THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

DAVID CHAPPELL, RICHARD BALDWIN, MICHELLE COCKERHAM, UPENDER REDDY GONE, and NIDAL BARAKAT, individually, and on behalf of a class of similarly situated individuals, Plaintiff, v. MERCEDES-BENZ USA, LLC and MERCEDES-BENZ GROUP AG f/k/a DAIMLER AG, Defendants.	Case No. 1:24-cv-01989-TWT

DEFENDANT MERCEDES-BENZ USA, LLC'S MOTION TO DISMISS FIRST AMENDED CLASS ACTION COMPLAINT

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INTRODUCTION

Plaintiffs cannot hold Mercedes-Benz USA, LLC ("MBUSA") liable for a purported unform "defect" supposedly affecting thousands of cars simply because their few vehicles had tires punctured one or more times. Tires unfortunately regularly get damaged for reasons that have nothing to do with a defect; tire issues are a "natural and expected consequence of tire ownership." *Robinson v. Am. Honda Motor Co.*, 551 F.3d 218, 224 (4th Cir. 2009). It is common sense and generally known that, in addition to wear and tear, tires can be punctured or deflated by screws, nails, or other road debris, and other symptoms alleged by plaintiffs (e.g., sidewall "bubbling" and blowouts) can be caused by hitting things like potholes and curbs (sometimes well after the impact itself occurs), or vehicle overloading. And all of these non-defect issues can cause things like cracked rims.

Though plaintiffs repeatedly use the term "configuration defect," they allege no ***facts*** showing a defect; the closest they come is to claim that the wheel and tire "configuration . . . is insufficient to withstand the weight of" every Mercedes-Benz sedan with 21-inch AMG V-multispoke wheels from year 2021 to the present ("Class Vehicles"). Dkt. 28 (Compl. ¶¶ 4, 95).

But the weight ("load") limitations of the tires were not concealed—they are printed directly on the tire and the vehicle itself, determined in compliance with federal regulations, and explained at length in materials accompanying each vehicle.

See Request for Judicial Notice ("RJN") Ex. 1 at 380-82. Similarly, plaintiffs cannot claim a "warranty" contradicting this disclosed load limit. Because plaintiffs allege no facts showing that their tires were unable to bear weight consistent with the disclosed, federally regulated load limits, their Complaint should be dismissed.

All of plaintiffs' claims fail for additional reasons, too. For example, their express warranty claims are precluded by the plain language of the New Vehicle Limited Warranty ("NVLW"), which plainly states that it does not cover tire punctures and does not cover design issues of the type alleged. Plaintiffs' implied warranty claims fare no better, as they fail for lack of privity and because plaintiffs have not alleged facts showing that their vehicles are unfit for driving.

Plaintiffs' fraud-based claims independently fail because they do not identify a single fraudulent statement or omission (let alone one upon which they relied), and they have not alleged facts showing MBUSA's pre-sale knowledge or a duty to disclose, as required. Additionally, plaintiffs' claims for unjust enrichment, declaratory and injunctive relief are all legally defective for various reasons.

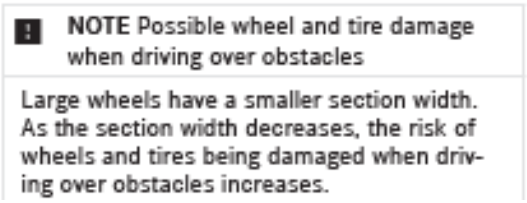
BACKGROUND

MBUSA Discloses Load Limits and the Possibility of Tire Damage from Road Hazards and Excludes Warranty Coverage for Such Occurrences

Plaintiffs allege one or more tire punctures for their vehicles at issue. Plaintiff Chappell alleges that while on a 2,500-mile cross-country trip, he experienced two punctures of his front driver's-side tire, both of which were

replaced by Mercedes-Benz dealerships. Compl. ¶¶ 18–21. Chappell does not allege that he ever experienced any further issue. *Id*. ¶ 23. The remaining plaintiffs also only allege that they experienced one or more blown out tires or bubbling for unspecified reasons. *Id*. ¶¶ 30-32, 46, 59, 69. Not a single plaintiff alleges any facts showing what caused their tire issues or that such issues were caused by a "defect" affecting thousands of cars, or even any reason covered by the NVLW as opposed to the more plausible explanation—that the issues were caused by road debris, speed bumps, manhole covers, potholes, curbs, or driver behavior (including failure to comply with the load limits), or other non-covered conditions.

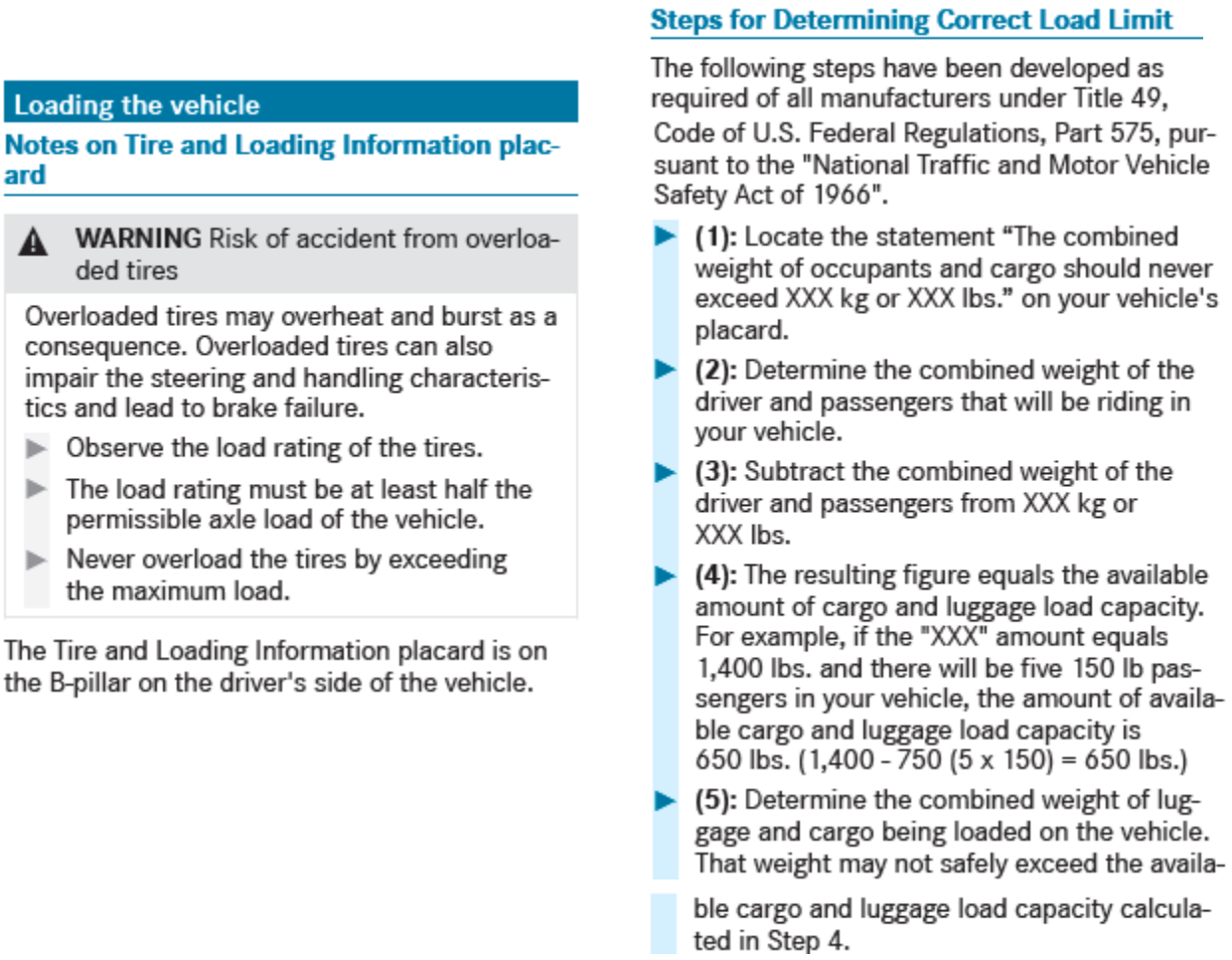
The Owner's Manual accompanying plaintiffs' vehicles plainly discloses that this kind of damage to tires may occur due to road conditions and obstacles, especially with large wheels, like the 21-inch wheels at issue here:



NOTE Possible wheel and tire damage when driving over obstacles

Large wheels have a smaller section width. As the section width decreases, the risk of wheels and tires being damaged when driving over obstacles increases.

See RJN Ex. 1 at 393. It also provides express disclaimers and warnings related to the load of the vehicles (e.g., "Overloaded tires may overheat and burst") and details the maximum vehicle load weight calculation in accordance with federal regulations.



Loading the vehicle

Notes on Tire and Loading Information placard

⚠ **WARNING** Risk of accident from overloaded tires

Overloaded tires may overheat and burst as a consequence. Overloaded tires can also impair the steering and handling characteristics and lead to brake failure.

- Observe the load rating of the tires.
- The load rating must be at least half the permissible axle load of the vehicle.
- Never overload the tires by exceeding the maximum load.

The Tire and Loading Information placard is on the B-pillar on the driver's side of the vehicle.

Steps for Determining Correct Load Limit

The following steps have been developed as required of all manufacturers under Title 49, Code of U.S. Federal Regulations, Part 575, pursuant to the "National Traffic and Motor Vehicle Safety Act of 1966".

- **(1):** Locate the statement "The combined weight of occupants and cargo should never exceed XXX kg or XXX lbs." on your vehicle's placard.
- **(2):** Determine the combined weight of the driver and passengers that will be riding in your vehicle.
- **(3):** Subtract the combined weight of the driver and passengers from XXX kg or XXX lbs.
- **(4):** The resulting figure equals the available amount of cargo and luggage load capacity. For example, if the "XXX" amount equals 1,400 lbs. and there will be five 150 lb passengers in your vehicle, the amount of available cargo and luggage load capacity is 650 lbs. (1,400 - 750 (5 x 150) = 650 lbs.)
- **(5):** Determine the combined weight of luggage and cargo being loaded on the vehicle. That weight may not safely exceed the available cargo and luggage load capacity calculated in Step 4.

Id. at 380, 381. The load limit of the tires is printed directly on the tires and, as set forth above, it also is on stamped onto the vehicle itself. Plaintiffs never allege that the Class Vehicles failed to comply with these disclosed weight limitiations.

Further, the NVLW, which plaintiffs incorporate by reference, expressly excludes coverage for tire damage due to road conditions:

> Items Which Are Not Covered:
>
> TIRE AND RIM DAMAGE: Damage to the tires such as punctures, cuts, snags, bruises, impact damage and breaks resulting from pothole impact, curb impact, or from other objects/road hazards is not covered. Damage from incorrect

RJN Ex. 2 at 18. It further states that MBUSA "will make any repairs or

replacements necessary to correct defects in material or workmanship, **but not design**, arising during the warranty period." *Id.* at 13. Just as the NVLW says, MBUSA did not cover plaintiffs' tire replacements. Compl. ¶¶ 22, 37, 49, 61, 81.

Plaintiffs assert express and implied warranty, state consumer protection law, and common law fraudulent concealment claims under Florida, California, and Nevada law, as well as Magnuson Moss Warranty Act ("MMWA") claims. Plaintiffs also assert claims for unjust enrichment and declaratory and injunctive relief. Plaintiffs seek to represent a class of all individuals in the United States and certain state subclasses who purchased or leased any Class Vehicle, whether or not they have ever experienced any issues with their tires. *Id*. ¶ 136.

Plaintiffs Acknowledge That MBUSA and MBG Are Distinct Entities

Plaintiffs allege that MBUSA and MBG are distinct entities, noting that MBUSA is headquartered in the State of Georgia while MBG is a German corporation. *Id*. ¶¶ 85–86. They allege that the two entities have distinct roles; MBUSA markets and distributes vehicles in the United States, while MBG designs and manufactures them. *Id*. Despite this, all allegations in the Complaint are alleged against a single "Defendant" entity, "Mercedes." *See generally* Compl. MBG has not yet been served and has not appeared in this matter.

LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain

sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations omitted). Though the Court must accept all well-pleaded facts as true and construe them in the light most favorable to the plaintiff, "the Court need not accept as true Plaintiff's legal conclusions, including those couched as factual allegations." *Barnes v. AstraZeneca Pharms. LP*, 253 F. Supp. 3d 1168, 1172 (N.D. Ga. 2017). Plaintiffs must "plead sufficient facts to support each element of [each] claim" in "order to survive [a defendant's] motion to dismiss." *Newbauer v. Carnival Corp.*, 26 F.4th 931, 935 (11th Cir. 2022). A party alleging fraud must satisfy a heightened pleading standard and "state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b).

ARGUMENT

I. MBUSA's Disclosures Foreclose All Claims.

A. MBUSA Disclosed the Load Limitations, Which Comply with Federal Law, and the Possibility of Tire Damage—Foreclosing All Fraud-Based Claims.

Plaintiffs bring claims premised on an alleged "failure to disclose material facts" (Compl. ¶ 1) that the tires on thousands of vehicles were "insufficient to withstand the weight of such vehicles." *Id.* ¶ 4. According to plaintiffs, information about their alleged inability to "withstand the weight" of Class Vehicles was "unavailable to consumers." *Id.* ¶¶ 4, 6. Yet information about the

load capacity of the vehicles was provided directly to consumers with the purchase of their vehicles, as well as stamped on the tires and vehicles themselves and set forth in the Owner's Manual. *See, e.g.*, RJN Ex. 1. Plaintiffs never allege facts showing that the vehicles do not comply with these disclosed load capacities.

The Owner's Manual contains nearly 30 pages of information and disclosures related to the wheels and tires, including the very information that plaintiffs claim MBUSA "actively concealed." *Id*. ¶¶ 4, 7. On page 380 of the manual, MBUSA provides an express disclaimer on the dangers of overloaded tires, including that tires may burst. RJN Ex. 1 at 380. MBUSA then proceeds to provide detailed information to explain how to calculate maximum load, and the only representation related to weight limit is that these calculations "have been developed as required of all manufacturers under Title 49, Code of U.S. Federal Regulations, Part 575, pursuant to the 'National Traffic and Motor Vehicle Safety Act of 1966.'" *Id*. at 380. In addition to providing this information in the manual, all tires on the vehicles themselves specify the maximum permissible weight for which the tire is approved. *Id*. at 386. The information also is stamped onto the vehicle, as reflected *id.* at 380. MBUSA expressly warns "do not overload the tires by exceeding the specified load limit." *Id*. at 386. Tellingly, plaintiffs do not (and cannot) allege that MBUSA did not comply with the relevant federal regulations in determining the appropriate weight limit—or disclosing these facts.

In addition to disclosing the load limitations, MBUSA also disclosed the possibility of wheel and tire damage due to things like "curbs, speed bumps, manhole covers and potholes" and warned consumers that "larger wheels have a smaller section width" and "[a]s the section width decreases, the risk of wheels and tires being damaged when driving over obstacles increases." *Id.* at 393. Thus, plaintiffs' theory that MBUSA "actively concealed" that its tires may experience "tire blowouts, tire punctures, sidewall bubbling, tire deflation, and cracked rims" is belied by the manual's express disclosures that these types of incidents may occur. Compl. ¶¶ 7, 95. These disclosures foreclose all of plaintiffs' fraud-based claims. *See, e.g.*, *Sponchiado v. Apple Inc.*, 2019 WL 6117482, at *6 (N.D. Cal. Nov. 18, 2019) (the presence of a disclaimer may defeat a claim of deception).

B. The Disclosures Show There Is No "Concealed Defect," Foreclosing the Entire Complaint.

Despite these clear disclosures, plaintiffs allege that all Class Vehicles contain a "configuration defect" which "is insufficient to withstand the weight of" such vehicles. Compl. ¶ 4. As the disclosures show, plaintiffs "ha[ve] not nudged [their] claims" of a concealed defect "across the line from conceivable to plausible." *Iqbal*, 556 U.S. at 680.

Not a single plaintiff provides any facts to explain how the tire punctures they faced were due to a systematic, uniform concealed defect affecting thousands of vehicles, as opposed to the more plausible explanation, that tires may be punctured,

deflate, or bubble due to numerous reasons other than a defect—including either failure to comply with the load limitations, or another external factor such as road conditions, debris, or driver behavior. As the Fourth Circuit has recognized, tire punctures are a "natural and expected consequence of tire ownership." *Robinson*, 551 F.3d at 224. The fact that tires were punctured and deflated is not sufficient to "rise to the level of plausibility" that a "defect was the cause." *Yagman v. Gen. Motors Corp.*, 2014 WL 4177295, at *3 (C.D. Cal. Aug. 22, 2014). In other words, the complaint only "pleads facts that are merely consistent with defendant's liability, and thus, stops short of the line between possibility and plausibility of entitlement to relief." *Id.* at *3 (cleaned up, quoting *Iqbal*, 556 U.S. at 678).

Plaintiffs further allege that earlier, pre-2021 models of the Class Vehicles had non-defective wheels that were "appropriate" and "sufficient," and that "Mercedes" was aware that a different wheel configuration was needed, they never explain how or in what ways the later tire configurations differed or how they suddenly became defective in 2021. Compl. ¶ 9. Nor do plaintiffs provide any factual allegations to show what motive there was to suddenly and knowingly decide to sell defective wheels. It is plainly implausible that MBUSA marketed and distributed an "appropriate[ly]" and "sufficient[ly]" configured wheel prior to 2021, and then, for apparently no reason at all, intentionally decided to market and distribute allegedly defective wheels. *Id.* ¶ 9. Plaintiffs do not nudge their claims

from "conceivable to plausible," as required, and their allegations should not be credited. *Iqbal*, 556 U.S. at 680; *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

II. Plaintiffs Cannot Plead Facts Giving Rise to Nationwide Claims.

"Plaintiffs cannot use class actions to escape pleading requirements." *In re Sony Grand Wega KDF-E A10/A20 Series Rear Projection HDTV Litig.*, 758 F. Supp. 2d 1077, 1096 (S.D. Cal. 2010). On a Rule 12(b)(6) motion, the Court must determine whether the "factual matter [alleged], accepted as true" states a claim for relief. *Iqbal*, 556 U.S. at 678. The Court cannot conduct a Rule 12(b)(6) analysis in the abstract but instead must determine whether each claim is based on factual allegations establishing ***every*** element of the claim.

Plaintiffs do not allege facts showing which state's law applies to their nationwide claims (Counts 11-15), but because it cannot plausibly be a single state's law, the nationwide claims must be dismissed. *See Callen v. Daimler AG*, 2021 WL 4523436, at *4 (N.D. Ga. Oct. 4, 2021). The Supreme Court of Georgia clarified in 2020 that "[w]hen a civil tort action is brought in a Georgia court for a harm that was sustained in an out-of-state jurisdiction," the doctrine of lex loci delicti applies, and "the law of the place where the injury was sustained governs." *Auld v. Forbes*, 848 S.E. 2d 876, 894 (Ga. 2020). In *Auld*, the Supreme Court of Georgia held that Georgia law did ***not*** apply to a claim brought by an out of state plaintiff against

several Georgia defendants when the alleged injury was sustained out of state. *Id*. at 895. Similarly, here, no plaintiff alleges an injury in Georgia, and accordingly, Georgia law cannot apply to a nationwide class for claims based in tort, including fraudulent concealment. Instead, plaintiffs each can only state a claim for relief under the law of states where they purchased their vehicle. *Id.*; *see also, e.g.*, *Berry v. Budget Rent a Car Sys., Inc.*, 497 F. Supp. 2d 1361, 1369 (S.D. Fla. 2007).

Further, Georgia law cannot apply to a nationwide class unless Georgia "has a significant aggregation of contacts to the claims asserted by each member of the [potential] class, contacts creating state interests, in order to ensure that the choice of [Georgia] law is not arbitrary or unfair" under the Due Process Clause. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821 (1985). *Parker v. Perdue Foods, LLC*, recently confirmed that plaintiffs—as the proponent of nationwide class claims—have the burden, and that the relevant due process analysis is whether the potential *class members* "interacted with Georgia in a significant way, in relation to the underlying claims" does not involve defendant's contacts with the forum state. 2024 WL 3993855, at *3, *8 (M.D. Ga. Aug. 29, 2024). *Parker* recognized that "numerous courts have held that the substantial variations in law among the fifty states regarding unjust enrichment" and accordingly, claims for unjust enrichment, cannot be brought on a nationwide basis. *Id*. at *10 (cleaned up). "Indeed, some states preclude such claims when an adequate legal remedy is available, and many

states say the existence of an enforceable contract will preclude an unjust enrichment claim. . . . The ability of some plaintiffs to bring a claim in some states while others cannot bring the same claim in their home state is the quintessential example of differences in legal theories that makes class treatment disfavored." *Id.*

The same reasoning applies to plaintiffs' alleged nationwide claims under the MMWA (Counts 11 and 12) as such claims depend on the underlying state warranty laws, many of which are based in statute, and are governed by the laws of each putative class members' home state. *McCabe v. Daimler AG*, 948 F. Supp. 2d 1347, 1364 (N.D. Ga. 2013). As demonstrated in this Motion, even among the four states at issue here, these laws and available defenses vary, and similarly cannot be brought on a nationwide class consistent with *Shutts* and due process. *See, e.g.*, *infra*, section III.B (Nevada and California express warranty claims require pre-suit notice); III.C (Florida express warranty claims require privity).

III. Plaintiffs' Express Warranty Claims Fail on Multiple Grounds.

A. Plaintiffs' Alleged Tire Damage Is Not Covered by the NVLW for Two Separate Reasons.

The NVLW, which plaintiffs allegedly "rel[ied] on" (Compl. ¶ 8), excludes coverage for plaintiffs' claims, in a section titled "Items Which Are Not Covered: TIRE AND RIM DAMAGE." RJN Ex. 2 at 18. To state a claim for breach of warranty (Counts 1, 4, and 8), a plaintiff must allege facts showing that the claimed breach is covered by the terms of the warranty. *Underwood v. O'Reilly Auto Parts*,

Inc., 671 F. Supp. 3d 1180, 1191–92 (D. Nev. 2023). "[L]iability for breach of an express warranty derives from, and is measured by, the terms of that warranty." *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 525 (1992); *see, e.g.*, *Minkler v. Apple Inc.*, 65 F. Supp. 3d 810, 816-17 (N.D. Cal. 2014); *Toca v. Tutco, LLC*, 430 F. Supp. 3d 1313, 1325 (S.D. Fla. 2020). The same is true for an express warranty claim under the Song-Beverly Act. *Pineda v. Nissan N. Am., Inc.*, 2022 WL 2920416, at *3 (C.D. Cal. July 25, 2022).

Plaintiffs' claims here are precluded by the plain language of the NVLW because: (1) the NVLW does not cover tire damage resulting from potholes, curbs, or other road hazards; and (2) the NVLW does not cover design defects.

MBUSA did ***not*** warrant that the tires would never puncture, bubble, or otherwise fail. To the contrary, the NVLW makes plaintiffs aware that tires often fail for different reasons, and states that "damage to the tires such as punctures, cuts, snags, bruises, impact damages and breaks resulting from pothole impact, curb impact, or from other objects/road hazards is not covered," thus excluding plaintiffs' claims from coverage. RJN Ex. 2 at 18; *see, e.g.*, *McCabe*, 948 F. Supp. 2d at 1359–60 (dismissing express warranty claims based on limitations in NVLW).

Separately, plaintiffs allege their tires "were defectively designed." *See, e.g.*, Compl. ¶¶ 104 (complaint at top of 22 claiming that alleged inability to "tolerate the loads" (weight) "is a design defect"), 163, 176 (alleging "the defective

design of [putative class vehicles'] wheels and/or tires"). Yet the NVLW says that the warranty covers a "defect in material or workmanship, **but not design**." RJN Ex. 2 at 13 (emphasis added). "[T]he vast weight of authority hold[s] that a workmanship and materials warranty cannot encompass a design defect claim." *Nelson v. Nissan N. Am., Inc.*, 2014 WL 7331075, at *3 (D.N.J. Dec. 19, 2014). (citations omitted); *Troup v. Toyota Motor Corp.*, 545 F. App'x 668, 668 (9th Cir. 2013) ("[E]xpress warranties covering defects in materials and workmanship exclude defects in design.").

A manufacturing defect is an "unintended configuration" while a design defect is "an intended configuration that may produce unintended and unwanted results." *Harduvel v. Gen. Dynamics Corp.*, 878 F.2d 1311, 1317 (11th Cir. 1989). Here, plaintiffs only allege that the intended configuration of vehicle weight, wheels, and tires—and not "a deviation from the intended design during the manufacturing process"—is the alleged defect at issue. *Callen*, 2021 WL 4523436, at *3-4. Accordingly, their warranty claims must be dismissed.

B. The Nevada and California Plaintiffs Did Not Provide the Required Notice for Many of Their Claims.

Both Nevada and California law require prior notice to the warrantor (here, MBUSA) before a plaintiff may bring express warranty claims: "the buyer must within a reasonable time after the buyer discovers or should have discovered any breach notify the seller of breach or be barred from any remedy." Nev. Rev. Stat.

§ 104.2607(3)(a); Cal. Com. Code § 2607 (The buyer must, within a reasonable time after he or she discovers or should have discovered any breach, notify the seller of breach or be barred from any remedy); *Flores v. Merck & Co.*, 2022 WL 798374, at *6 (D. Nev. Mar. 16, 2022) (express warranty claim dismissed where plaintiff did not allege that she provided defendant with pre-suit notice). Furthermore, an individual cannot pursue a claim for monetary damages under the California CLRA unless they provide notice 30 days before initiating a lawsuit. *See* Cal. Civ. Code § 1782; *Cattie v. Wal-Mart Stores, Inc.*, 504 F. Supp. 2d 939, 950 (S.D. Cal. 2007) (dismissal with prejudice for failure to comply with notice requirements).

Plaintiff Chappell alleges that he provided notice to "Mercedes" by "presenting [his] vehicle to Mercedes dealerships for repairs." Compl. ¶ 153. Even if "presenting" his vehicle for repair could constitute legally sufficient notice, "Mercedes dealerships" are wholly distinct entities from MBUSA—as Chappell recognizes. *See, e.g.*, *id*. ¶ 94. He alternatively concludes, without any factual support, that he was relieved from the notice requirement because such notice would have been "futile." *Id*. ¶ 153. Conclusory allegations of futility are ***insufficient*** to avoid prerequisites to warranty claims. *See In re MyFord Touch Consumer Litig.*, 46 F. Supp. 3d 936, 971, 989 (N.D. Cal. 2014). Nor should the Court credit plaintiff Chappell's legal conclusion in any event. *Barnes v.*

AstraZeneca Pharms. LP, 253 F. Supp. 3d 1168, 1172 (N.D. Ga. 2017). California plaintiffs Gone, Barakat, and Cockerham similarly do not allege that they provided timely notice. Accordingly, Counts 1 and 4 should be dismissed.

C. The Florida Express Warranty Claims Fail for Lack of Privity.

In Florida, only a consumer in privity with a defendant can state express warranty claims. *Fed. Ins. Co. v. Bonded Lightning Prot. Sys., Inc.*, 2008 WL 5111260, at *7 (S.D. Fla. Dec. 3, 2008). Plaintiff Baldwin does not allege that he purchased or leased his vehicle from MBUSA. *See* Compl. ¶¶ 26, 287. Instead, he only claims that privity is not required because he and members of the Florida Sub-Class are intended third-party beneficiaries. Plaintiffs' argument fails as the Complaint does not allege that the parties to the contract, or the contract "clearly express[ed] . . . an intent to benefit" plaintiffs. *Caretta Trucking, Inc. v. Cheoy Lee Shipyards, Ltd.*, 647 So. 2d 1028, 1031 (Fla. App. 1994). Here, there is no clear expression of any such intent, so Count 8 fails.

D. Plaintiffs Baldwin and Barakat Do Not Plead Their Vehicles Were Within the Warranty Period.

The NVLW is limited to 48 months or 50,000 miles, whichever occurs first. Neither Baldwin nor Barakat plead that their vehicle was within the 50,000-mile limitation when they experienced issues with their tires, barring their express warranty claims. *See, e.g.*, *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017,

1023 (9th Cir. 2008) ("[W]e can hardly say that the warranty is implicated when the item fails after the warranty period expires.").

E. Plaintiffs Do Not Establish That the NVLW Is Unconscionable.

Many courts have considered and rejected plaintiffs' unconscionability claims (Compl. ¶¶ 126-29) as to this same NVLW. *See, e.g.*, *McCabe*, 948 F. Supp. 2d at 1357–58; *Seifi v. MBUSA*, 2013 WL 2285339, at *5 (N.D. Cal. May 23, 2013); *Ponzio v. MBUSA*, 447 F. Supp. 3d 194, 257 (D.N.J. 2020); *Licul v. Volkswagen Group of Am., Inc.*, 2013 WL 6328734, at *3 (S. D. Fla. Dec. 5, 2013). Plaintiffs provide no reason to depart from this sound conclusion.

IV. Plaintiffs' Fraud-Based Claims Fail for Multiple Reasons.

Plaintiffs bring claims under the Nevada DTPA (Count 2), the California CLRA (Count 6), the California UCL (Count 7), the Florida DUTPA (Count 10), and for common-law fraudulent omission[1] on behalf of the nationwide class (Count 14), premised on an allegation that "Mercedes" concealed the purported "defect." Compl. ¶ 7. These Counts each independently fail for numerous reasons.

A. Plaintiffs Do Not Plead Any Statement or Omission at All, Nor with Sufficient Particularity.

Plaintiffs' fraud-based claims, including claims under consumer protection statutes that sound in fraud, fail at the outset because they have not alleged any

[1] Plaintiffs do not identify under which state's law they bring their claims, but their claims fail under Georgia, California, Florida, and Nevada law, as shown.

specific statement or omission made by MBUSA at all, let alone with sufficient particularity to survive Rule 9(b). To the contrary, MBUSA expressly disclosed the alleged "omissions" as set forth at length in Section I, *supra*.

"In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b); *Drover v. LG Elecs. USA, Inc.*, 2012 WL 5198467, at *2 (D. Nev. Oct. 18, 2012) (Rule 9(b) applies to Nevada DPTA claims); *see, e.g.*, *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009) (UCL and CLRA claims like the ones alleged here "are subject to the heightened pleading requirements of Rule 9(b)"). To satisfy 9(b), a complaint must allege "precisely what statements or omissions were made in what documents or oral representations, who made the statements, the time and place of the statements, the content of the statements and manner in which they misled the plaintiff." *In re Theragenics Corp.*, 105 F. Supp. 2d 1342, 1348 (N.D. Ga. 2000).

Plaintiffs conclude some *twenty-four* times that "Mercedes" "fail[ed] to disclose" or "actively concealed" the alleged defect, but *not once* with a shred of any factual allegation as to how it purportedly did so or what exactly it concealed. Compl. ¶¶ 2, 7, 11, 114, 116, 155, 161, 165, 166, 191, 214, 237, 240, 256, 268, 269, 319, 324, 325, 356, 357, 365, 366, 368. As discussed above, the weight (load) limit is clearly disclosed in many places. While plaintiffs claim that "Mercedes falsely informed class members that there was no problem with their vehicle" (*see e.g.*, *id.*

¶¶ 155, 198), the Complaint nowhere identifies a single statement, advertisement, or other representation made by MBUSA, let alone the full "who, what, when, where, and how," as required under Rule 9(b). *Theragenics*, 105 F. Supp. 2d at 1348.[2]

Nor could it, when as set forth in Section I, *supra*, MBUSA has disclosed many times that tires may experience issues, including deflation or puncture. RJN Exs. 1 & 2. The Owner's Manual also warns that tires, particularly those with a "smaller section width" have a "risk of being damaged when driving over obstacles." RJN Ex. 1 at 393. The NVLW further discloses that tire damage by road hazards and other things is excluded from coverage. RJN Ex. 2 at 18. Further, MBUSA disclosed the maximum load limits in compliance with federal regulations, and warned consumers of the risk of failure to abide by such limitations. RJN Ex. 1 at 380-81. Plaintiffs have not made any allegations that MBUSA did not comply with federal regulations, or that the load limitations were not as disclosed.

Because plaintiffs do not identify any specific statement they viewed prior to purchasing their vehicles, and cannot do so, since MBUSA provided clear disclosures of such risks, dismissal of the fraud-based claims is required. *See, e.g.*, *Raie v. Cheminova, Inc.*, 336 F.3d 1278, 1282 n.1 (11th Cir. 2003) (plaintiff must

[2] The only specific statement plaintiff Chappell points to is an allegation that an independent Service Advisor told him that he should not have been sold the vehicle for a cross-country trip. Compl. ¶ 21. This was not a statement by MBUSA and plaintiff Chappell does not allege this statement was false. It also was made *after* he bought his vehicle and does not say anything about the so-called "defect."

allege "specific acts of misrepresentation or concealment"); *In re iPhone 4S Consumer Litig.*, 2014 WL 589388, at *5 (N.D. Cal. Feb. 14, 2014) ("Rule 9(b) [] requires Plaintiffs to aver specifically the statements they relied upon in making their purchases, what is false or misleading about the statements, and why those statements turned out to be false."); *see also, e.g.*, *Tsai v. Wang*, 2017 WL 2587929, at *3, *12 (N.D. Cal. June 14, 2017) (dismissing fraudulent misrepresentation and UCL claims for failing to identify statement); *Wester v. Home Sav. Mortg.*, 2012 WL 607562, at *4-*5 (D. Nev. Feb. 23, 2012) (similar).

Nor do plaintiffs sufficiently allege any omission. Despite concluding that "[d]efendant concealed […] and failed to disclose" the alleged defect, plaintiffs fail to allege any statement for which disclosure was "necessary to make [the] previous statement true." *See Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1185 (3d Cir. 1993). Absent a duty to disclose, for an omission to be actionable, the omission must be contrary to a representation actually made. *Smallman v. MGM Resorts Int'l*, 638 F. Supp. 3d 1175, 1202 (D. Nev. 2022); *Andren v. Alere, Inc.*, 207 F. Supp. 3d 1133, 1141 (S.D. Cal. 2016) (noting fraudulent omission claims, including under the UCL and common law, require "either showing that the alleged omissions are contrary to a representation actually made by the defendant, or showing an omission of a fact the defendant was obliged to disclose") (citation omitted).

These fundamental pleading failures cause plaintiffs' fraud-based claims to fail outright. *See, e.g., Smith v. Wachovia Mortg. Corp.*, 2012 WL 3222144, at *5 (D. Nev. Aug. 3, 2012) (dismissing claims for fraud and fraudulent omission for failure to allege "any fraudulent statements or omissions"); *Brazil v. Janssen Rsch. & Dev. LLC*, 249 F. Supp. 3d 1321, 1339–40 (N.D. Ga. 2016) (same).

Shotgun pleading issues also doom plaintiffs' fraud-based claims. "[I]t is impermissible to 'lump together' defendants in the fraud context; Plaintiff must assert which of the [two] Defendants represented what." *Hill v. Davol Inc.*, 2016 WL 10988657, at *8 (C.D. Cal. Nov. 16, 2016); *Swartz v. KPMG LLP*, 476 F.3d 756, 764–65 (9th Cir. 2007) ("Rule 9(b) does not allow a complaint to merely lump multiple defendants together but require[s] plaintiffs to differentiate their allegations when suing more than one defendant.").

B. Plaintiffs Do Not Allege Facts Showing Pre-Sale Knowledge by MBUSA.

Claims for fraud under Nevada, California, Florida, and Georgia law require a plaintiff to allege facts showing that the defendant had "knowledge or belief that the representation was false." *Smith*, 2012 WL 3222144, at *4; Nev. Rev. Stat. § 598.0923 (defining a deceptive trade practice as "knowingly" failing to disclose a material fact); *Meyer v. Waite*, 606 S.E.2d 16, 20 (Ga. App. 2004); *see Tsai v. Wang*, 2017 WL 2587929, at *3-4 (dismissing fraud-based claim for failure to sufficiently plead defendant's knowledge); *Epperson v. Gen. Motors, LLC*, 706 F.

Supp. 3d 1031, 1041 (S.D. Cal. 2023); *Tucci v. Smoothie King Franchises, Inc.*, 215 F. Supp. 2d 1295, 1302 (M.D. Fla. 2002) (dismissing common law fraud claim for failure to meet an element "of common law fraud . . . known by the person making the statement to be false at the time it was made.").

Of course, "factual allegations must be enough to rise above the speculative level." *LKimmy, Inc. v. Bank of Am., N.A.*, 2020 WL 13533714, at *2 (D. Nev. June 12, 2020) (citation omitted). Where "the complaint offers only conclusory allegations regarding defendant's knowledge," when knowledge is a required element, that complaint should be dismissed. *Id*. at *3; *Epperson*, 706 F. Supp. 3d at 1039-41 (dismissing plaintiff's fraudulent concealment and UCL claims; holding the "allegations regarding knowledge of falsity" were "entirely conclusory and [did] not even meet the standard of Rule 8"). Plaintiffs do not even allege that MBUSA's only representation about vehicle weight capacity was false, let alone that MBUSA had knowledge that it was false. RJN, Ex. 1.

In any event, at most, plaintiffs point to pre-production testing, warranty data, consumer complaints in online forums, and NHTSA complaints to allege knowledge. Compl. ¶¶ 96, 101. This type of conclusory pleading, including allegations that rely on these same sources of purported knowledge, has been rejected by courts across the country as insufficient to establish pre-sale knowledge. *See, e.g.*, *Snowdy v. MBUSA*, 2024 WL 1366446, at *20 (D.N.J. April

1, 2024) ("Plaintiffs must allege more than an undetailed assertion that the testing *must* have revealed the alleged defect.") (original emphasis) (collecting cases).

For example, in *Lewis v. MBUSA*, 530 F. Supp. 3d 1183, 1220 (S.D. Fla. 2021), the court rejected similar allegations concerning the same sources of alleged knowledge as insufficient to show pre-sale knowledge. The court, after noting "a survey of case law," held that general allegations related to pre-production testing, warranty data, consumer complaints to online forums, and complaints to NHTSA, "even when considered in the aggregate," are deficient. *Id*. Indeed, where, as here, plaintiffs cannot show "how or why" certain information actually revealed an alleged defect, courts reject these allegations as conclusory and insufficient to establish pre-sale knowledge. *See, e.g.*, *Harrison v. Gen. Motors, LLC*, 2023 WL 348962, at *5 (E.D. Mich. Jan. 19, 2023); *Grodzitsky v. Am. Honda Motor Co.*, 2013 WL 690822, at *6 (C.D. Cal. Feb. 19, 2013); *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1147 (9th Cir. 2012).

C. Plaintiffs Do Not Allege Facts Showing a Duty of Disclosure.

To plead fraudulent omission claims under Nevada, California, Florida, or Georgia law, plaintiff must allege facts showing a duty to disclose. *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1486 (1998), *overruled on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265 (2001) ("For a mere omission to constitute actionable fraud, a plaintiff must first demonstrate that the defendant had a duty to disclose

the fact at issue."); *Andren*, 207 F. Supp. 3d at 1141 (omission claims, including under the UCL and common law, require "either showing that the alleged omissions are 'contrary to a representation actually made by the defendant, or showing an omission of a fact the defendant was obliged to disclose'"); *Virgilio v. Ryland Grp., Inc.*, 680 F.3d 1329, 1337–38 (11th Cir. 2012).

To establish a duty to disclose under California or Nevada law, a plaintiff must allege: (1) a special relationship between plaintiff and defendant; (2) exclusive and superior knowledge by defendant; (3) active concealment of a material fact; or (4) a partial statement with an omission of a material fact. *Smallman*, 638 F. Supp. 3d at 1202 (Nevada law); *Andren*, 207 F. Supp. 3d. at 1142; *see also JDIS Grp., LLC v. 626 Holdings, LLC*, 2021 WL 4813757, at *5 (C.D. Cal. June 7, 2021) (same). In Florida and Georgia, "a duty to disclose arises 'when one party has information that the other party has the right to know because of the fiduciary or other relationship of trust or confidence between them.'" *Broward Motorsports of Palm Beach, LLC v. Polaris Sales, Inc.*, 2018 WL 1072211, at *5 (S.D. Fla. Feb. 27, 2018) (quoting *Barnes v. Burger King Corp.*, 932 F. Supp. 1420, 1429–30 (S.D. Fla. 1996)); *McCabe v. Daimler AG*, 160 F. Supp. 3d 1337, 1351 (N.D. Ga. 2015). Plaintiffs fail to plead such facts.

First, plaintiffs have not and cannot allege any "special relationship" between themselves and MBUSA. *See, e.g., id.* (a confidential or special relationship does

not exist between buyer and auto manufacturer). Instead, plaintiffs attempt to allege a duty based on the allegation that "Mercedes" had "superior and exclusive knowledge" of the alleged defect. Compl. ¶¶ 100, 106, 114, 164, 366. As set forth in Section IV.B, *supra*, plaintiffs have not adequately alleged any pre-sale knowledge by MBUSA at all, let alone knowledge that is "superior and exclusive." To the contrary, plaintiffs allege that "[f]or years, owners of [class vehicles] have publicly complained to the United States government about the [alleged defect]." Compl. ¶ 103 (emphasis added). Plaintiffs also cite several publicly available complaints to NHTSA, many of which pre-date plaintiffs' purchases, as well as eight complaints posted on public internet forums. *Id.* ¶¶ 104–05. These cannot be the basis to establish "exclusive" pre-sale knowledge when many of these were equally available to plaintiffs before they bought their vehicles. *Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1205–06 (11th Cir. 2007) ("Our duty to accept the facts in the complaint as true does not require us to ignore specific factual details of the pleading in favor of general or conclusory allegations.").

Plaintiffs also make a conclusory claim that "Defendant actively concealed the defective nature of the Class Vehicles" and "made partial disclosures about the quality of the Class Vehicles without revealing their true defective nature." Compl. ¶¶ 268, 324 (b) & (c), 366(d), (e). Plaintiffs' efforts are unavailing because plaintiffs do not allege ***facts*** showing "active concealment" by MBUSA. *See supra*

Section IV.A; *Snowdy*, 2024 WL 1366446, at *21 (active concealment allegations deficient absent sufficient knowledge allegations). And MBUSA did not make partial disclosures; MBUSA expressly disclosed in both the NVLW and Owner's Manual that tire damage may occur from road conditions and is not covered by the warranty, and expressly disclosed the load limits of the vehicles. RJN Exs. 1 & 2.

California law further requires a plaintiff to allege facts of "affirmative acts of concealment e.g., that the defendant sought to suppress information in the public domain or obscure the consumers' ability to discover it." *Taragan v. Nissan N. Am., Inc.*, 2013 WL 3157918, at *7 (N.D. Cal. June 20, 2013) (allegations that defendant "actively concealed . . . the Defect and posed a serious risk of Rollaway Danger" insufficient to allege duty to disclose) (citation omitted). "Mere nondisclosure does not constitute active concealment." *Punian v. Gillette Co.*, 2016 WL 1029607, at *16 (N.D. Cal. Mar. 15, 2016) (citation omitted); *see also, e.g., Gray v. Toyota Motor Sales, U.S.A.*, 2012 WL 313703, at *9-10 (C.D. Cal. Jan. 23, 2012) ("[I]f mere nondisclosure constituted 'active concealment,' the duty requirement would be subsumed and any material omission would be actionable. This is not the law."). "To plead active concealment, Plaintiffs must point to specific affirmative acts Defendants took in hiding, concealing or covering up the matters complained of." *Herron v. Best Buy Co.*, 924 F. Supp. 2d 1161, 1176 (E.D. Cal. 2013) (dismissing claim based on a "conclusory assertion that Defendants actively concealed material

facts from Plaintiff and the Class") (citation omitted). As in *Herron*, plaintiffs here do not allege any facts showing what MBUSA did or how it actively "conceal[ed] the existence" of anything from plaintiffs. *Id.* Nor have plaintiffs adequately alleged any facts of a "partial statement" by MBUSA that required correction.

D. Plaintiffs Do Not Allege Facts Showing Causation or Reliance on Any Particular Statement or Omission.

Common law fraud, the NDTPA, FDUTPA, and the UCL and CLRA require plaintiffs to allege facts showing causation/reliance. *Drover*, 2012 WL 5198467, at *2; *Nev. Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1417 (D. Nev. 1995); *Shea v. Best Buy Homes, LLC*, 533 F. Supp. 3d 1321, 1336–38 (N.D. Ga. 2021); *CWELT-2008 Series 1045 LLC v. PHH Corp.*, 2020 WL 2744191, at *6 (S.D. Fla. May 27, 2020); *Damabeh v. 7-Eleven, Inc.*, 2012 WL 4009503, at *5 (N.D. Cal. Sept. 12, 2012): *Resnick v. Hyundai Motor Am., Inc.*, 2017 WL 1531192, at *17–22 (C.D. Cal. Apr. 13, 2017).

Plaintiffs do not point to a single alleged misstatement or omission that they viewed or relied upon in their decision to purchase their vehicles, which bars their fraud-based claims. *See Kearns*, 567 F.3d at 1126 (affirming dismissal where plaintiff "does not, however, specify who made this statement or when this statement was made [and plaintiff] failed to articulate the who, what, when, where, and how"). Instead, plaintiffs merely conclude that they were "induce[d] to act" and "justifiably relied on Defendant's omissions to their detriment." Compl. ¶¶

116, 118, 257, 368. Plaintiffs' naked legal conclusions should be ignored. *Barnes*, 253 F. Supp. 3d at 1172; *Hindsman v. Gen. Motors LLC*, 2018 WL 2463113, at *13 (N.D. Cal. June 1, 2018) (dismissing UCL and CLRA claims because plaintiffs "have not pleaded that they reviewed any advertising materials before purchasing their Vehicles; nor have they alleged that they had specific interactions with GM before purchasing their Vehicles"); *In re iPhone 4S Consumer Litig.*, 2013 WL 3829653, at *12 (N.D. Cal. July 23, 2013) (dismissing UCL and CLRA claims for plaintiffs' failure to "specify which particular advertisements or representations [plaintiffs were] exposed to and relied upon.").

E. The Economic Loss Rule Bars Plaintiffs' Claims for Fraudulent Concealment.

While plaintiffs do not allege which state law applies to their claim for fraudulent concealment, such claims fail under Georgia, California, or Florida law. "[W]here a purchaser's expectations in a sale are frustrated because the product [s]he bought is not working properly, [her] remedy is said to be in contract alone, for [s]he has suffered only economic losses." *Epperson*, 706 F. Supp. 3d at 1043-44 (citations omitted). "For this reason, federal courts sitting in diversity jurisdiction often dismiss fraudulent concealment claims brought against vehicle manufacturers." *Id.* at 1044; s*ee also*, *e.g.*, *In re Takata Airbag Prods. Liab. Litig.*, 193 F. Supp. 3d 1324, 1339 (S.D. Fla. 2016) (Florida law); *Murray v. ILG Techs., LLC*, 378 F. Supp. 3d 1227, 1243 (S.D. Ga. 2019), *aff'd*, 798 F. App'x 486 (11th

Cir. 2020). Plaintiffs' claims "indeed allege only economic injury." *Epperson*, 706 F. Supp. 3d at 1044. Plaintiffs have not alleged any injury other than monetary damages, so their fraudulent concealment claims fail. Compl. ¶¶ 17, 20-21.

F. The Nevada Deceptive Trade Practices Act Does Not Apply Extraterritorially.

A plaintiff "cannot maintain a cause of action under the NDTPA when the challenged conduct occurred outside of Nevada." *Rimini St., Inc. v. Oracle Int'l Corp.*, 473 F. Supp. 3d 1158, 1226 (D. Nev. 2020). Mr. Chappell has not alleged any omission or statement by MBUSA that occurred in Nevada (or anywhere). He has not alleged that he was denied coverage of the warranty in Nevada either. Compl. ¶ 19 (tire replaced in Texas); *id.* ¶ 21 (tire replaced in Tennessee).

V. Plaintiffs' Implied Warranty Claims Fail on Multiple Grounds.

A. Plaintiffs Do Not Allege Facts Showing Privity with MBUSA.

"Nevada law does not allow an implied warranty claim in the absence of privity between the parties." *Miller v. DuPuy Synthes Sales, Inc.*, 837 F. App'x 472, 474–75 (9th Cir. 2020). California and Florida law similarly require privity. *See, e.g.*, *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1024 (9th Cir. 2008) (California law); *Toca*, 430 F. Supp. 3d at 1325; *Padilla v. Porsche Cars N. Am., Inc.*, 391 F. Supp. 3d 1108, 1116 (S.D. Fla. 2019) ("Time and again, Florida courts have dismissed breach of implied warranty claims under Florida law for lack of contractual privity where the plaintiff purchaser did not purchase a product directly

from the defendant."). Plaintiffs cannot allege facts showing privity with MBUSA, so plaintiffs' implied warranty claims must be dismissed (Counts 3, 5, and 9).

Plaintiffs cannot rely on an express warranty as a basis to establish privity; the required form of privity only exists between a buyer and seller who "are in adjoining links of the distribution chain." *Clemens*, 534 F.3d at 1024 (affirming dismissal of breach of implied warranty claim for lack of privity even when an express warranty existed between plaintiff and defendant manufacturer); *see also, e.g.*, *Wong v. Am. Honda Motor Co.*, 2024 WL 612939, at *1 (9th Cir. Feb. 14, 2024); *Brisson v. Ford Motor Co.*, 349 F. App'x 433, 434 (11th Cir. 2009).

B. Plaintiffs Do Not Allege Facts Showing Their Vehicles Are Unmerchantable.

The implied warranty of merchantability is only breached "when the goods manifest a defect which renders them unfit for the ordinary purpose for which they are used." *Underwood*, 671 F. Supp. 3d at 1193. Plaintiffs "must allege" that the goods were "not fit for the ordinary purposes for which such [products] are used." *Bem v. Stryker Corp.*, 2015 WL 6089819, at *2 (N.D. Cal. Oct. 16, 2015); Cal. Civ. Code § 1791.1(a)(2). In the context of vehicles, implied warranty claims are only cognizable if a plaintiff's vehicle "manifests a defect that is so basic it renders the vehicle unfit for its ordinary purposes of providing transportation." *Am. Suzuki Motor Corp. v. Superior Court*, 37 Cal. App. 4th 1291, 1296 (Cal. Ct. App. 1995); *Toca*, 430 F. Supp. 3d at 1325 ("For a good to be merchantable, . . . the goods must

. . . be fit for the ordinary purposes for which such goods are used") (citation omitted).

Tire punctures are a "natural and expected consequence of tire ownership" and do not render tires unfit for their ordinary purpose. *Robinson v. Am. Honda Motor Co.*, 551 F.3d 218, 224 (4th Cir. 2009). "[R]equir[ing] all automobile tires to last as long as the standard passenger tire would elevate durability above all other considerations in the manufacture and design of tires." *Id*. at 226. As in *Robinson*, there are multiple "trade-offs," so the merchantability of various tires "must be determined by examining whether [each type] of tire would pass objection in the trade" given various trade-offs. *Id*. at 225. Plaintiffs have not alleged facts showing that the specific size and design of their tires are unmerchantable.

For example, plaintiff Chappell alleges that he drove his vehicle on a 2,500-mile road trip and that his tires were punctured twice. Compl. ¶¶ 18–21. Despite a conclusory claim of a "safety concern" (*id*. ¶ 23), he does not allege facts showing he experienced any safety issue or any issue with his second replacement tire; only the inconvenience of needing to stay at a hotel while his tires were replaced. *Id*. ¶¶ 19–21. But neither the inconvenience Chappell experienced nor his unilateral choice to garage his vehicle make the car unmerchantable. In other words, Chappell has not alleged any facts showing the Class Vehicles are unfit to drive. Nor have any other named plaintiffs alleged that after experiencing a tire puncture or flat

tire—a common occurrence—that they were unable to safely pull over, or that their vehicles are otherwise inoperable. Plaintiffs have failed to allege unmerchantability.

VI. Plaintiffs' Claims Under the Magnuson-Moss Warranty Act Fail.

The MMWA "does not provide an independent cause of action for state law claims[.]" *McCabe*, 948 F. Supp. 2d at 1364. If there is no actionable warranty claim, there is no violation of the MMWA. *Id.* Because plaintiffs' express and implied warranty claims fail (Sections III and V, *supra*), their claims under the MMWA, Counts 11[3] and 12, fail as well. *Id.*

Additionally, the NVLW requires plaintiffs to exhaust an ADR process (BBB Auto Line) before making MMWA claims. RJN Ex. 2 at 12 ("You must submit a claim and go through the BBB Auto Line prior to exercising rights or seeking remedies pursuant to the Magnuson-Moss Warranty Act"). No plaintiff alleges they exhausted this ADR process. Plaintiffs' failure provides yet another reason to dispose of their MMWA claim. *See In re MyFord Touch*, 46 F. Supp. 3d at 989 (dismissing MMWA claim for failure to use similar BBB procedure).

VII. Plaintiffs' Unjust Enrichment Claims Fail.

A. An Unjust Enrichment Claim Cannot Lie Because the NVLW Set Forth the Terms of Repair Obligations.

[3] Count 11 also fails because the MMWA separately only permits a claim for express warranty where a defendant has failed to comply with an obligation under a written warranty. 15 U.S.C. § 2310(d)(1). As set forth above, MBUSA has complied with its warranty terms. *Supra* Section III.A.

Under Nevada, California, Florida, and Georgia law, "an unjust enrichment claim cannot lie where an express written contract exists because no agreement can be implied when there is an express agreement." *West Charleston Lofts I, LLC v. R & O Const. Co.*, 915 F. Supp. 2d 1191, 1195–96 (D. Nev. 2013); *Callen v. Daimler AG*, 2020 WL 10090879, at *13 (N.D. Ga. June 17, 2020) (same); *Toca*, 430 F. Supp. 3d at 1327 (existence of express warranty barred unjust enrichment claim under Florida law); *Paracor Fin., Inc. v. Gen. Elec. Cap. Corp.*, 96 F.3d 1151, 1167 (9th Cir. 1996) (California law).

There is no dispute that a written agreement, the NVLW, sets forth the terms of repair obligations as to the tires at issue. Count 13 therefore fails.

B. Plaintiffs' Unjust Enrichment Claims Also Fail Because They Have Not Pled Facts Showing an Inadequate Legal Remedy.

"It is undisputed that unjust enrichment" is an "equitable remed[y]." *Smallman*, 638 F. Supp. 3d at 1196 (Nevada law). "Under *Sonner*, plaintiffs must show that they lack an adequate remedy at law for their unjust enrichment claim to proceed." *Id*. (citing *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020) (California law). Because plaintiffs here fail to plead facts showing that their "alleged injuries cannot be remedied by money damages" and do not allege, "even in the alternative, that they do not have adequate legal remedies," their claims for unjust enrichment must be dismissed. *Id*. at 1198; *see also, e.g.*, *Schroeder v. United States*, 569 F.3d 956, 963 (9th Cir. 2009) (equitable relief is

"not appropriate where an adequate remedy exists at law."); *Drake v. Toyota Motor Corp.*, 2021 WL 2024860, at *6-7 (C.D. Cal. May 17, 2021) ("To proceed with their equitable claims and pursue equitable relief, Plaintiffs must plead a lack of an adequate remedy at law."); *Bolin v. Story*, 225 F.3d 1234, 1242 (11th Cir. 2000) (denying injunctive relief as "there is an adequate remedy at law").

Plaintiffs, for example with Mr. Chappell, conclude in a lone paragraph that money damages are not an adequate remedy. Compl. ¶ 361. But Chappell also alleges only economic damages, which are readily compensable via monetary damages. *See, e.g.*, Compl. ¶¶ 17, 20–21. *See In re Apple Processor Litig.*, 2023 WL 5950622, at *2 (9th Cir. Sept. 13, 2023) (affirming dismissal of unjust enrichment under *Sonner* because plaintiffs did not show monetary damages were inadequate); *Williams v. Lobel Fin. Corp.*, 673 F. Supp. 3d 1101, 1108 (C.D. Cal. 2023) ("Economic damages are not traditionally considered irreparable because the injury can later be remedied by a damage award."). Because plaintiffs have not alleged ***facts*** showing the inadequacy of monetary damages, Count 13 fails.

C. Plaintiffs Did Not Confer a Direct Benefit on MBUSA.

To state a claim for unjust enrichment under Nevada, Florida, and Georgia law, plaintiff must allege that he conferred a benefit on defendant. *Ames v. Caesars Ent. Corp.*, 2019 WL 1441613, at *5 (D. Nev. Apr. 1, 2019). Plaintiffs do not allege anywhere that they conferred a *direct* benefit on MBUSA, only that "money from

the vehicle sales flows directly back to Defendant." Compl. ¶ 356. These allegations are insufficient to establish a direct benefit, as required for an unjust enrichment claim. *See, e.g.*, *Meritage Homes of Nev., Inc. v. FNBN-Rescon I, LLC*, 86 F. Supp. 3d 1130, 1146–47 (D. Nev. 2015) (a party with downstream benefit has not been conferred a benefit sufficient to state a claim for unjust enrichment); *Bowen v. Porsche Cars, N.A., Inc.*, 561 F. Supp. 3d 1362, 1379 (N.D. Ga. 2021); *Marrache v. Bacardi U.S.A., Inc.*, 17 F.4th 1084, 1102 (11th Cir. 2021) (affirming dismissal of unjust enrichment claim under Florida law because "[plaintiff] failed to allege that he and the other class members conferred a direct benefit to [defendant]. . . . as such, cannot satisfy the first element of an unjust enrichment claim.").[4]

VIII. Plaintiffs Cannot Seek Injunctive or Declaratory Relief as a Cause of Action.

A. Injunctive Relief Is Not an Independent Cause of Action.

Injunctive relief "is not an independent, free standing cause of action," but instead is a "form of relief the court may grant." *EVIG, LLC v. Natures Nutra Co.*, 685 F. Supp. 3d 991, 996 (D. Nev. 2023); *Street v. AU Health Sys., Inc.*, 2021 WL 5514010, at *3 (S.D. Ga. Mar. 22, 2021) (same). Further, plaintiffs do not specify any declaratory relief they seek other than injunctive relief. *See, e.g.*, *Godwin v.*

[4] To the extent plaintiff Chappell asserts his unjust enrichment claim under Nevada law, it additionally fails on the ground that disgorgement is not available. *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1106 (9th Cir. 2004).

City Redev., LLC, 2018 WL 3620482, at *4 (D. Nev. July 30, 2018) (declaratory relief fails when the underlying claim fails); *Quality of Life Corp. v. City of Margate*, 805 F. App'x 762, 772 (11th Cir. 2020) (same).

Additionally, claims for unjust enrichment are not proper where—as here—there is an adequate remedy at law. *See Shay v. Apple Inc*., 2021 WL 1733385, at *3 (S.D. Cal. May 3, 2021) (collecting cases); *Scheibe v. Livwell Prods., LLC*, 2023 WL 6812550, at *3 (S.D. Cal. Oct. 16, 2023) ("[D]istrict courts have not limited *Sonner* to restitution," but have dismissed "all forms of equitable relief, including injunctive relief."). As such, Count 15 also should be dismissed.

B. Claims for Injunctive Relief in the Form of a Recall Are Preempted by Federal Law.

Plaintiffs seek a "voluntary recall" (Compl. ¶¶ 376, 377(d)) as a form of injunctive relief, but such request for relief is preempted by the Motor Vehicle Safety Act, 49 U.S.C. § 30101. *See, e.g., In re Bridgestone/Firestone, Inc. Tires Prods. Liab. Litig.*, 153 F. Supp. 2d 935 (S.D. Ind. 2001). In *Bridgestone*, the court held that because NHTSA is the "key governmental force in negotiating recalls" there is conflict preemption of plaintiffs' claim seeking a recall. *Id*. at 943-944. That is because "a parallel, competing system of court-ordered and supervised recalls would undermine and frustrate the Safety Act's objectives of prospectively protecting the public interest through a scheme of administratively enforced remedies." *Id*. at 944. This issue of preemption is appropriately decided

via a motion to dismiss. *Id*. at 940 ("[A] resolution of the preemption issue is entirely feasible and indeed, appropriate" at the pleading stage); *Cox House Moving, Inc. v. Ford Motor Co*., 2006 WL 2303182, at * 8 (D.S.C. Aug. 8, 2006).

CONCLUSION

MBUSA respectfully requests that the Court grant its Motion to Dismiss Plaintiffs' First Amended Class Action Complaint with prejudice.

Dated: November 6, 2024

Respectfully submitted,

/s/ Shaniqua L. Singleton

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 6, 2024, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

/s/ Shaniqua L. Singleton
Shaniqua L. Singleton

CERTIFICATE OF COMPLIANCE

The foregoing complies with Local Rule 5.1 and was prepared using a 14-point Times New Roman font.

/s/ Shaniqua L. Singleton
Shaniqua L. Singleton