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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

MICHAEL PARKINSON, et al.,)	SA CV 06-345 AHS (MLGx)
)	
Plaintiffs,)	MEMORANDUM OPINION ON ORDER:
)	(1) GRANTING IN PART AND
v.)	DENYING IN PART PLAINTIFFS'
)	MOTION FOR CLASS
HYUNDAI MOTOR AMERICA, et al.,)	CERTIFICATION; AND (2)
)	DENYING PARTIES' MOTIONS TO
Defendants.)	STRIKE
)	
)	

I.

PROCEDURAL BACKGROUND

On June 16, 2008, plaintiffs Michael Parkinson, Donn Schroeder, Michael K. Sano, Eric Matuschek, and Wesley Gorman (collectively, "plaintiffs") filed a Motion for Class Certification. On June 27, 2008, defendant Hyundai Motor America ("defendant") filed opposition and a Motion to Strike and Objections to Plaintiffs' Purported Statistical Data. On August 1, 2008, plaintiffs filed a Motion to Strike and Objections to Declaration of Jason R. Erb and Evidence Attached Thereto in Support of Defendant's Opposition to Motion for Class Certification. On August 6, 2008, plaintiffs filed a reply in

1 further support of the Motion for Class Certification.

2 On September 17, 2008, the Court granted the parties
3 leave to submit supplemental filings in support of their respective
4 positions regarding class certification. Plaintiffs filed a
5 supplemental reply on September 17, 2008, and defendant filed a
6 supplemental opposition on September 29, 2008.

7 All of the above matters came on for hearing on October
8 20, 2008, at the conclusion of which the Court took the matters
9 under submission. On November 6, 2008, the Court issued an Order
10 and Minute Order granting in part and denying in part plaintiffs'
11 Motion for Class Certification, noting that a memorandum opinion
12 may follow. Defendant filed a Petition for Permission to Appeal
13 with the Ninth Circuit on November 21, 2008. The Court granted in
14 part and denied in part defendant's application for a stay pending
15 appeal on November 24, 2008.¹

16 **II.**

17 **FACTUAL SUMMARY**

18 Defendant is an American subsidiary of Hyundai Motor
19 Company that distributes, markets, sells, and issues warranties for
20 Hyundai passenger vehicles. (First Am. Consolidated Compl.
21 ("FACC") ¶¶ 13-14.) In the first quarter of 2002, defendant
22 introduced the 2003 Hyundai Tiburon. (FACC ¶ 17.) According to
23 the owner's guide and handbook, the 2003 Hyundai Tiburon came
24 equipped with the "Hyundai Advantage - America's Best Warranty,"
25 which included: (1) a New Vehicle 60 Months/60,000 Miles Limited
26

27 ¹ The Court granted defendant's request to vacate the
28 December 15, 2008, Final Pretrial Conference but denied
defendant's application in all other respects.

1 Warranty; (2) a New Vehicle 120 Months/100,000 Miles Limited
2 Powertrain Warranty for original owners (60 months/60,000 miles for
3 subsequent owners); and (3) a 12 months/12,000 miles warranty for
4 "[n]ormal maintenance items" found to be "defective in material or
5 workmanship under normal use and maintenance." (Decl. of Eric H.
6 Gibbs ("Gibbs Decl."), Ex. 1 at 16, Ex. 2 at 16-17, 21, 38.)
7 Defendant expressly excluded from coverage any "damage or failure"
8 resulting from negligent maintenance, use of non-Genuine Hyundai
9 Parts, misuse, abuse, accidents, modifications, or alterations.
10 (Gibbs Decl., Ex. 2 at 18, 20.)

11 Plaintiffs are residents of various states, including
12 California, who purchased a new or used manual-transmission 2003
13 Hyundai Tiburon GT ("Tiburon"). (Mot. Class Cert. 1.) After
14 purchasing their Tiburons, plaintiffs each experienced problems
15 shifting into and between gears. Each plaintiff then spent roughly
16 \$2,000 in replacement parts and repairs.

17 Michael Parkinson purchased a new Tiburon from an Ohio
18 dealership in May 2003. (Decl. of Jason H. Anderson ("Anderson
19 Decl."), Ex. S at 248.) At approximately 30,000 miles, Parkinson
20 attempted to move his Tiburon from a parking spot but was unable to
21 shift into reverse and had trouble transitioning into other gears.
22 (Anderson Decl., Ex. R at 93:10-21.) Parkinson was able to drive
23 the vehicle home, and, the next morning, drove to a local Hyundai
24 dealership for inspection. (Anderson Decl., Ex. R at 93:14-18.)
25 Later that day, the dealership called Parkinson to inform him that
26 his "clutch had failed and that it would have to be replaced."
27 (Anderson Decl., Ex. R at 105:11-21.) Although Parkinson assumed
28 that the repair would be covered under warranty, the technician

1 determined that the problem was a "failed" clutch disc, which was
2 not covered. (See Anderson Decl., Ex. R at 107:22-23, 108:20-24.)
3 Parkinson initially disputed the warranty coverage but, ultimately,
4 paid for the repair. (Anderson Decl., Ex. R at 116:4-18, Ex. T at
5 249-50.)

6 Donn Schroeder purchased a new Tiburon from a Maryland
7 dealership in March 2003. (Anderson Decl., Ex. B at 57.) At
8 approximately 53,000 miles, he was unable to shift into reverse and
9 took the Tiburon to the dealership for repairs. (Anderson Decl.,
10 Ex. A at 75:17-25.) The service technician informed Schroeder that
11 the clutch was worn and needed replacing but the repair would not
12 be covered under the vehicle's warranty. (Anderson Decl., Ex. A at
13 89:10-14, Ex. E at 106.) Schroeder "didn't question it" and agreed
14 to pay for the repair. (Anderson Decl., Ex. A at 90:8-10.)

15 Michael K. Sano purchased a new Tiburon from a California
16 dealership in February 2002. (Anderson Decl., Ex. G at 137-38.)
17 At approximately 88,000 miles, during his drive to work, Sano
18 "[c]ouldn't get [the clutch] out of gear." (Anderson Decl., Ex. F
19 at 116:1.) Sano took his Tiburon to a dealership where a service
20 technician test-drove the vehicle and wrote an invoice identifying
21 the problem as a "bad" clutch. (Anderson Decl., Ex. F at 112:11-
22 25.) The technician recommended "replacement of clutch ass[em]bly"
23 at a quoted price of \$1,895, but Sano declined. (Anderson Decl.,
24 Ex. H at 139.) Instead, Sano had a mechanic friend make the
25 repairs. (Anderson Decl., Ex. F at 115:15-20, 118:5-7, 124:17-23.)

26 Eric Matuschek, a trained automobile mechanic and
27 professional stuntman, purchased a new Tiburon from a California
28 dealership in March 2003. (FACC ¶ 47; Anderson Decl., Ex. P at

1 27:1-16, 28:23-24, 29:2-12.) At approximately 30,000 miles,
2 Matuschek noticed what he thought to be clutch-related problems
3 while driving his Tiburon. (Anderson Decl., Ex. P at 110:4-18.)
4 He drove the vehicle to his repair shop and began researching the
5 symptoms on the Internet. (Anderson Decl., Ex. P at 114:5-22.)
6 Matuschek then called a Hyundai dealership whose representative
7 suggested that he bring the car in for inspection; however,
8 Matuschek declined when the representative estimated that the
9 repair would cost roughly \$2,600. (Anderson Decl., Ex. P at
10 114:23-25, 115:1-5.) Instead, Matuschek performed the repair
11 himself. (Anderson Decl., Ex. P at 123:5-25, 124:23-25, 128:15-17,
12 131:2-12.)

13 Wesley Gorman purchased a used Tiburon from a Florida
14 Ford dealership in March 2005. (Def.'s Opp. 9; Anderson Decl., Ex.
15 I at 146.) At the time of purchase, the vehicle had approximately
16 41,000 miles on it. (Anderson Decl., Ex. I at 146.) In May 2005,
17 Gorman took his Tiburon to a Florida Hyundai dealership to report a
18 "creeping noise" and vibration when shifting. (Anderson Decl., Ex.
19 J at 70:19-25, 71:1-2.) The Hyundai dealership told Gorman that
20 the clutch repair was not covered under warranty and suggested that
21 he take the vehicle to the original place of purchase - the Ford
22 dealership - for repairs. (Anderson Decl., Ex. J at 85:1-7, 88:5-
23 10.) When the Ford dealership also refused to cover the costs of
24 the clutch repair, Gorman purchased an aftermarket clutch and had a
25 Honda specialty shop perform the repairs. (Anderson Decl., Ex. J
26 at 85:4-21, Ex. M at 173.)

27 In March 2004, defendant released a Technical Service
28 Bulletin stating problems with the Tiburon's flywheel and clutch

1 assembly. (See FACC ¶¶ 30-31.) On March 22, 2006, Parkinson filed
2 a putative class action against defendant in Orange County Superior
3 Court. (Not. Removal, Ex. A.) Defendant filed a Notice of Removal
4 to this Court on April 4, 2006. At roughly the same time,
5 plaintiffs Gorman, Schroeder, and Sano were in the initial stages
6 of litigating putative class actions against defendant in the
7 Central District of California. (See Def.'s Mot. to Consolidate 2-
8 3.) On August 7, 2006, the Court consolidated the cases and
9 appointed interim class counsel.² Plaintiffs filed a First Amended
10 Consolidated Complaint on September 7, 2006, alleging, *inter alia*,
11 violation of the Consumers Legal Remedies Act, unfair business
12 practices, breach of written warranty under the Magnuson-Moss
13 Warranty Act, and breach of express warranty. Defendant, after
14 unsuccessfully moving to dismiss the action, filed its answer on
15 April 20, 2007.

16 Plaintiffs argue that the cause of the alleged problems
17 in plaintiffs' vehicles is a defective "flywheel system." (FACC ¶
18 29.) In all manual transmission vehicles, "the torque of the
19 engine is connected to the transmission by the clutch assembly."
20 (Decl. of Dirk Starksen ("Starksen Decl.") 3.) The Tiburon's
21 clutch assembly consists of a dual mass flywheel, a clutch disc,
22 and clutch cover assembly composed of a cover stamping, diaphragm
23 spring, and pressure plate. (Decl. of Dylan Hughes, Ex. 4 at 5;
24 Starksen Decl. 3.) The flywheel and clutch cover assembly are
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27 ² Another action, Stark v. Hyundai Motor America, CV 06-
28 3161 AHS (MLGx), was consolidated pursuant to the Court's August
7, 2006 order. Plaintiff Stark did not seek appointment as a
class representative. (Mot. Class Cert. 12 n.6.)

1 attached to the engine's driveshaft. (Starksen Decl. 3.) The
2 clutch disc is "clamped" between the flywheel and clutch cover
3 assembly. (Starksen Decl. 3.)

4 "The clutch assembly engages and disengages the engine
5 from the transmission, enabling the driver to start, stop, idle,
6 and shift gears." (Starksen Decl. 4.) When the driver presses his
7 foot on the clutch pedal, the clutch disconnects the engine from
8 the transmission. (Starksen Dec. 3.) When the driver releases the
9 clutch pedal, the clutch becomes fully engaged and connects the
10 engine to the transmission, thus enabling the automobile to drive.

11 "The principal function of the dual mass flywheel is to
12 absorb minor engine vibrations before they are transmitted to the
13 driveline where they may create gear rattle." (Starksen Decl. 3.)
14 To accomplish this, the dual mass flywheel is divided into two
15 sections: a "primary" section that connects to the crankshaft, and
16 a secondary section attached to the primary section with springs to
17 isolate and absorb engine vibrations.

18 According to plaintiffs, the Tiburon's dual mass flywheel
19 system "suffers from excessive heat build-up under normal driving
20 conditions," which, in turn, leads to premature flywheel system
21 failure, "rendering the vehicle inoperable." (Pl.'s Supp. Reply 1;
22 FACC ¶ 29.)

23 **III.**

24 **SUMMARY OF PARTIES' CONTENTIONS**

25 On May 27, 2008, plaintiffs filed a motion for
26 certification of a class consisting of:

27 All current and former owners or lessees of a
28 manual-transmission 2003 Tiburon GT, produced

1 on or before April 1, 2003, who paid for a
2 replacement to the flywheel assembly, clutch
3 disc assembly, clutch cover assembly, or clutch
4 release bearing within the applicable warranty
5 period.

6 (Mot. Class Cert. 1.) Excluded from the class are defendant,
7 Hyundai Motor Company; any affiliate, parent, or subsidiary of
8 defendant or Hyundai Motor Company; any entity in which defendant
9 or Hyundai Motor Company has a controlling interest; any officer,
10 director, or employee of defendant or Hyundai Motor Company; anyone
11 employed by counsel for plaintiffs; any judge to whom this case is
12 assigned, as well as her immediate family or staff; any person who
13 purchased a Tiburon for the purpose of resale; and those pursuing
14 claims for personal injury. (Mot. Class Cert. 7.)

15 **A. Plaintiffs' Motion for Class Certification**

16 Plaintiffs each purchased a 2003 Hyundai Tiburon GT after
17 defendant aggressively marketed the vehicle as being protected by
18 "America's Best Warranty." However, plaintiffs, like thousands of
19 others, have been wrongfully forced to bear the cost of repairing a
20 defective flywheel system.

21 The Court should certify the class because each of the
22 procedural requirements in Fed. R. Civ. P. 23 is satisfied, the
23 class action device is well suited to this case, and a class action
24 will afford a fair and efficient way of litigating the class
25 claims.

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1 **1. Class Treatment is Appropriate Under Rule 23**

2 **a. Plaintiffs Satisfy Rule 23(a)**

3 Under Fed. R. Civ. P. 23(a), the class must be so
4 numerous that joinder of all members is impracticable (numerosity),
5 there must be questions of law or fact common to the class
6 (commonality), the claims or defenses of the representative parties
7 must be typical of the claims or defenses of the class
8 (typicality), and the representative parties must fairly and
9 adequately protect the interests of the class (adequacy).

10 To satisfy the numerosity requirement, joinder of all
11 parties must be "impracticable," but not necessarily impossible.
12 Negrete v. Allianz Life Ins. Co. of N. Am., 238 F.R.D. 482, 487
13 (C.D. Cal. 2006). Plaintiffs need not identify with precision the
14 number of class members and may instead rely on reasonable
15 inferences. Westways World Travel, Inc. v. AMR Corp., 218 F.R.D.
16 223, 233-34 (C.D. Cal. 2003).

17 Plaintiffs' evidence shows that defendant sold 12,652
18 class vehicles, many of which required defective flywheel system
19 repairs that defendant failed to cover under warranty. Also,
20 defendant sold a large number of replacement flywheels and received
21 numerous complaints from Tiburon owners dissatisfied with the lack
22 of warranty coverage. These facts evidence a class whose
23 individual members would be too large to join in one action.

24 To satisfy commonality, plaintiffs may show either shared
25 legal issues with divergent facts, or a "common core of facts" with
26 divergent legal remedies. Dukes v. Wal-Mart, Inc., 509 F.3d 1168,
27 1177 (9th Cir. 2007). Moreover, the inquiry is qualitative, not
28 quantitative, and one significant issue may warrant certification.

1 Id.; Thomas v. Baca, 231 F.R.D. 397, 400 (C.D. Cal. 2005). In
2 automobile defect cases, commonality is often found when the most
3 significant question concerns the existence of a defect. See,
4 e.g., Chamberlan v. Ford Motor Co., 223 F.R.D. 524, 526 (N.D. Cal.
5 2004).

6 Plaintiffs show commonality here because the central
7 issue is whether the Tiburon flywheel system is defective.
8 Plaintiffs' allegations present a number of other common legal and
9 factual questions, including: (1) whether and to what extent
10 defendant was obligated to repair or replace allegedly defective
11 flywheel systems under the warranty; (2) whether the 12
12 months/12,000 miles warranty for the "clutch lining" applies to the
13 entire clutch disc assembly, as well as the flywheel, clutch cover,
14 and release bearing; (3) whether defendant knew or should have
15 known the flywheel system allegedly was defective; (4) whether
16 defendant had a duty to disclose the alleged flywheel system
17 problems; (5) whether the allegedly undisclosed problems would be
18 material to a reasonable consumer; (6) whether defendant engaged in
19 conduct likely to deceive a reasonable consumer; and (7) whether
20 the alleged failure to disclose or misrepresentations regarding
21 warranty coverage violated the Consumers Legal Remedies Act
22 ("CLRA") or Unfair Competition Law ("UCL").

23 A class representative's claims are typical if they are
24 "reasonably coextensive" with those of the absent class members.
25 Dukes, 509 F.3d at 1184. Plaintiffs' warranty claims are
26 "reasonably coextensive" with those of the absent class members
27 because plaintiffs and every other class member purchased a 2003
28 Tiburon with a manual transmission, experienced problems related to

1 the defective flywheel system, and paid for the repair out-of-
2 pocket, in violation of the warranty agreement. Likewise,
3 plaintiffs' consumer protection claims are "reasonably coextensive"
4 with those of absent class members because all claims arise from
5 defendant's common scheme to misrepresent its warranty and withhold
6 internal knowledge of common problems with the Tiburon's flywheel
7 system.

8 To establish that they will fairly and adequately
9 represent the interests of the class, plaintiffs must show that
10 they do not have conflicting interests with the class and that they
11 are represented by qualified, competent counsel. Id. at 1185.
12 Plaintiffs' interests and those of the unrepresented class members
13 are aligned because each suffered the same injury; there are no
14 conflicts of interest. Further, plaintiffs are represented by
15 qualified and competent counsel.

16 **b. The Case is Maintainable as a Class Action**
17 **Under Rule 23(b)(3)**

18 In addition to satisfying the requirements of Rule 23(a),
19 a party seeking certification must show that the class action fits
20 within one of the categories described in Rule 23(b). Here,
21 plaintiffs' action meets the predominance and superiority
22 requirements of Rule 23(b)(3).

23 The predominance inquiry hinges on the cohesiveness of
24 the class - whether common legal and factual questions appear more
25 significant than individual legal and factual questions. Hanlon v.
26 Chrysler Corp., 150 F.3d 1011, 1022 (9th Cir. 1998). The legal and
27 factual issues central to plaintiffs' claims are common to all
28 class members. These include allegations that the Tiburon flywheel

1 system was defective and, thus, that defendant breached its
2 warranty agreements for failing to cover the cost of repair.
3 Further, the scope of coverage under the warranty agreement is a
4 question of contract construction common to all members of the
5 class. Plaintiffs' UCL and CLRA claims also hinge on common
6 questions of law and fact, including the existence of a known
7 defect, whether defendant had a duty to disclose that defect,
8 whether it failed to do so, whether those undisclosed facts would
9 be material to a reasonable consumer, and whether defendant engaged
10 in conduct likely to deceive a reasonable consumer or comprising a
11 common scheme by applying the 12 months/12,000 miles "clutch
12 lining" warranty limitation to the entire flywheel system.

13 Individual litigation of relatively small damages claims
14 is both a burden on the judiciary and uneconomical for plaintiffs.
15 Hanlon, 150 F.3d at 1023. Few, if any, of the potential class
16 members in this action could afford individual litigation of their
17 claims, given the disparity between possible recovery and
18 litigation costs. Therefore, the class action method is superior.

19 **c. A Nation-Wide Class is Appropriate**

20 A court may certify a nation-wide class for alleged
21 violations of state law. See Phillips Petroleum Co. v. Shutts, 472
22 U.S. 797, 821, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985). For
23 certification to be proper, application of the state's laws to out-
24 of-state class members must comport with due process. Once
25 plaintiffs make this showing, the burden shifts to the non-movant
26 to show that the laws of another state apply. Wash. Mut. Bank, FA
27 v. Superior Court, 24 Cal. 4th 906, 921, 103 Cal. Rptr. 2d 320
28 (2001).

1 **i. Application of California Law Is**
2 **Constitutional**

3 To satisfy their burden, plaintiffs must show that
4 California has a significant contact or aggregation of contacts to
5 the claims of the class members to ensure that California law is
6 not being applied arbitrarily. See Wershba v. Apple Computer,
7 Inc., 91 Cal. App. 4th 224, 244, 110 Cal. Rptr. 2d 145 (2001);
8 Clothesrigger, Inc. v. GTE Corp., 191 Cal. App. 3d 605, 612-13, 236
9 Cal. Rptr. 605 (1987). Here, defendant has a substantial presence
10 in California, including in-state business practices that form the
11 core of plaintiffs' allegations. Additionally, a significant
12 number of class members reside in California.

13 Because plaintiffs have already identified significant
14 contacts, the burden shifts to defendant to show that the laws of
15 another state apply. This burden is "substantial" when defendant
16 is located in California and the alleged misconduct occurred in or
17 emanated from California. See In re Activision Sec. Litig., 621 F.
18 Supp. 415, 430 (N.D. Cal. 1985). In California, a three-step
19 "governmental interest" test is used to determine choice of law
20 questions. Under the "governmental interest" test, the Court first
21 determines whether the laws of each potentially concerned state are
22 different from those of California. Kearney v. Salomon Smith
23 Barney, Inc., 39 Cal. 4th 95, 107, 45 Cal. Rptr. 3d 730 (2006).
24 The Court then "examines each jurisdiction's interest in the
25 application of its own law." Id. If the non-forum state laws
26 differ from those of the forum state and the non-forum states have
27 an interest in applying their laws in the action, the Court will
28 select the law of the state whose interests would be most impaired.

1 Id. at 107-08.

2 Defendant cannot satisfy its burden because California's
3 consumer protection statutes, upon which some of plaintiffs' claims
4 are based, are largely homogeneous with those of the other fifty
5 states and, if anything, afford greater protection to consumers.
6 Even assuming a conflict existed, defendant cannot show that
7 another state has a more substantial interest in having its laws
8 apply to this action. California has a strong interest in policing
9 wrongful conduct allegedly occurring within its borders, including
10 when the victims of such conduct are out-of-state residents.

11 **B. Defendant's Opposition**

12 The motion for class certification should be denied
13 because factual and legal issues unique to each plaintiff
14 predominate every facet of the litigation. Several key background
15 facts illustrate this point.

16 First, individual driver habits and the driving
17 environment impact the lifespan of a clutch. Second, the purchase
18 and service process is individualized and detached from defendant.
19 For example, the Tiburon was designed and manufactured in Korea by
20 Hyundai Motor Company, then shipped to one of the 794
21 independently-owned Hyundai dealerships throughout the country.
22 Defendant only becomes involved in a warranty determination when a
23 customer disputes a dealer's coverage decision or when a dealer
24 requests assistance with a particularly difficult vehicle
25 diagnosis.

26 Third, clutch-related diagnoses are complex and highly
27 individualized. Often, the service technician must discuss the
28 symptoms with the customer and road test the vehicle to observe the

1 customer's driving habits. Like virtually all other automobile
2 manufacturers, defendant does not provide coverage where there is
3 evidence of lack of proper maintenance, abusive driving, a prior
4 accident, or modifications to the vehicle.

5 Fourth, while the class vehicle was in production, there
6 were over fifteen different component configurations of the clutch
7 assembly.

8 Fifth, the Tiburon is one of a handful of inexpensive
9 sports coupe vehicles popular with a dedicated group of "tuner"
10 enthusiasts. There is widespread evidence of owner modifications
11 to Tiburons, as well as evidence of aggressive and/or abusive
12 driving. Such evidence is readily available on the Internet, where
13 Tiburon owners post comments, photographs, and videos of their
14 modifications and driving.

15 Sixth, each of the named plaintiffs, who either modified
16 their Tiburons with performance-enhancing parts, exhibited abusive
17 driving, or conducted improper repairs, illustrate the predominance
18 of individual issues.

19 Finally, plaintiffs mischaracterize defendant's Technical
20 Service Bulletins and Quality Information Reports. Defendant
21 communicates to dealerships through Technical Service Bulletins
22 ("TSBs"), which relay diagnostic changes to a product and technical
23 changes or issues. Defendant communicates with the parent company
24 through Quality Information Reports ("QIRs"), which convey
25 information and product "brainstorming" from "the field" to Korea.
26 The TSB plaintiffs believe to be an admission of a defect is simply
27 a number change/update to defendant's catalog.

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1 **1. Plaintiffs Do Not Meet the Requirements of Rule**
2 **23(a)**

3 Certification of a class action is proper only after the
4 Court undertakes a rigorous analysis and determines that the Rule
5 23 requirements have been satisfied. Gen. Tel. Co. of Sw. v.
6 Falcon, 457 U.S. 147, 161, 102 S. Ct. 2364, 72 L. Ed. 2d 740
7 (1982).

8 Plaintiffs have not demonstrated numerosity because their
9 conclusory statement that an undefined "many" are in the proposed
10 class is insufficient and the class is unascertainable. See In re
11 Am. Med. Sys., Inc., 75 F.3d 1069, 1079 (6th Cir. 1996).

12 The remaining Rule 23(a) factors - commonality,
13 typicality, and adequacy - overlap and can be discussed together.
14 To meet these requirements, plaintiffs have simply restated the
15 basic rule and, in conclusory terms, alleged compliance. See id.
16 at 1080-81.

17 **2. Plaintiffs Do Not Meet the Requirements of Rule**
18 **23(b)(3)**

19 Under Rule 23(b)(3), plaintiffs must show that common
20 questions predominate and that the class action is a superior means
21 of litigating the case. Here, individual factual and legal issues
22 predominate, and the class action procedure is not superior to
23 litigate plaintiffs' claims.

24 Plaintiffs have not shown credible, class-wide proof of a
25 common defect. See Walsh v. Ford Motor Co., 130 F.R.D. 260, 269
26 (D.D.C. 1990). The clutch problems occurred at different mileage
27 intervals and under different driving circumstances, and, rather
28 than identify a specific defect, plaintiffs refer generally to the

1 "flywheel system," a term plaintiffs created. All but one of the
2 plaintiffs failed to retain the replaced parts, and the one who did
3 subjected them to testing. Even assuming plaintiffs can show the
4 existence of a defect, the Court must still evaluate the multiple,
5 varying reasons for denying each individual warranty claim, as well
6 as whether the defect caused the clutch repairs. See Cox House
7 Moving, Inc. v. Ford Motor Co., CA No. 7:06-1218-HMH, 2006 WL
8 3230757, at *8 (D.S.C. Nov. 6, 2006). Plaintiffs also each dealt
9 with defendant differently. All plaintiffs dealt with independent
10 dealerships, and only some plaintiffs actually contacted defendant
11 directly. Whether there was any wrongful conduct relating to the
12 denial of warranty coverage will depend on each plaintiff's
13 individual experience.

14 Moreover, each plaintiff will be subject to individual
15 defenses relating to driving habits and vehicle modifications, each
16 of which is grounds for excluding warranty coverage. Other
17 plaintiffs are subject to spoliation of evidence defenses for
18 knowingly discarding service records and conducting testing on
19 parts without defendant's knowledge.

20 Variations in state laws that overwhelm common issues of
21 fact are sufficient to preclude certification of a nation-wide
22 class. See Zinser v. Accufix Research Inst., Inc., 253 F.3d 1180,
23 1189 (9th Cir. 2001). Due process problems will arise if
24 California law is applied to non-California class members. The
25 state does not have sufficient contacts here because the alleged
26 injury-producing contact occurred in the state where each Tiburon
27 was purchased. See Clothesrigger, 191 Cal. App. 3d at 612-13.

28 The warranty contract must be interpreted according to

1 the law of the place of performance or where the contract was made.
2 See Lantz v. Am. Honda Motor Co., No. 06 C 5932, 2007 WL 1424614,
3 at *4-5 (N.D. Ill. May 14, 2007). As such, the warranty claims
4 will involve the application of a variety of state laws regarding
5 contract interpretation. Further, using California's "governmental
6 interest" approach, there are material differences in the
7 applicable laws of other states, other states have an interest
8 applying their own laws to incidents that took place within their
9 borders, and each state has an interest in providing redress for
10 its own citizens. Plaintiffs have failed to meet their burden to
11 show that these obstacles are not insurmountable.

12 The class action method is not superior because other
13 viable options, including individual litigation and the Council of
14 Better Business Bureau's BBB Auto Line arbitration system, exist
15 for resolution of plaintiffs' claims.

16 **C. Plaintiffs' Reply**

17 Defendant misrepresents plaintiffs' problems as "clutch
18 problems" not covered under warranty when the real issue is failure
19 of the flywheel system. Plaintiffs' case is about the flywheel
20 system, not the clutch.

21 Although defendant argues at length that individual
22 issues will predominate as to plaintiffs' warranty claims, it says
23 almost nothing about plaintiffs' consumer protection claims under
24 the UCL and CLRA.

25 Defendant's TSB suggests that the fifteen clutch
26 configurations resulted from defendant's multiple, failed attempts
27 to remedy the defect. The different configurations are simply more
28 evidence of a defect.

1 Defendant's "affirmative defenses" do not defeat
2 predominance. Each is meritless, and courts generally are
3 reluctant to deny certification based on defenses to each
4 individual class member's claims. Smilow v. Sw. Bell Mobile Sys.,
5 Inc., 323 F.3d 32, 39 (1st Cir. 2003). Moreover, the Court has
6 adequate procedural mechanisms for dealing with plaintiffs barred
7 by individual defenses, such as placing those plaintiffs in a
8 separate subclass or excluding them altogether.

9 Contrary to defendant's assertions, plaintiffs do meet
10 the numerosity requirement. Even accepting defendant's contention
11 that 80% of warranty claims were paid, at least 800 Tiburon owners
12 were denied warranty coverage.

13 **D. Plaintiffs' Supplemental Reply**

14 Defendant's internal reports, which were belatedly
15 produced to plaintiffs, reveal that extensive testing was
16 undertaken on the Tiburon flywheel system. These tests showed
17 abnormally high temperatures under normal operating conditions.
18 Further, the persuasiveness of defendant's evidence showing fifteen
19 different clutch assembly configurations is questionable because it
20 reveals that only a single vehicle was produced in one of the
21 configurations, and only two vehicles were produced in another.
22 Two others were not class vehicles at all, as they were
23 manufactured with the solution to the flywheel defect described in
24 the TSB.

25 **E. Defendant's Supplemental Opposition**

26 Plaintiffs still have not told the Court what parts of
27 the "flywheel system" are allegedly defective.

28 Plaintiffs' UCL and CLRA claims are not amenable to

1 class-wide determination because they involve individual questions
2 of injury, actual reliance, and policy and practice. See Gartin v.
3 S&M NuTech LLC, 245 F.R.D. 429, 436 n.4 (C.D. Cal. 2007).

4 Plaintiffs also do not dispute that their Magnuson-Moss claims
5 cannot be certified for class treatment for failure to exhaust
6 administrative remedies.

7 **IV.**

8 **DISCUSSION**

9 **A. Plaintiffs' Motion for Class Certification**

10 **1. Legal Standard**

11 Certification of a class is proper if: "(1) the class is
12 so numerous that joinder of all members is impracticable; (2) there
13 are questions of law or fact common to the class; (3) the claims or
14 defenses of the representative parties are typical of the claims or
15 defenses of the class; and (4) the representative parties will
16 fairly and adequately protect the interests of the class." Fed. R.
17 Civ. P. 23(a). In addition to the requirements of Rule 23(a), the
18 Court must find that plaintiffs have satisfied at least one of the
19 following conditions:

20 (1) the prosecution of separate actions would
21 create a risk of: (a) inconsistent or varying
22 adjudications or (b) individual adjudications
23 dispositive of the interests of other members
24 not a party to those adjudications; (2) the
25 party opposing the class has acted or refused
26 to act on grounds generally applicable to the
27 class; or (3) the questions of law or fact
28 common to the members of the class predominate

1 over any questions affecting only individual
2 members, and a class action is superior to
3 other available methods for the fair and
4 efficient adjudication of the controversy.

5 Dukes, 509 F.3d at 1176. Here, plaintiffs claim that their
6 proposed class action satisfies the third condition of Rule 23(b).

7 A class action may be brought under Rule 23(b)(3) if "the
8 court finds that the questions of law or fact common to the members
9 of the class predominate over any questions affecting individual
10 members, and that a class action is superior to other available
11 methods for the fair and efficient adjudication of the
12 controversy." Fed. R. Civ. P. 23(b)(3); Hanlon, 150 F.3d at 1022-
13 23. In making these findings, the Court considers:

14 (A) the class members' interests in
15 individually controlling the prosecution or
16 defense of separate actions;

17 (B) the extent and nature of any litigation
18 concerning the controversy already begun by or
19 against class members;

20 (C) the desirability or undesirability of
21 concentrating the litigation of the claims in
22 the particular forum; and

23 (D) the likely difficulties in managing a class
24 action.

25 Fed. R. Civ. P. 23(b)(3)(A)-(D).

26 Although Rule 23(b)(3) presumes the existence of common
27 issues of fact and law has been established under Rule 23(a)(2),
28 Rule 23(b)(3) focuses on the relationship between the common and

1 individual issues. Hanlon, 150 F.3d at 1022. "When common
2 questions present a significant aspect of the case and they can be
3 resolved for all members of the class in a single adjudication,
4 there is clear justification for handling the dispute on a
5 representative rather than on an individual basis." Id. (citations
6 omitted).

7 The Court has "broad discretion" over whether the moving
8 party has satisfied each Rule 23 requirement, but must also conduct
9 a rigorous inquiry before certifying a class. Dukes, 509 F.3d at
10 1176, 1177 n.2; see also Gen. Tel. Co. of Sw., 457 U.S. at 161. It
11 is the plaintiff's burden to show he satisfies the class
12 certification requirements. Dukes, 509 F.3d at 1176.

13 **2. Analysis**

14 **a. Magnuson-Moss Act**

15 The Magnuson-Moss Warranty - Federal Trade Commission
16 Improvement Act ("MMA") regulates written warranties on consumer
17 products and establishes remedies for consumers. See 15 U.S.C. §§
18 2301-2312. The MMA contains an explicit congressional policy
19 statement encouraging "warrantors to establish procedures whereby
20 consumer disputes are fairly and expeditiously settled through
21 informal dispute settlement mechanisms." Id. § 2310(a)(1).
22 Pursuant to this policy, a "class of consumers may not proceed in a
23 class action . . . unless the named plaintiffs . . . initially
24 resort to [the warrantor's informal dispute settlement mechanism]."
25 Id. § 2310(a)(3)(C)(ii).

26 Certification of plaintiffs' MMA claims cannot be granted
27 because plaintiffs have failed to resort to defendant's informal
28 dispute settlement mechanism, the BBB Auto Line. Defendant's

1 warranty contract provides that customers "must use BBB Auto Line
2 prior to seeking remedies available to you through a court action
3 pursuant to the [MMA]." (Gibbs Decl., Ex. 2 at 13.) Plaintiffs do
4 not allege any attempt to use the BBB Auto Line to resolve their
5 MMA claims because, as they assert, such attempts are "unnecessary
6 and/or futile." (FACC ¶ 81.)

7 Without further elaboration by plaintiffs regarding the
8 alleged futility of the BBB Auto Line process, and given the strong
9 presumption in favor of encouraging alternative dispute resolution
10 under the MMA, the Court concludes that plaintiffs' MMA claims are
11 not certifiable.

12 **b. Breach of Express Warranty**

13 **i. Rule 23(a)**

14 **(a) Numerosity**

15 The numerosity requirement is "discharged if 'the class
16 is so large that joinder of all members is impracticable.'" Hanlon,
17 150 F.3d at 1019 (quoting Fed. R. Civ. P. 23(a)(1)).

18 Defendant challenges plaintiffs' showing of numerosity as
19 no more than a vague recitation of the general Rule 23
20 requirements. Plaintiffs point out, however, that, even accepting
21 defendant's assertion that 80% of warranty claims were paid, over
22 800 Tiburon owners were denied coverage for flywheel system
23 problems. An 800-member class is plainly sufficient to satisfy
24 numerosity under Rule 23(a). In addition, plaintiffs allege that
25 defendant sold 11,432 class vehicles, received over 1,500
26 complaints from Tiburon owners regarding lack of warranty coverage
27 for clutch assembly repairs, and sold approximately 9,000
28 replacement clutches for class vehicles. With this factual

1 support, plaintiffs' numerosity allegations are more than mere
2 recitations of Rule 23's requirements.

3 Defendant also argues that the class is unascertainable
4 because defendant has no way of determining which class members
5 were denied warranty coverage and subsequently obtained repairs at
6 a non-Hyundai dealer. "An identifiable class exists if its members
7 can be ascertained by reference to objective criteria." In re Wal-
8 Mart Stores, Inc. Wage & Hour Litig., No. C 06-05411, 2008 WL
9 413749, at *5 (N.D. Cal. Feb. 13, 2008). The class definition must
10 describe "a set of common characteristics sufficient to allow" a
11 prospective plaintiff to "identify himself or herself as having a
12 right to recover based on the description." Moreno v. AutoZone,
13 Inc., 251 F.R.D. 417, 421 (N.D. Cal. 2008) (citation and internal
14 quotations omitted). "However, 'not all class members need to be
15 ascertained prior to class certification.'" Mauro v. Gen. Motors
16 Corp., No. CIV. S-07-892 FCD GGH, 2008 WL 2775004, at *4 (E.D. Cal.
17 July 15, 2008).

18 Here, plaintiffs show that potential class members will
19 be able to objectively determine whether they are a "current [or]
20 former owner[] or lessee[] of a manual-transmission 2003 Tiburon
21 GT, produced on or before April 1, 2003, who paid for a replacement
22 to the flywheel assembly, clutch disc assembly, clutch cover
23 assembly, or clutch release bearing within the applicable warranty
24 period." The class definition identifies a particular make, model,
25 and production period for the class vehicle, while excluding from
26 the class persons who did not pay for repairs, persons who paid for
27 repairs outside the warranty period, and certain persons affiliated
28 with defendant. See id. Because the proposed class definition

1 allows prospective plaintiffs to determine whether they are class
2 members with a potential right to recover, the defined class is
3 sufficiently ascertainable.

4 Accordingly, plaintiffs satisfy the numerosity
5 requirement.

6 **(b) Commonality and Typicality**

7 The threshold for establishing commonality under Rule
8 23(a) is relatively low. Walsh, 130 F.R.D. at 268. "It may be met
9 where . . . the claims of every class member are based on a common
10 legal theory, even though the factual circumstances differ for each
11 member." Id.; see also Hanlon, 150 F.3d at 1019 ("The existence of
12 shared legal issues with divergent factual predicates is
13 sufficient, as is a common core of salient facts coupled with
14 disparate legal remedies within the class.").

15 Given the low bar for satisfying Rule 23(a)'s commonality
16 requirement, the Court finds that plaintiffs demonstrate the
17 existence of common legal and factual questions. Citing
18 defendant's March 2004 TSB and December 12, 2002 QIR, plaintiffs'
19 central common question is whether the 2003 manual-transmission
20 Tiburon suffered from a flywheel defect. (See Gibbs Decl. Exs. 5,
21 9 at HMA 13524.) Defendant disputes the meaning plaintiffs
22 attribute to these documents, claiming they reflect little more
23 than routine communications between defendant's various branches
24 and its parent company. "They are not, as plaintiffs attempt to
25 characterize them, product recall announcements or communications
26 of admitted defects." (Decl. of Steve R. Johnson ¶ 14.) Whether
27 the TSBs and QIRs show what plaintiffs claim they show is more
28 properly an issue for the trier of fact. Regardless of the normal

1 problems caused by the alleged defect during the applicable
2 warranty period, each named plaintiff was told by defendant or a
3 dealer that the problem was clutch-related, and each named
4 plaintiff paid for the necessary repairs out of pocket.
5 Accordingly, plaintiffs have shown that their interests are
6 sufficiently aligned with those of the proposed class to satisfy
7 the adequacy requirement of Rule 23(a).

8 **ii. Rule 23(b)(3)**

9 A class action may be brought under Rule 23(b)(3) if "the
10 court finds that the questions of law or fact common to the members
11 of the class predominate over any questions affecting individual
12 members, and that a class action is superior to other available
13 methods for the fair and efficient adjudication of the
14 controversy." Fed. R. Civ. P. 23(b)(3); Hanlon, 150 F.3d at
15 1022-23.

16 Here, assuming the existence of a defect, a host of
17 individual questions regarding warranty coverage preclude a finding
18 that common questions of law and fact predominate. The Tiburon's
19 warranty expressly excluded from coverage "damage or failure" due
20 to "[n]egligence of proper maintenance," misuse or abuse, use of
21 inferior or non-genuine Hyundai parts, and "[m]odifications,
22 alterations, tampering or improper repair." (Gibbs Decl., Ex. 2 at
23 18.) Accordingly, to determine whether each class member's
24 warranty was, in fact, breached, the trier of fact will be required
25 to inquire into the individual circumstances of each alleged denial
26 of warranty coverage. See Cox House, 2006 WL 3230757, at *5. If
27 plaintiffs are accurate exemplars of the proposed class, this will
28 involve examining modifications made to the vehicles that might bar

1 coverage, questioning plaintiffs about their driving habits and
2 evaluating the driving conditions of each class vehicle to
3 determine whether misuse or abuse has occurred, judging the
4 thoroughness of each dealer's inspection, and, as in the case of
5 Matuschek, determining whether the class member ever even attempted
6 to make a warranty claim or was denied coverage.

7 Given the individual questions underlying plaintiffs'
8 warranty claims, a class action is not superior to individual
9 litigation. Additionally, plaintiffs have an alternative, free
10 forum for determination of warranty claims through the BBB Auto
11 Line.

12 The Court, therefore, denies certification for
13 plaintiffs' breach of express warranty claim.³

14 **c. Plaintiffs' Consumers Legal Remedies Act and**
15 **Unfair Competition Law Claims**

16 The CLRA outlaws "unfair methods of competition and
17 unfair or deceptive acts or practices undertaken by any person in a
18 transaction intended to result or which results in the sale or
19 lease of goods or services to any consumer." Cal. Civ. Code §
20 1770. Consumers who suffer "as a result of the use or employment
21 by any person of a method, act, or practice" under § 1770 may
22 recover actual damages, injunctive relief, restitution, and
23 punitive damages. Id. § 1780(a)(1)-(5).

24 Similarly, the UCL prohibits "unlawful, unfair or
25 fraudulent business act[s] or practice[s] and unfair, deceptive,
26

27 ³ Because plaintiffs' fifth cause of action for declaratory
28 relief is premised on the breach of express warranty claim, the
Court also denies certification of the declaratory relief claim.

1 untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200.

2 **i. Rule 23(a)**

3 **(a) Numerosity**

4 As discussed above, plaintiffs show that the class is
5 sufficiently numerous to satisfy Rule 23(a)(1).

6 **(b) Commonality and Typicality**

7 Commonality is satisfied with respect to plaintiffs'
8 claims under the CLRA and UCL. Commonality will be found where
9 plaintiffs' claims stem from the same alleged source. Chamberlan,
10 223 F.R.D. at 526. In Chamberlan, for example, plaintiffs brought
11 suit under the CLRA after Ford Motor Company allegedly failed to
12 inform consumers that certain plastic intake manifolds were
13 defective. Id. The court found commonality under Rule 23(a)(2)
14 because the claims of all class members sprang from the same
15 source, "namely, that Ford knew that there was a risk that the
16 plastic intake manifolds would crack prematurely, but concealed
17 that information from ordinary consumers." Id.

18 Like the plaintiffs in Chamberlan, plaintiffs here allege
19 that their claims stem from the same source: defendant's alleged
20 knowledge and concealment of a known flywheel system defect at the
21 time the vehicles were purchased or serviced. Given the permissive
22 standard under Rule 23(a), the Court finds that plaintiffs allege
23 facts sufficient to satisfy the commonality requirement.

24 Typicality also is satisfied because plaintiffs' claims -
25 that defendant deceived customers at the time of purchase or
26 service - are reasonably co-extensive with those of the class.

27 //

28 //

1 disclose, which, again, may be proven through materiality. See
2 Falk v. Gen. Motors Corp., 496 F. Supp. 2d 1088, 1094-95 (N.D. Cal.
3 2007). Materiality is determined from the perspective of the
4 reasonable consumer. Id. at 1095.

5 Plaintiffs' CLRA claim is based largely on defendant's
6 alleged uniform failure to "disclose numerous facts that a
7 reasonable consumer might find material." (Pl.'s Reply 20.) Thus,
8 the common questions for determining whether class members may
9 recover under the CLRA include: (1) whether defendant was aware of
10 the alleged defect; (2) whether defendant had a duty to disclose
11 its knowledge; (3) whether defendant failed to do so; (4) whether
12 the alleged failure to disclose would be material to a reasonable
13 consumer; and (5) whether defendant's actions violated the CLRA.
14 See Chamberlan, 223 F.R.D. at 526-27. The Court finds that these
15 common questions predominate over any individual issues pursuant to
16 Rule 23(b)(3).

17 (2) UCL

18 Plaintiffs allege that defendant's practices are
19 unlawful, unfair, and fraudulent in violation of the UCL. (FACC ¶
20 69.) Thus, plaintiffs' claim falls under all three prongs of the
21 UCL. See Cal. Bus. & Prof. Code § 17200. The Court finds that the
22 common questions underlying plaintiffs' UCL claim predominate over
23 individual issues.

24 Like plaintiffs' CLRA claim, upon which plaintiffs' UCL
25 claim is partially based, common questions include: (1) whether
26 the flywheel system was defective; (2) whether defendant had a duty
27 to disclose the alleged defect; (3) whether defendant failed to
28 disclose the defect; and (4) whether the failure to disclose would

1 be likely to deceive a reasonable consumer. See Williams v. Gerber
2 Prods. Co., 523 F.3d 934, 938 (9th Cir. 2008) (under reasonable
3 consumer standard, plaintiff must show that the public is likely to
4 be deceived). Further, plaintiffs establish that a common question
5 concerns whether defendant was engaged in a scheme to
6 mischaracterize flywheel system problems in order to avoid warranty
7 coverage.

8 Defendant contends that plaintiffs must show injury in
9 fact and, potentially, actual reliance to recover under the UCL.
10 These issues of proof, defendant claims, prevent a finding of
11 predominance under Rule 23(b)(3).

12 A violation of the UCL may be proven "even without
13 allegations of actual deception, reasonable reliance, and damage."
14 Daugherty v. Am. Honda Motor Co., 144 Cal. App. 4th 824, 838, 51
15 Cal. Rptr. 3d 118 (2006). Rather than show "individualized proof
16 of deception, reliance and injury," plaintiffs must show only that
17 "members of the public are likely to be deceived." Id.; Mass. Mut.
18 Life Ins. Co., 97 Cal. App. 4th at 1288; see also Falk, 496 F.
19 Supp. 2d at 1098. Whether class members must prove causation or
20 reliance under the UCL remains an open question. The issue is
21 currently pending before the California Supreme Court. See In re
22 Tobacco II Cases, 142 Cal. App. 4th 891, 47 Cal. Rptr. 3d 917
23 (2006), rev. granted, 51 Cal. Rptr. 3d 707, 146 P.3d 1250 (2006);
24 Pfizer, Inc. v. Superior Court, 141 Cal. App. 4th 290, 45 Cal.
25 Rptr. 3d 840 (2006), rev. granted, 51 Cal. Rptr. 3d 707, 146 P.3d
26 1250 (2006). Notwithstanding this uncertainty and in light of the
27 common questions identified above, the Court finds that plaintiffs
28 establish predominance for the UCL claim. See Stern v. AT&T

1 Mobility Corp., No. CV 05-8842 CAS (CTx), 2008 WL 4382796, at *12
2 (C.D. Cal. Aug. 22, 2008).

3 **(b) Superiority**

4 In addition to predominance of common legal or factual
5 issues, plaintiffs must show that the class action method is
6 "superior to other available methods for fairly and efficiently
7 adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). "This
8 determination necessarily involves a comparative evaluation of
9 alternative mechanisms of dispute resolution." Hanlon, 150 F.3d at
10 1023.

11 Absent adjudication on a class basis, plaintiffs must
12 pursue their claims individually. Although the CLRA, unlike the
13 UCL, permits recovery of both actual damages and punitive damages,
14 Anunziato v. eMachines, Inc., 402 F. Supp. 2d 1133, 1137 (C.D. Cal.
15 2005), litigation costs would likely "dwarf potential recovery."
16 Hanlon, 150 F.3d at 1123. Further, the burden on the judiciary
17 would be significant and unnecessary, given the existence of
18 questions common to each potential plaintiff's claim.

19 In sum, plaintiffs' CLRA and UCL claims satisfy the
20 predominance and superiority requirements under Rule 23(b)(3).

21 **iii. Choice of Law**

22 When a party seeks to certify a nation-wide class for
23 claims arising under the law of the forum state, that party must
24 show that the forum state has "a 'significant contact or
25 aggregation of contacts' to the claims asserted by each member of
26 the plaintiff class, contacts 'creating state interests,' in order
27 to ensure that the choice of [state] law is not arbitrary or
28 unfair." Shutts, 472 U.S. at 821-22 (citation omitted). "[S]o

1 long as the requisite significant contacts to California exist, a
2 showing that is properly borne by the class action proponent,
3 California may constitutionally require the other side to shoulder
4 the burden of demonstrating that foreign law, rather than
5 California law, should apply to the class claims." Wash. Mut.
6 Bank, 24 Cal. 4th at 921. Under California's three-step
7 "governmental interest" test, the "foreign law proponent must
8 identify the applicable rule of law in each potentially concerned
9 state and must show it materially differs from the law of
10 California." Id. at 919. If the Court finds that the relevant
11 laws of other states are materially different, the Court determines
12 "whether each of the states has an interest in having its law
13 applied to the case." Clothesrigger, 191 Cal. App. 3d at 614.
14 Finally, if the first two requirements are met, thus demonstrating
15 the existence of an actual conflict, the Court must "select the law
16 of the state whose interests would be 'more impaired' if its law
17 were not applied." Wash. Mut. Bank, 24 Cal. 4th at 920 (citations
18 omitted).

19 Plaintiffs make a sufficient state contacts showing under
20 Shutts to establish that application of California law comports
21 with due process. In Clothesrigger, the court found sufficient
22 state contacts where defendant did business in California, had its
23 principal offices in California, a significant number of plaintiffs
24 resided in California, and defendant's agents who prepared
25 advertising and other misrepresentations at issue in the litigation
26 were located in the state. Clothesrigger, 191 Cal. App. 3d at 613.
27 Plaintiffs' allegations are almost identical. Plaintiffs contend
28 that defendant's relevant operations, including its headquarters,

1 marketing department, warranty department, customer affairs
2 department, and engineering department, are located in California.
3 Plaintiffs aver that many of the alleged wrongful acts emanated
4 from defendant's Fountain Valley offices in Orange County,
5 California. See In re Pizza Time Theatre Sec. Litig., 112 F.R.D.
6 15, 18 (N.D. Cal. 1986). Additionally, plaintiffs allege that
7 defendant conducts substantial business in the state through its
8 fifty California dealerships. Finally, given the volume of
9 California automobile sales and the number of in-state dealerships,
10 plaintiffs claim it is likely that more class members reside in
11 California than any other state. Thus, plaintiffs' alleged
12 contacts are sufficient to satisfy the test under Shutts.

13 Because plaintiffs show that application of California
14 law is constitutional under Shutts, defendant must show that
15 another state's laws apply under the California governmental
16 interest choice-of-law test. Defendant argues that the laws of the
17 non-forum states are different from those of California, attaching
18 to its opposition an appendix cataloging state-by-state variations
19 involving privity, notice, reliance, scienter, damages, and other
20 elements necessary to plaintiffs' claims. (See Anderson Decl., Ex.
21 V.) Citing Washington Mutual Bank, defendant next argues that non-
22 forum states have an interest applying their law to litigation
23 involving events that occurred within their borders. Finally,
24 defendant argues that California does not have a greater interest
25 than other states applying its law because the incidents at issue -
26 the individual warranty determinations - occurred in other states
27 and, further, customers would reasonably assume the law of the
28 place of purchase would apply.

1 While defendant's arguments are persuasive in the context
2 of plaintiffs' warranty claims in that denials of warranty coverage
3 might accurately be described as occurring in the state where
4 repair was sought, they carry less force when applied to
5 plaintiffs' claims under the CLRA and UCL. Plaintiffs allege that
6 the wrongful acts underlying those claims emanated from defendant's
7 California headquarters; defendant does not adequately rebut
8 plaintiffs' showing that the representations or omissions made
9 regarding the Tiburon emanated from California.

10 Further, "California's consumer protection laws are among
11 the strongest in the country," and relatively recent California
12 state court decisions "hold that a California court may properly
13 apply the same California statutes at issue here to non-California
14 members of a nationwide class where the defendant is a California
15 corporation and some or all of the challenged conduct emanates from
16 California." Wershba, 91 Cal. App. 4th at 244. Thus, the Court
17 does not find a conflict between California's consumer protection
18 laws and the applicable laws of the non-forum states.

19 Finally, the Court recognizes that extraterritorial
20 application of the UCL is improper where non-residents of
21 California raise claims based on conduct that allegedly occurred
22 outside of the state. See Sullivan v. Oracle Corp., ---F.3d---,
23 No. 06-56649, 2008 WL 4811911, at *10 (9th Cir. Nov. 6, 2008). In
24 Sullivan, for example, the Ninth Circuit, citing Norwest Mortgage,
25 Inc. v. Superior Court, 72 Cal. App. 4th 214, 85 Cal. Rptr. 2d 18
26 (1999), held "that § 17200 does not apply to the claims of
27 nonresidents of California who allege violations of the FLSA
28 outside California." Sullivan, 2008 WL 4811911, at *10. However,

1 extraterritorial application of the UCL is not barred where the
2 alleged wrongful conduct occurred in California. See Norwest
3 Mortgage, 72 Cal. App. 4th at 224-25. In light of defendant's
4 alleged in-state conduct discussed above, the Court finds that
5 certification of a nation-wide class for plaintiffs' UCL claim is
6 not barred under the Ninth Circuit's reasoning in Sullivan.

7 Because defendant does not meet its burden under
8 California's governmental interest test with respect to plaintiffs'
9 CLRA and UCL claims and because plaintiffs otherwise make the
10 showing required by Rule 23, nation-wide certification of these
11 claims is warranted.

12 **B. Defendant's Motion to Strike**

13 **1. Legal Standard**

14 In determining whether a class is to be certified, the
15 Court looks to parties' allegations and other material "sufficient
16 to form a reasonable judgment on each requirement." See Blackie v.
17 Barrack, 524 F.2d 891, 901 (9th Cir. 1975). Though the issue has
18 not been squarely addressed by the Ninth Circuit, certain "courts
19 have held that on a motion for class certification, the evidentiary
20 rules are not strictly applied and courts can consider evidence
21 that may not be admissible at trial." Rockey v. Courtesy Motors,
22 Inc., 199 F.R.D. 578, 582 (W.D. Mich. 2001); see also Bell v. Addus
23 Healthcare, Inc., No. C06-5188 RJB, 2007 WL 3012507, at *2 (W.D.
24 Wash. Oct. 12, 2007) (noting that the Ninth Circuit has not
25 addressed the evidentiary standard at the class certification
26 stage). Unlike a summary judgment motion under Fed. R. Civ. P. 56,
27 a motion for class certification is not dispositive and need not be
28 supported by admissible evidence. Bell, 2007 WL 3012507, at *2

1 (comparing Fed. R. Civ. P. 23 with Fed. R. Civ. P. 56); see also
2 Wiegele v. Fedex Ground Package Sys., Inc., No. 06cv1330, 2008 WL
3 410691, at *11 n.8 (S.D. Cal. Feb. 12, 2008).

4 Still, the Court should not abandon admissibility
5 standards entirely at the certification stage. For example, when
6 expert reports are cited in support or opposition of certification,
7 the Court need not engage in a full Daubert v. Merrell Dow
8 Pharmaceuticals, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469
9 (1993), analysis; however, the Court should conduct a limited
10 inquiry into the reliability of the expert opinion and its
11 relevance to determining a Rule 23 requirement. See Dukes, 509
12 F.3d at 1179-80.

13 2. Analysis

14 Defendant seeks to strike what it characterizes as
15 inadmissible statistical data and data comparisons. This data
16 consists of:

- 17 (1) Complaint data relating to the Tiburon and
18 other unrelated vehicles;
- 19 (2) Warranty claims data for the Tiburon and
20 other unrelated vehicles; and
- 21 (3) Warranty claims data for different Tiburon
22 models and years.

23 (See Gibbs Decl., Exs. 10-12.) Defendant argues that: (1) this
24 evidence constitutes inadmissible hearsay; (2) the comparative
25 statistics are irrelevant; and (3) warranty claims are,
26 effectively, settlement negotiations.

27 Given this stage in the proceedings and the applicable
28 evidentiary standard, the Court denies without prejudice

1 defendant's motion to strike.⁴ Defendant's evidentiary objections
2 may be asserted prior to or during trial.

3 **B. Plaintiffs' Motion to Strike**

4 **1. Legal Standard**

5 Plaintiffs seek to strike the declaration Jason R. Erb
6 and attachments thereto because defendant allegedly failed to
7 produce this evidence pursuant to its obligations under Fed. R.
8 Civ. P. 26. Alternatively, plaintiffs claim that the Erb
9 declaration attachments were plainly responsive to several of
10 plaintiffs' requests for production.

11 Rule 26 of the Federal Rules of Civil Procedure requires
12 a party to provide certain initial disclosures and to supplement
13 those disclosures as litigation progresses. Fed. R. Civ. P. 26(a),
14 (e). Of relevance here, a party must disclose "a copy - or
15 description by category and location - of all documents,
16 electronically stored information, and tangible things that the
17 disclosing party has in its possession, custody, or control and may
18 use to support its claims or defenses, unless the use would be
19 solely for impeachment." Fed. R. Civ. P. 26(a)(1)(A)(ii).
20 Additionally, parties must disclose witness information at least
21 thirty days prior to trial. Fed. R. Civ. P. 26(a)(3). Under Fed.

22
23 ⁴ Defendant cites to Local Rules 7-6 and 7-7 for the
24 applicable evidentiary standard. Local Rules 7-6 and 7-7 require
25 that declarations accompanying motions "contain only factual,
26 evidentiary matter and . . . conform as far as possible to the
27 requirements of [Fed. R. Civ. P. 56(e)]." Defendant's recitation
28 of Local Rules 7-6 and 7-7 is accurate; however, neither Local
Rule reads as a strict evidentiary and admissibility mandate.
More importantly, as the courts in Bell and Wiegele noted, a
motion under Rule 23, unlike a motion under Rule 56, is not
dispositive, and the admissibility standards should be applied
accordingly.

1 R. Civ. P. 37(e), the Court may prevent a party from supporting a
2 motion with evidence not produced or supplemented in violation of
3 Fed. R. Civ. P. 26(a) or (e). Rule 37 vests the Court with broad
4 discretion in sanctioning parties for discovery violations. 8A
5 Wright & Miller, Federal Practice and Procedure, § 2284 (1994 &
6 2008 Supp.).

7 **2. Analysis**

8 Given that the Court is presently deciding the
9 certification issue - a relatively early stage in the proceedings -
10 the Court denies plaintiffs' requested Rule 37 sanctions. The Erb
11 declaration and attachments are relevant to the certification
12 inquiry in that they tend to counter plaintiffs' claim that common
13 questions will predominate. Plaintiffs may reassert their
14 objections prior to or during trial and are not prejudiced by the
15 Court's consideration of defendant's evidence in deciding class
16 certification.

17 Further, defendant argues persuasively that the printed
18 internet postings were created and published by plaintiffs
19 themselves, suggesting that *plaintiffs* were required to produce the
20 documents in response to defendant's discovery requests.
21 Plaintiffs' motion to strike is denied without prejudice.

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CONCLUSION

Accordingly and for the foregoing reasons, the Court grants certification of plaintiffs' claims arising under the UCL and CLRA, denies certification for plaintiffs remaining claims, and denies the parties' respective motions to strike.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Memorandum Opinion on counsel for all parties in this action.

DATED: December 12, 2008.

ALICEMARIE H. STOTLER

ALICEMARIE H. STOTLER
CHIEF U.S. DISTRICT JUDGE