UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARY TAPPANA et al., Plaintiffs, v. AMERICAN HONDA MOTOR CO., INC., Defendant.	CV 21-9046 DSF (PLAx) Order DENYING Motion to Dismiss (Dkt. 39)

Defendant American Honda Motor Co., Inc. moves to dismiss claims asserted by Plaintiffs and putative class members Mary Tappana, Mark Cabrera, Jeffery Edelheit, Dustin Fulcomer, Holly Prouty, Darryl Roberts, Alischa Wilson, and Andrew Coleman. Dkt. 39-1 (Mot.). Plaintiffs oppose. Dkt. 43 (Opp'n). The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. Honda's motion is DENIED.

I. BACKGROUND

Honda is headquartered in Torrance, California and distributes, markets, services, repairs, and sells Honda and Acura vehicles, including the ones purchased by Plaintiffs. Dkt. 32 (FAC) ¶ 64. Plaintiffs are individuals who purchased or leased new Honda and Acura vehicles from authorized Honda and Acura dealers, and whose sunroofs allegedly "spontaneously exploded." Tappana resides in Missouri. Id. ¶ 7. Cabrera and Coleman reside in Illinois. Id. ¶¶ 14, 56. Edelheit, Prouty, and Wilson reside in California. Id. ¶¶ 21, 35, 49. Fulcomer resides in Florida, id. ¶ 28, and Roberts resides in Washington, id. ¶ 42.

Plaintiffs allege that 2015-2022 Honda and Acura vehicles (the Class Vehicles) include sunroofs, which are pieces of glass embedded in the roof of motor vehicles. Id. ¶ 67. The Class Vehicles' sunroofs are made of tempered glass, which is "generally made by shaping and cutting a piece of annealed glass that is then heated and rapidly cooled." Id. ¶¶ 68-69. "This tempering process creates an outer layer of compression that is shrink-wrapped around the middle of the glass, which is constantly pressing outwards," and "[i]f the outer layer is compromised then the entire piece of glass explosively shatters" and "can explode suddenly, causing thousands of pieces of glass to rain down at once onto the driver and occupants of the vehicle, as well as those nearby." Id. ¶¶ 69-70. The tempered glass used by Honda in the Class Vehicles includes sodium carbonate and calcium oxide, known as "soda-lime glass," which is a lighter-weight glass that reduces the weight of the vehicles and can increase fuel efficiency. Id. ¶ 74. Plaintiffs allege the manufacturing process of soda-lime glass is "substandard, dangerous, and inadequate" and that an "insufficient manufacturing process results in sunroofs with significant calcium inclusions, which creates a heightened risk of spontaneous breakage." Id. ¶ 76. Plaintiffs further allege that "[i]n the Class Vehicles, Defendants failed to utilize an appropriate manufacturing process of the sunroof panels, thereby causing significant calcium inclusions to be contained within the Sunroofs" (the Defect). Id. ¶ 77.

Plaintiffs bring claims as a putative class action for breach of the implied warranty of merchantability under the law of several states; breach of express warranty; breach of implied warranty under the Song-Beverly Act; violation of the California Consumers Legal Remedies Act (CLRA); California Unfair Competition Law; Missouri Merchandising Practices Act; Washington Consumer Protection Act (WCPA); Florida Deceptive and Unfair Trade Practices Act; Illinois Consumer Fraud and Deceptive Business Practices Act; fraudulent concealment; and unjust enrichment. Id. ¶¶ 126-263.

II. LEGAL STANDARD

Rule 12(b)(6) allows an attack on the pleadings for failure to state a claim on which relief can be granted. "[W]hen ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). However, a court is "not bound to accept as true a legal conclusion couched as a factual allegation." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" Id. (alteration in original) (quoting Twombly, 550 U.S. at 557). A complaint must "state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570. This means that the complaint must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. There must be "sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively . . . and factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

Ruling on a motion to dismiss will be "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.'" Iqbal, 556 U.S. at 679 (alteration in original) (citation omitted) (quoting Fed. R. Civ. P. 8(a)(2)).

Under Federal Rule of Civil Procedure 9(b), fraud claims must be pleaded with particularity. Kearns v. Ford Motor Co., 567 F.3d 1120, 1126 (9th Cir. 2009). "[A] plaintiff must set forth *more* than the neutral facts necessary to identify the transaction." In re GlenFed, Inc. Sec. Litig., 42 F.3d 1541, 1548 (9th Cir. 1994). Fraud allegations must "be specific enough to give defendants notice of the particular misconduct

so that they can defend against the charge and not just deny that they have done anything wrong." Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003).

III. DISCUSSION

A. Plaintiffs Plausibly Pleaded the Defect

All of Plaintiffs' claims are based on the presence of an alleged defect. Honda argues Plaintiffs' claims should be dismissed because they failed to identify the alleged defect. Mot. at 8.

To survive a motion to dismiss, Plaintiffs must describe the alleged defect in sufficient detail. In Wilson v. Hewlett-Packard Co., 668 F.3d 1136, 1143 (9th Cir. 2012), a consumer class action brought against HP for allegedly concealing a design defect in its laptop computers, the circuit held the district court "did not err in requiring Plaintiffs to allege that the design defect caused an unreasonable safety hazard" and noted the plaintiffs "describe[d] the design defect in some detail."

Plaintiffs allege that the Defect is caused by Honda's use of tempered glass in the sunroofs of the Class Vehicles, which is "generally made by shaping and cutting a piece of annealed glass that is then heated and rapidly cooled." FAC ¶ 69. "This tempering process creates an outer layer of compression that is shrink-wrapped around the middle of the glass, which is constantly pressing outwards. If the outer layer is compromised then the entire piece of glass explosively shatters" and can "explode suddenly, causing thousands of pieces of glass to rain down at once onto the driver and occupants of the vehicle, as well as those nearby." Id. ¶¶ 69-70. Plaintiffs allege that the tempered glass used by Honda in the Class Vehicles includes sodium carbonate and calcium oxide, known as "soda-lime glass," which is a lighter-weight glass that reduces the weight of the vehicles and can increase fuel efficiency. Id. ¶ 74. They allege the manufacturing process of soda-lime glass is "substandard, dangerous, and inadequate" and that an "insufficient manufacturing process results in sunroofs with significant calcium inclusions, which creates a heightened risk of

spontaneous breakage." Id. ¶ 76. Plaintiffs contrast Honda's use of tempered glass to some other automakers' use of laminated glass for sunroofs, which "can reduce the risk of sudden explosions." Id. ¶ 71.

Honda also argues Plaintiffs failed to identify whether the Defect is one in manufacturing or design and that "Plaintiffs are only speculating as to what the defect might be" and therefore cannot "describe it consistently, much less with particularity." Mot. at 10. However, the Court finds Plaintiffs' allegations are sufficiently specific as to the nature of the alleged defect, and Plaintiffs may seek the specific mechanical details of the defect during discovery. See Cholakyan v. Mercedes-Benz USA, LLC, 796 F. Supp. 2d 1220, 1237 n.60 (C.D. Cal. 2011) ("Plaintiff is not required to plead the mechanical details of an alleged defect in order to state a claim."). In Johnson v. Nissan N. Am., Inc., another case involving exploding sunroofs, the district court explained that the defendant vehicle manufacturer "could not have intended for the panoramic sunroofs to explode" and "[t]he numerous examples of exploding sunroofs in the First Amended Complaint suggest that these vehicles 'c[ame] off the assembly line in a substandard condition.' This could be due to a defect in manufacturing rather than a design defect." 272 F. Supp. 3d 1168, 1178 (N.D. Cal. 2017) (simplified). ("Discovery may show that this defect is one in design, and Nissan is welcome to revisit the issue later in the proceedings. For now, plaintiffs' allegations are sufficient to establish their right to discovery to investigate the potential causes.").

Finally, Honda argues Plaintiffs have not alleged Honda's sunroofs have broken more often than those of other manufacturers, or that the sunroofs in the Class Vehicles have broken more often than those of other model years. Mot. at 11. Honda cites no authority requiring Plaintiffs to make such allegations.

The Court DENIES Honda's motion to dismiss for failure to allege a defect.

B. Standing

Next, Honda argues Plaintiffs lack Article III standing to bring claims for injuries to owners of vehicle models that Plaintiffs did not buy or lease. Mot. at 11. Plaintiffs' putative class definition includes "[a]ll persons or entities in [the] United States who purchased or leased a Class Vehicle," which is defined as "all model year 2015-2022 Honda and Acura vehicles equipped with a sunroof or moonroof manufactured with tempered glass." FAC ¶ 116. However, Plaintiffs' vehicles represent only six models: 2016 Honda Civic, 2022 Acura MDX, 2019 Acura TLX, 2019 Acura TLX, 2020 Honda Odyssey, 2021 Honda Pilot, and 2017 Honda Accord. Id. ¶¶ 8, 15, 29, 36, 43, 50, 57.

District courts within the Ninth Circuit are split as to whether named plaintiffs may represent class members who did not buy the same product as they did; some courts apply the "substantial similarity" approach, while others have rejected that approach. See Mot. at 11-12 (citing Lorentzen v. Kroger Co., 532 F. Supp. 3d 901, 908 (C.D. Cal. 2021) (acknowledging split of authority, stating "'substantial similarity analysis appears to be inconsistent with the basic concept of standing" and dismissing claims based on non-purchased products); Figy v. Frito-Lay N. Am., Inc., 67 F. Supp. 3d 1075, 1084 (N.D. Cal. 2014) (denying motion to dismiss for lack of standing based on non-purchased products because plaintiffs adequately alleged those products were substantially similar to the ones plaintiffs purchased); Zakikhan v. Hyundai Motor Co., No. 8:20-cv-01584-SB-(JDEx), 2021 WL 4805454, at *5 (C.D. Cal. June 28, 2021) (citing Lorentzen and dismissing claims based on non-purchased products); Cordes v. Boulder Brands USA, Inc., No. CV 18-6534 PSG (JCx), 2018 WL 6714323, at *5 (C.D. Cal. Oct. 17, 2018) (stating dismissal of claims based on non-purchased products is generally reserved for the class certification stage but dismissing plaintiff's claims because he did not allege in the complaint that all of the defendant's products had the same defect); Opp'n at 8-10 (collecting cases, including Banks v. R.C. Bigelow, Inc., 536 F. Supp. 3d 640, 650 (C.D. Cal. 2021) (denying motion to dismiss

for lack of standing where plaintiffs "identified the products which they challenge and plausibly allege that the products are substantially similar" and noting defendants may raise this issue at the class certification stage).

Plaintiffs allege "the Class Vehicles all utilize the same tempered glass Sunroofs, which can be identified by part number during discovery." FAC ¶ 79. Plaintiffs also allege "the physical makeup of the Sunroofs in the Class Vehicles is the same (i.e., the use of the same thin, tempered Soda-lime Glass containing the same manufacturing defects), and they only differ in size to accommodate the different sized Sunroof assemblies found across the Class Vehicles." Id. The Court agrees with Plaintiffs that this is an argument more appropriately addressed at the class certification stage of the proceedings. See Banks, 536 F. Supp. 3d at 650.

The Court agrees with DENIES Honda's motion to dismiss for lack of standing.

C. Implied Warranty (Counts 1 and 3)

Honda argues Plaintiffs' claims for breach of the implied warranty of merchantability (Count 1) and the Song-Beverly Act (Count 3) fail because Plaintiffs do not allege facts showing their vehicles were unfit for their ordinary purpose, and because Plaintiffs lack privity. Mot. at 13.

1. Merchantability

First, Honda contends Plaintiffs' implied warranty claims fail because, while Plaintiffs experienced a "startling event that distracted them while they were driving," this does not make their vehicles unfit for the purpose of transportation. Mot. at 14. This position is inconsistent with California law interpreting the Song-Beverly Act, which recognizes that "a merchantable vehicle under the statute requires more than the mere capability of "just getting from point 'A' to point 'B.'" Brand v. Hyundai Motor Am., 226 Cal. App. 4th 1538, 1546 (2014). "[A]n important consideration under the implied warranty is

consumer safety." Id. at 1547. Brand rejected the argument made by Honda here that an easily fixable defect does not violate the implied warranty. Id. (rejecting car manufacturer's argument that "the *single, minor* problem with [plaintiff's] sunroof, which was easily fixable, was insufficient to support a finding of liability on a breach of implied warranty theory."). Plaintiffs also assert implied warranty claims under the laws of Missouri, Florida, Washington, and Illinois, and under the common law of California. FAC ¶ 127. Honda argues that under these states' laws, Plaintiffs have not alleged their vehicles were unmerchantable because under the laws of each of those states, the implied warranty of merchantability guarantees only that the product is fit for its ordinary purpose. Mot. at 13.

Here, Plaintiffs allege that when their sunroofs shattered while they were driving, they were distracted and put themselves and others at risk of collision. FAC ¶¶ 11, 18, 25, 32, 39, 46, 53, 60. Taking these allegations as true, it is plausible that the spontaneous shattering of the sunroofs in Plaintiffs' vehicles caused a safety hazard that made their vehicles unsafe to drive – and therefore unfit for their ordinary purpose. Moreover, it is likely that if Plaintiffs knew there was a possibility the sunroofs of their vehicles might explode, they would not have purchased the vehicles. Plaintiffs have plausibly stated their vehicles were unmerchantable for purposes of their Song-Beverly Act claim.

2. Privity

Second, Honda argues Plaintiffs' implied warranty claims under the laws of Florida, Illinois, Washington, and under the common law of California, fail for lack of privity. Mot. at 14-15. Plaintiffs do not dispute they lack privity with Honda, but argue that their claims survive the motion to dismiss because they are third-party beneficiaries. Opp'n at 14.

With respect to the California law implied warranty claim, Honda responds that the third-party beneficiary exception is not recognized in the context of an implied warranty claim and that the

Ninth Circuit's decision in Clemens v. DaimlerChrysler Corp., 534 F.3d 1017 (9th Cir. 2008), is inconsistent with such an exception. Dkt. 44 (Reply) at 4-5. But Clemens did not expressly consider the third-party beneficiary exception. The circuit court dismissed an implied warranty claim for lack of privity, noting that "California courts have painstakingly established the scope of the privity requirement under California Commercial Code [§] 2314, and a federal court sitting in diversity is not free to create new exceptions to it." Clemens, 534 F.3d at 1024. This Court "concurs with many of the courts in the Ninth Circuit and determines that where a plaintiff sufficiently pleads that he or she is a third-party beneficiary to a contract that gives rise to the implied warranty of merchantability, he or she may assert a claim for the warranty's breach." Id.

The laws of Washington, Illinois, and Florida also provide for an exception to the privity requirement when a plaintiff is a third-party beneficiary. See Tex Enterprises, Inc. v. Brockway Standard, Inc., 149 Wash. 2d 204, 210 (2003) (acknowledging third-party beneficiary exception under Washington law for claim for implied warranty of merchantability); O'Connor v. Ford Motor Co., 567 F. Supp. 3d 915, 944 (N.D. Ill. 2021) (finding third-party beneficiary exception to implied warranty of merchantability claim under Illinois law existed but was not plausibly alleged because "no Illinois Plaintiff has alleged any facts to satisfy this exception."); Merino v. Ethicon Inc., 536 F. Supp. 3d 1271, 1286 (S.D. Fla. 2021) ("Florida law recognizes that, in some situations, a person who is not a party to a contract can enforce the terms of the contract if the provisions of the contract primarily and directly benefit the third party or a class of persons of which the third party is a member.") (citing Weiss v. Gen. Motors LLC, 418 F. Supp. 3d 1173, 1183 (S.D. Fla. 2019)).

Plaintiffs allege in their first and second claims that "Plaintiffs and each of the Class members are the intended third-party beneficiaries of contracts between Honda and its dealers, and specifically of Honda's implied warranties." FAC ¶¶ 136, 149. Further, Plaintiffs allege Honda did not intend for the dealers to be the ultimate consumers of the Class Vehicles, and the warranty agreements "were

designed for and intended to benefit consumer end-users only." Id. Plaintiffs have stated a claim under California common law and the laws of Washington, Illinois, and Florida.

The Court DENIES Honda's motion to dismiss Plaintiffs' claim for breach of the implied warranty of merchantability (Count 1) and DENIES the motion to dismiss as to the Song-Beverly Act claim (Count 3).

D. Express Warranty (Count 2)

Honda contends Plaintiffs' express warranty claim fails because Honda's warranty does not cover broken glass "unless it is due to a defect in material or workmanship." Mot. at 13, 15. Honda argues Plaintiffs have alleged only a design defect, which cannot be the basis for an express warranty claim. Id. at 15. Honda cites Woo v. Am. Honda Motor Co., 462 F. Supp. 3d 1009, 1017 (N.D. Cal. 2020), in which the court dismissed the express warranty claim because the plaintiffs had alleged the defect was one "in material and/or workmanship" but "include[d] no facts to support such conclusory assertion." In contrast, Plaintiffs have alleged not only that the Defect "is a defect in materials and/or workmanship" but that it is caused by excessive calcium inclusions when the manufacturing process is "insufficient." FAC ¶¶ 69-70, 76, 143.

The Court DENIES the motion to dismiss as to the express warranty claim (Count 2).

E. Fraud Claims

Honda argues Plaintiffs' fraud claims, asserted in Counts 4-9, fail because (1) they identify no false or misleading representations; (2) they have not adequately alleged their fraud-by-omission claims; (3) their fraudulent concealment claim is barred by the economic loss rule; and (4) two plaintiffs' fraud claims are time-barred. Mot. at 16-20.

1. False or Misleading Representations

Where a plaintiff alleges fraud in the complaint, Rule 9(b) requires a plaintiff to "state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). A party must set forth "the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentation." Odom v. Microsoft Corp., 486 F.3d 541, 553 (9th Cir. 2007). Rule 9(b) also applies to claims that are "grounded in fraud" or "sound in fraud." Vess v. Ciba-Geigy Corp., U.S.A., 317 F.3d 1097, 1103-04 (9th Cir. 2003).

Honda argues Plaintiffs failed to allege with particularity any misrepresentations, Mot. at 16. In their Opposition, Plaintiffs contend they did not assert a misrepresentation claim and instead rely on their fraudulent omission arguments. Opp'n at 15, 21.

2. Fraud By Omission

"Because the Supreme Court of California has held that nondisclosure is a claim for misrepresentation in a cause of action for fraud, it (as any other fraud claim) must be pleaded with particularity under Rule 9(b)." Kearns v. Ford Motor Co., 567 F.3d 1120, 1127 (9th Cir. 2009). Generally, a plaintiff must plead the "time, place, and specific content" of allegedly fraudulent conduct to satisfy Rule 9(b). See Swartz v. KPMG LLP, 476 F.3d 756, 764 (9th Cir. 2007). "When a claim rests on allegations of fraudulent omission, however, the Rule 9(b) standard is somewhat relaxed because 'a plaintiff cannot plead either the specific time of [an] omission or the place, as he is not alleging an act, but a failure to act.'" Herremans v. BMW of N. Am., LLC, No. CV 14-02363 MMM (PJWx), 2014 WL 5017843, at *9 (C.D. Cal. Oct. 3, 2014) (alterations in original) (quoting Cirulli v. Hyundai Motor Co., No. SACV 08-0854 AG (MLGx), 2009 WL 5788762, *4 (C.D. Cal. June 12, 2009)). To plead their claims for fraud by omission, Plaintiffs must both "describe the content of the omission" and "where the omitted information should or could have been revealed." Erickson v. Bos. Sci. Corp., 846 F. Supp. 2d 1085, 1093 (C.D. Cal. 2011). These same requirements apply to Plaintiffs' fraud claims under the laws of

Illinois, Missouri, Florida, and Washington. See Demaria v. Nissan N. Am., Inc., No. 15 C 3321, 2016 WL 374145, at *11 (N.D. Ill. Feb. 1, 2016); Elfaridi v. Mercedes-Benz USA, LLC, No. 4:16 CV 1896 CDP, 2018 WL 4071155, at *5 (E.D. Mo. Aug. 27, 2018); Aprigliano v. Am. Honda Motor Co., 979 F. Supp. 2d 1331, 1343 (S.D. Fla. 2013); Short v. Hyundai Motor Co., 444 F. Supp. 3d 1267, 1281 (W.D. Wash. 2020).

Plaintiffs have pleaded their omission-based claims with particularity. The FAC describes in detail the nature of the Defect. Plaintiffs also allege with particularity that Honda had notice of the Defect at the time the Class Vehicles were sold to Plaintiffs. With respect to the notice requirement, Plaintiffs may allege "general rather than particularized allegations" of Honda's state of mind. Odom v. Microsoft Corp., 486 F.3d 547, 554 (9th Cir. 2007). Plaintiffs allege Honda was previously sued for allegedly exploding sunroofs, FAC ¶ 87; consumers complained to Honda on third-party websites about its sunroofs, id. ¶¶ 114-15; and Honda conducts presale durability testing metrics and quality assurance activities, id. ¶¶ 94-100. Taken together, the Court finds Plaintiffs have alleged both the Defect and Honda's notice of it with particularity.

The Court DENIES Honda's motion to dismiss Plaintiffs' claims to the extent they are based on fraud by omission.

3. Economic Loss Rule

"The economic loss rule requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual promise." Robinson Helicopter Co. v. Dana Corp., 34 Cal. 4th 979, 988 (2004). The doctrine "hinges on a distinction drawn between transactions involving the sale of goods for commercial purposes where economic expectations are protected by commercial and contract law, and those involving the sale of defective products to individual consumers who are injured in a manner which has traditionally been remedied by resort to the law of torts." Id. (citing Neibarger v. Universal Cooperatives, Inc., 439 Mich. 512, 521 (1992)).

The purpose of the rule is to "prevent[] the law of contract and the law of tort from dissolving one into the other." Id. (quoting Rich Prods. Corp. v. Kemutec, Inc., 66 F. Supp. 2d 937, 939 (E.D. Wis. 1999)).

The economic loss rule does not apply where "the duty that gives rise to tort liability is either completely independent of the contract or arises from conduct which is both intentional and intended to harm." Id. at 990 (citing Erlich v. Menezes, 21 Cal. 4th 543, 552 (1999)). In addition, the doctrine does not apply when:

> (1) the breach is accompanied by a traditional common law tort, such as fraud or conversion; (2) the means used to breach the contract are tortious, involving deceit or undue coercion; or (3) one party intentionally breaches the contract intending or knowing that such a breach will cause severe, unmitigable harm in the form of mental anguish, personal hardship, or substantial consequential damages.

Id. (citing Erlich, 21 Cal. 4th at 553-54).

In Robinson Helicopter, the California Supreme Court held a consumer's fraud and intentional misrepresentation claim was not barred because it was based on allegations that the defendant had not just delivered defective helicopter parts, but had also issued false certificates stating those parts complied with certain safety standards and failed to provide information that would have allowed the plaintiff to sooner discover and replace the defective parts. Id. at 991 ("[T]he economic loss rule does not bar [the plaintiff's] fraud and intentional misrepresentation claims because they were independent of [the defendant's] breach of contract."). The court stated the exception from the economic loss rule was "narrow in scope and limited to a defendant's affirmative misrepresentations on which a plaintiff relies and which expose a plaintiff to liability for personal damages independent of the plaintiff's economic loss." Id. at 993.

In In re Ford Motor Co., 483 F. Supp. 3d at 841, the district court addressed fraudulent omission, specifically fraudulent inducement by concealment, claims in connection with an allegedly defective dual-

clutch powershift transmission. The court found the plaintiff's claims were barred by the economic loss rule because "Plaintiff's harm is purely economic and derives from Ford's alleged breach of its warranty obligation to fix or replace the vehicle if it is defective. Stated differently, the foundation of Plaintiff's claim is that his expectations about the vehicle were frustrated because it did not work properly as Ford promised it would." Id. at 848.

The court went on to hold that none of the exceptions set forth in Robinson Helicopter applied to save the plaintiff's claim. Id. The court found "Robinson Helicopter provides that a claim for fraud by *affirmative misrepresentation* may avoid the economic loss rule, but it does not establish any other exception, such as a for a claim for fraud by omission, as Plaintiff argues for in this case." Id. at 849; see also Goldstein v. Gen. Motors LLC, No. 3:19-CV-1778-JLS-AHG, 2021 WL 364140, at *9 (S.D. Cal. Feb. 3, 2021) ("The narrowly tailored exception to the economic loss rule articulated in Robinson Helicopter does not extend to fraudulent omission claims."). The court further rejected the contention that Robinson Helicopter recognized an exception for exposure to potential liability for a defective product in the absence of an affirmative misrepresentation. In re Ford Motor Co., 483 F. Supp. 3d at 849. The court noted the plaintiff did not allege fraudulent conduct "similar to the issuance of false certificates in Robinson Helicopter, or conduct that is otherwise sufficiently independent of Ford's contractual/warranty obligations to repair or replace the vehicle, as would be required to exempt his fraudulent omission claim from the economic loss rule." Id. The claim was therefore barred. Id.

Honda argues Plaintiffs seek only economic damages and do not allege any personal injury or damage to other property. Mot. at 19-20. Honda also argues Plaintiffs allege only fraud by omission, rather than an affirmative misrepresentation. Id. at 20. The Court agrees with Honda that Plaintiffs do not allege damages other than economic damages resulting from the Defect. See FAC ¶¶ 251-256. As the Court notes below, while Plaintiffs may bring a claim for equitable relief in the alternative, the FAC as drafted does not include allegations that

permit an inference that Plaintiffs suffered damages other than their economic damages.

This result also accords with the reasoning in other district court cases addressing the economic loss rule in similar situations. See Kelsey v. Nissan N. Am., No. CV 20-4835 MRW, 2020 WL 4592744, at *2 (C.D. Cal. July 15, 2020) ("Numerous California federal courts sitting in diversity have applied the economic loss rule to prohibit a follow-on fraudulent inducement claim in run-of-the-mill Song-Beverly Act warranty breach actions."); Traba v. Ford Motor Co., No. 2:18-cv-00808-SVW-GJS, 2018 WL 6038302, at *4 (C.D. Cal. June 27, 2018) ("Here, the alleged fraudulent concealment resulted only in Plaintiffs' 'disappointed expectations' because of Defendant's alleged broken promise: the vehicle allegedly failed to conform to express and implied warranties. . . . Therefore, the economic loss rule precludes Plaintiffs' fraud claims."); Crystal Springs Upland Sch. v. Fieldturf USA, Inc., 219 F. Supp. 3d 962, 970 (N.D. Cal. 2016) ("The clear pattern that emerges from these cases is that a negligent misrepresentation claim paralleling a contract claim that prays only for economic damages will be barred by the economic loss rule unless the plaintiff alleges both that the defendant made an affirmative misrepresentation, and that the defendant's misrepresentation exposed the plaintiff to independent personal liability."); but see Hastings v. Ford Motor Company, et al., No. 19-cv-02217-BASMDD, at 9-10 (S.D. Cal. Oct. 2, 2020) (No. 40) (holding a plaintiff's "fraud claim is based on his allegation that Ford Motor Company's intentional omission of a known safety defect in the Vehicle from disclosure exposed him to the risk of accident, injury, and personal liability that he did not voluntarily assume. Those damages are independent of his economic loss from a simple breach of contract." (citations omitted)).

Plaintiffs' fraudulent concealment claim is barred by the economic loss rule. The Court DISMISSES Plaintiffs' claim for fraudulent concealment.

4. Allegedly Time-Barred Claims

Honda argues the fraud claims brought by Plaintiffs Prouty and Roberts under California and Washington law, respectively, are time-barred because the applicable four-year statute of limitations ran before they brought suit. Plaintiffs argue that under the discovery rule, Prouty's and Roberts' claims are timely.

"Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was *caused by wrongdoing*, that someone has done something wrong to her." Jolly v. Eli Lilly & Co., 44 Cal. 3d 1103, 1110 (1988) (emphasis added). "[A] potential plaintiff who suspects that an injury has been wrongfully caused must conduct a reasonable investigation of all potential causes of that injury. If such an investigation would have disclosed a factual basis for a cause of action, the statute of limitations begins to run on that cause of action when the investigation would have brought such information to light." Fox v. Ethicon Endo-Surgery, Inc., 35 Cal. 4th 797, 808–09 (2005). However, "a plaintiff's ignorance of wrongdoing involving a product's defect will usually delay accrual because such wrongdoing is essential to that cause of action." Id. at 813.

Prouty and Roberts allege they could not have learned of the Defect until it arose, and there were no symptoms before their sunroofs shattered, so they had no reason to investigate. FAC ¶¶ 39, 41, 46, 48, 124. Both Prouty and Roberts timely filed suit after discovering the Defect. Under the discovery rule, Prouty's and Roberts' causes of action accrued on July 22, 2020 and October 27, 2021, respectively, and are not time-barred.

F. WCPA Safe Harbor

Honda moves to dismiss Roberts' claim under the WCPA because the WCPA's safe harbor provision permits "actions or transactions permitted by any . . . regulatory body or officer acting under statutory authority of this state or of the United States . . . ." Mot. at 21 (citing Wash. Rev. Code § 19.86.170). Honda argues that because federal law

permits the use of tempered glass in vehicles, it is not liable under the WCPA. Plaintiffs argue that the gravamen of the WCPA claim is that Honda used *defective* tempered glass, not just that Honda used tempered glass, without disclosing the defect and honoring warranty claims in good faith. The Court agrees with Plaintiffs that Honda's characterization of the WCPA does not accurately state the theory of liability Plaintiffs allege in the FAC: "Honda also engaged in unfair and deceptive trade practices in violation of Washington law by promoting the quality and functionality of the Class Vehicles, while failing to disclose and actively concealing the Sunroof Defect." FAC ¶ 220. Because the WCPA safe harbor provision is inapplicable and Honda does not challenge the WCPA claim on any other grounds, the Court DENIES the motion to dismiss the WCPA claim.

G. Equitable Relief

Finally, Honda moves to dismiss Plaintiffs' claims for equitable relief through their CLRA, UCL, and unjust enrichment claims (Counts 4, 5, and 11) on the basis that Plaintiffs have not alleged they lack an adequate remedy at law. Plaintiffs allege they lack an adequate remedy at law for the equitable relief they seek, FAC ¶¶ 204, 259, which consists of "an order enjoining Honda from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint, or, at a minimum, to provide Plaintiffs and Class members with appropriate curative notice regarding the existence and cause of the Sunroof Defect," id. at 55. Courts within the Ninth Circuit are split on whether it is appropriate to dismiss claims for equitable relief at the motion to dismiss stage, and the Court follows other courts that have declined to dismiss such claims.

The Court DENIES Honda's motion to dismiss Plaintiffs' claims for equitable relief.

IV. CONCLUSION

Honda's motion to dismiss is DENIED.

IT IS SO ORDERED.

Date: July 5, 2022

Dale S. Fischer
United States District Judge