2d 929, 945 (C.D. Cal. 2012)). The ordinary purpose of a vehicle is to provide "safe, reliable transportation." In re MyFord Touch Consumer Litig., 46 F. Supp. 3d 936, 980 (N.D. Cal. 2014). Generally, a vehicle should be "in safe condition and substantially free of defects." Brand, 173 Cal. Rptr. 3d at 459 (internal quotation marks and citation omitted); see also Isip v. Mercedes-Benz USA, LLC, 65 Cal. Rptr. 3d 695, 700 (Cal. Ct. App. 2007) (rejecting "the notion that merely because a vehicle provides transportation from point A to point B, it necessarily does not violate the implied warranty of merchantability").

The Court finds that Plaintiffs' breach of implied warranty claims are amenable to class-wide resolution. See, e.g., Wolin, 617 F.3d at 1173; In re MyFord, 2016 WL 7734558, at *25 (certifying breach of implied warranty claims under various states' laws). Plaintiffs allege that the Class Vehicles were defective and not of merchantable quality at the time they left Honda's possession. (See Complaint ¶ 120; Motion at 26.) A reasonable jury could conclude that a Transmission Defect that causes "sudden, unexpected shaking and violent jerking" poses a substantial safety risk such that the vehicle fails to provide safe, reliable transportation. (See Complaint ¶ 5; MTD Order at 5); see also Brand, 173 Cal. Rptr. 3d at 461 ("[A] reasonable jury

[6] There is no privity requirement for the implied warranty claim under the Song-Beverly Act. See Ehrlich v. BMW of N. Am., LLC, 801 F. Supp. 2d 908, 921 (C.D. Cal. 2010). For the UCC-based implied warranty claims under California and Florida law, privity of contract is required. See id.; In re ZF-TRW Airbag Control Units Prods. Liab. Litig., 601 F. Supp. 3d 625, 819–20 (C.D. Cal. 2022) (discussing Florida law); Mesa v. BMW of N. Am., LLC, 904 So.2d 450, 458 (Fla. Dist. Ct. App. 2005) ("Under Florida law, a plaintiff cannot recover economic losses for breach of implied warranty in the absence of privity."). This difference is immaterial because Plaintiffs allege that they are third-party beneficiaries (i.e., that Plaintiffs are the intended end-users of the vehicles). (See MTD Order at 4–5.)

could conclude that a vehicle sunroof that opens and closes ***on its own*** creates a substantial safety hazard."); Isip, 65 Cal. Rptr. 3d at 700 ("A vehicle that smells, lurches, clanks, and emits smoke over an extended period of time is not fit for its intended purpose."). Thus, the breach of implied warranty claims are proper for certification.

f. Unjust Enrichment

Finally, Plaintiffs seek certification of separate statewide classes for unjust enrichment under the laws of California, New Jersey, Florida, and Pennsylvania. (See Motion at 27.) Generally, "'unjust enrichment' does not describe a theory of recovery, but an effect: the result of a failure to make restitution under circumstances where it is equitable to do so." Cartwright v. Viking Indus., Inc., 2009 WL 2982887, at *13 (E.D. Cal. Sept. 14, 2009) (quoting Lauriedale Assocs., Ltd. v. Wilson, 9 Cal. Rptr. 2d 774, 780 (Cal. Ct. App. 1992)). "Unjust enrichment is synonymous with restitution." Durell v. Sharp Healthcare, 108 Cal. Rptr. 3d 682, 699 (Cal. Ct. App. 2010). When a plaintiff alleges an unjust enrichment claim, "a court may construe the cause of action as a quasi-contract claim seeking restitution." Resnick v. Hyundai Motor Am., Inc., 2017 WL 1531192, at *22 (C.D. Cal. Apr. 13, 2017) (quoting Astiana v. Hain Celestial Grp., Inc., 783 F.3d 753, 762 (9th Cir. 2015)).

Under California and New Jersey law, the elements of unjust enrichment are the receipt of a benefit and the unjust retention of the benefit at the expense of another. See, e.g., In re ConAgra Foods Inc., 908 F. Supp. 2d 1090, 1113 (C.D. Cal. 2012); Stewart v. Beam Glob. Spirits & Wine, Inc., 877 F. Supp. 2d 192, 196 (D.N.J. 2012). Under Florida and Pennsylvania law, the elements of an unjust enrichment claim are: (1) the plaintiff conferred a benefit on the defendant, who had knowledge thereof; (2) the defendant voluntarily accepted and retained the benefit conferred; and (3) it would be inequitable for the defendant to retain the benefit without first paying the value thereof to the plaintiff. See, e.g., Pincus v. Am. Traffic Solutions, Inc., 986 F.3d 1305, 1311 & n.8 (11th Cir. 2021); Fleming Steel Co. v. Jacobs Eng'g Grp., Inc., 373 F. Supp. 3d 567, 603–04 (W.D. Pa. 2019).

Honda argues that "[a]s a matter of law, an unjust enrichment claim does not lie where the parties have an enforceable express contract." (See Opposition at 25–26 (quoting Durell, 183 Cal. App. 4th at 1370)). Although this may be true, Honda's argument is misplaced. Honda initially moved to dismiss the unjust enrichment claim, but the Court allowed Plaintiffs to plead it in the alternative to express warranty. (See MTD Order at 11.) Then, on summary judgment, Honda neglected to raise the argument that the unjust enrichment claim was precluded by its express warranties covering the same subject matter. (See MSJ.) Now, at class certification, the Court is concerned with whether common questions predominate, not whether Plaintiffs can maintain this claim. (See Reply at 17 ("Honda merely reargues its Motion to Dismiss . . . .").)

Plaintiffs allege that class members "conferred substantial benefits on Honda by purchasing the defective Class Vehicles," that "Honda knowingly and willingly accepted and enjoyed those benefits," and that "Honda's retention of these benefits is inequitable." (Complaint ¶¶ 237–38.) The "crux" of Plaintiffs' claims is that Honda unjustly retained the

benefits of its sale of defective vehicles to consumers after it failed to disclose material facts about the defective nature of those vehicles. See Cartwright, 2009 WL 2982887, at *13. For the same reasons as discussed above with respect to Plaintiffs' fraudulent omission claims, the Court finds that common issues of fact predominate the unjust enrichment claims. See id. (certifying unjust enrichment claim); see also Dzielak v. Whirlpool Corp., 2017 WL 6513347, at *19 (D.N.J. Dec. 20, 2017) (same); Carroll v. Stettler, 2011 WL 5008349, at *4–5 (E.D. Pa. Oct. 19, 2011) (same). Thus, the unjust enrichment claims are proper for certification.

g. Damages

The Court next considers whether Plaintiffs' proposed damages model—specifically, a benefit of the bargain model—satisfies the predominance requirement. As discussed above, in order to certify a class under Rule 23(b)(3), a court must find that "questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). "Although uncertain damages calculations do not alone defeat certification, Yokoyama v. Midland Nat'l Life Ins. Co., 594 F.3d 1087, 1094 (9th Cir. 2010), the Supreme Court has emphasized that 'at the class-certification stage (as at trial), any model supporting a plaintiff's damages case ***must be consistent*** with its liability case.'" Nguyen v. Nissan N. Am., Inc., 932 F.3d 811, 817 (9th Cir. 2019) (quoting Comcast Corp. v. Behrend, 569 U.S. 27, 35 (2013) (internal quotation marks omitted)).

The Ninth Circuit has clarified that "Comcast did not alter our holding that individualized damages issues do not alone defeat certification." Nguyen, 932 F.3d at 817; see also Pulaski & Middleman, LLC v. Google, Inc., 802 F.3d 979, 988 (9th Cir. 2015) ("Yokoyama remains the law of this court, even after Comcast."); Jimenez v. Allstate Ins. Co., 765 F.3d 1161, 1168 (9th Cir. 2014) ("So long as the plaintiffs were harmed by the same conduct, disparities in how or by how much they were harmed did not defeat class certification."). However, Comcast requires that the plaintiffs translate "the ***legal theory of the harmful event*** into an analysis of the economic impact ***of that event***." 569 U.S. at 38 (citation omitted). That is, "the plaintiffs must be able to show that their damages stemmed from the defendant's actions that created the legal liability." Leyva v. Medline Indus. Inc., 716 F.3d 510, 514 (9th Cir. 2013). Fundamentally, damages must be "capable of measurement on a classwide basis." Comcast, 569 U.S. at 34.

Here, Plaintiffs propose a damages model that calculates, on a class-wide basis, the economic impact of Honda's alleged misconduct. (See Motion at 29.) Plaintiffs' expert, Mr. Boedeker, measured this economic impact by calculating the difference between the price consumers paid and the price they would have paid if they had known about the Transmission Defect. (See Boedeker Report at 62.) "Sometimes this difference is also referred to as a price premium." (Id.) In essence, this measures a loss of the benefit of the bargain. To quantify this amount, Mr. Boedeker used a survey methodology known as "choice-based conjoint analysis," which measures respondents' willingness to pay for a product with or without a particular attribute of the product (i.e., a Honda Odyssey with or without the Transmission Defect). (See id.) He explained that "by multiplying the percentage economic loss per unit . . . with the price and number of units purchased by class members during the class period," one can calculate

class-wide damages. (See id. at 63.) In his report, Mr. Boedeker translates Plaintiffs' "legal theory of the harmful event into an analysis of the economic impact of that event," which is all that is required at certification. Comcast, 569 U.S. at 38. Thus, the Court concludes that Plaintiffs' damages model satisfies Comcast.

Alternatively, Plaintiffs may calculate class-wide damages based on Honda's internal records regarding the cost of repair. (See Ninth Circuit Order at 4.) According to Plaintiffs, Honda selected low-cost fixes rather than providing an Engine Control Unit ("ECU") update that would have cost Honda $30 million or more. (Motion at 8; see L-3 at 898.) As discussed above, Plaintiffs seek the benefit of the bargain damages, which focus on the benefits received at the time of purchase. (See Ninth Circuit Order at 4); Nguyen, 932 F.3d at 820; Pulaski, 802 F.3d at 989. The Ninth Circuit reasoned that "the cost of repair—whether or not that cost is borne by a plaintiff—can be relevant to determining 'the difference between what was paid and what a reasonable consumer would have paid at the time of purchase without the fraudulent or omitted information.'" (Ninth Circuit Order at 4 (quoting Nguyen, 932 F.3d at 820).) A cost-of-repair damages model also satisfies Comcast. See Nguyen, 932 F.3d at 821 ("Plaintiff has demonstrated the nexus between his legal theory—that Nissan violated California law by selling vehicles with a defective clutch system that was not reflected in the sale price—and his damages model, the average cost of repair.").

Further, the Court is convinced by Plaintiffs' supplemental briefing that post-sale events, such as certain Plaintiffs' resale of their vehicles, do not undermine the damages calculation. (See Pl. Supp. at 3–6.) In Pulaski, the Ninth Circuit held that a damages calculation "need not account for benefits received after purchase because the focus is on the value of the service ***at the time of purchase***." 802 F.3d at 989 (emphasis added). In calculating restitution, "the focus is on the difference between what was paid and what a reasonable consumer would have paid at the time of purchase without the fraudulent or omitted information." Id. The Ninth Circuit has since applied this reasoning to a benefit of the bargain theory of damages. See Maldonaldo v. Apple, Inc., 2021 WL 1947512, at *24 (N.D. Cal. May 14, 2021) (citing Nguyen, 932 F.3d at 820–21). In Nguyen, the plaintiff's theory was that "the defect was inherent in each of the Class Vehicles at the time of purchase, regardless of when and if the defect manifested." 932 F.3d at 819. The Nguyen court found that "Plaintiff's theory of liability—that Nissan's manufacture and concealment of a defective clutch system injured class members at the time of sale—is consistent with his proposed recovery based on the benefit of the bargain." Id. at 822. Here too, Plaintiffs' post-sale conduct is irrelevant because benefit of the bargain damages should be measured at the time of sale. See, e.g., Victorino v. FCA US LLC, 2022 WL 3691642, at *3 (S.D. Cal. Aug. 25, 2022) (finding that resale of the defective product is immaterial); Maldonaldo, 2021 WL 1947512, at *24; Carriuolo, 823 F.3d at 990 ("[T]he fact of resale is immaterial because the injury occurred when class members paid a price premium at the time of lease or purchase."). Accordingly, Plaintiffs satisfy the predominance requirement.

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2. Superiority

Finally, the Court considers whether "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The superiority test requires a court to determine whether maintenance of the litigation as a class action is efficient and fair. See Wolin, 617 F.3d at 1175–76. "Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification." Id. at 1175. In Wolin, the Ninth Circuit found that the "amount of damages suffered by each member is not large." Id. at 1176. "Forcing individual vehicle owners to litigate their cases, particularly where common issues predominate for the proposed class, is an inferior method of adjudication." Id. Here too, recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis. It is far more efficient to litigate common questions, such as whether Class Vehicles have a Transmission Defect, on a class-wide basis rather than through thousands of individual lawsuits. Thus, the Court concludes that a class action is the superior method of adjudicating this case.

V. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the Motion. The Court **CERTIFIES** the following classes:

> California Class: All persons or entities who purchased or leased model year 2012 Touring and Touring Elite Honda Odysseys with VINs in the range 5FNRL5H…CB053446 through 5FNRL5H…CB148157, model year 2013 Touring and Touring Elite Honda Odysseys, and model year 2014 to 2016 Honda Odysseys (collectively, "Class Vehicle(s)") in California from American Honda Motor Company or through an American Honda Motor Company dealership. The California Class is certified for the following claims: (a) violation of the California Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750, et seq.; (b) violation of the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, et seq.; (c) breach of the California Song-Beverly Consumer Warranty Act ("Song-Beverly Act"), Cal. Civ. Code § 1790, et seq.; (d) breach of implied warranty under state law; (e) breach of express warranty under state law; (f) unjust enrichment under state law; and (g) injunctive and declaratory relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, and state law. The Court appoints Plaintiffs Ray Seow and Bryan Lentz as the class representatives for the California Class.
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> Pennsylvania Class: All persons or entities who purchased or leased a Class Vehicle in Pennsylvania from American Honda Motor Company or through an American Honda Motor Company dealership. The Pennsylvania Class is certified for the following claims: (a) breach of implied warranty under state law; (b) breach of express warranty under state law; (c) unjust enrichment under state law; and (d) injunctive and declaratory relief under the Declaratory Judgment Act and state law.

The Court appoints Plaintiff Dennis MacDougall as the class representative for the Pennsylvania Class.

New Jersey Class: All persons or entities who purchased or leased a Class Vehicle in New Jersey from American Honda Motor Company or through an American Honda Motor Company dealership. The New Jersey Class is certified for the following claims: (a) violation of the New Jersey Consumer Fraud Act ("NJCFA"), N.J. Stat. Ann. § 56:8-1, et seq.; (b) breach of implied warranty under state law; (c) breach of express warranty under state law; (d) unjust enrichment under state law; and (e) injunctive and declaratory relief under the Declaratory Judgment Act and state law. The Court appoints Plaintiff Prabhanjan Kavuri as the class representative for the New Jersey Class.

Florida Class: All persons or entities who purchased or leased a Class Vehicle in Florida from American Honda Motor Company or through an American Honda Motor Company dealership. The Florida Class is certified for the following claims: (a) violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201, et seq.; (b) breach of implied warranty under state law; (c) breach of express warranty under state law; (d) unjust enrichment under state law; and (e) injunctive and declaratory relief under the Declaratory Judgment Act and state law. The Court appoints Plaintiff Joseph Ryan Parker as the class representative for the Florida Class.

The Court also appoints the law firms of Whitfield Bryson & Mason LLP; Berger & Montague, P.C.; and Bronstein Gewirtz & Grossman as class counsel.

IT IS SO ORDERED.