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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11-21	
WENDY HIGHTMAN, on behalf of herself and all others similarly situated, Plaintiff, v. FCA US LLC; and DOES 1 through 10, inclusive, Defendant.	Case No.: 3:18-cv-02205-BEN-KSC **ORDER:** **(1) DEFENDANT'S MOTION TO DISMISS IS GRANTED;** **(2) DEFENDANT'S MOTION TO STRIKE IS DENIED AS MOOT; AND** **(3) DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS DENIED.** **[ECF No. 35]**

22 **I. INTRODUCTION**

23 Plaintiff Wendy Hightman ("Plaintiff"), individually and on behalf of all others
24 similarly situated, brings this action against FCA US LLC ("Defendant"), for breach of
25 contract/common law warranty pursuant to California law. ECF No. 3. Before the Court
26 is Defendant's Motion to Dismiss the First Amended Complaint pursuant to Federal Rule
27 of Civil Procedure 12(b)(6) and in the alternative, Defendant's Motion to Strike
28 Nationwide Class Allegations. ECF No. 35. Defendant also makes a Request for Judicial

Notice. ECF No. 35-2.

After considering the papers submitted, supporting documentation, and applicable law, the Court **GRANTS** Defendant's Motion to Dismiss, **DENIES** as moot Defendant's Motion to Strike, and **DENIES** Defendant's Request for Judicial Notice.

II. BACKGROUND

Plaintiff sued Defendant after being denied coverage under a Lifetime Limited Powertrain Warranty for repairs to her vehicle.

A. Statement of Facts[1]

On October 12, 2007, Plaintiff purchased a new 2007 Jeep Patriot (the "Jeep") from a Chrysler dealership in Guam. ECF. No. 3 ("FAC") at 13, ¶ 26. Plaintiff was told by a Chrysler employee that her Jeep was covered by Chrysler's Lifetime Limited Powertrain Warranty (the "Warranty"). *Id.* at 13, ¶ 27. Plaintiff alleges she was not provided with the terms and conditions of the Warranty until after the Jeep's purchase. *Id.* The Warranty terms include an inspection clause that provides:

> In order to maintain the Lifetime Powertrain Limited Warranty, the person . . . covered by this Power-train Limited Warranty must have a powertrain inspection performed by an authorized Chrysler, Dodge, or Jeep dealer once every 5 years. . . . The inspection must be made within sixty (60) days of each 5 year anniversary of the in-service date of the vehicle. You must have the inspection performed to continue this coverage.

(the "Inspection Clause"). *Id.* at 14, ¶ 30.

On March 13, 2017, Plaintiff, a San Diego resident, presented her Jeep to Carl

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[1] The majority of the facts set forth are taken from the First Amended Complaint (the "FAC") and for purposes of ruling on Defendant's Motion to Dismiss, the Court assumes the truth of the allegations pled and liberally construes all allegations in favor of the non-moving party. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

Burger's Chrysler Jeep Dodge ("Burger's Chrysler") and RAM World in San Diego for repairs. *Id.* at 13, ¶ 29; 12, ¶ 18. The technician determined the Jeep had a transmission fuel leak in the right axle, repaired the leak, "and confirmed the Jeep had 'received a 16-point multi-inspection according to the maintenance interval.'" *Id.* at 13, ¶ 29. The March 2017 repairs were covered by the Warranty. *Id.*

On July 6, 2018, Plaintiff brought the Jeep to Burger's Chrysler for repair "because the check engine light was on." *Id.* at 14, ¶ 30. After a technician determined the engine gasket needed to be replaced, "Plaintiff reasonably expected this to be covered under her . . . Warranty but [Defendant] denied coverage for the claim." *Id.* Defendant's justification was that Plaintiff failed to adhere to the Inspection Clause. *Id*. at 14, ¶ 31. Defendant claimed Plaintiff did not present the Jeep for a powertrain inspection within sixty-days of the Jeep's five-year purchase anniversary as required. *Id.* Instead, the inspection occurred "seven months prior to the 10-year purchase date anniversary." *Id.*

Plaintiff alleges that having no other choice, she paid $2,307.16 to Burger's Chrysler to replace the engine gasket, which would have been covered by the Warranty. *Id.* Ten days later, Plaintiff brought the Jeep back to Burger's Chrysler because of a transmission failure. *Id.* at 14, ¶ 32. Plaintiff was quoted $5,128.87 to repair the transmission. *Id.* Defendant refused to cover the repair. *Id*.

B. Procedural History

In 2009, Chrysler, LLC ("Old Chrysler")[2] filed for bankruptcy in the Southern District of New York. *See In re Old Carco, LLC formerly known as Chrysler LLC*, No. 09-50002 (Bankr. S.D.N.Y.). Defendant purchased nearly all of Old Chrysler's assets and assumed certain liabilities pursuant to a Master Transaction Agreement entered into by the parties. *See* ECF No. 30 at 388–477. On June 1, 2009, the court in the bankruptcy

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[2] Chrysler, LLC is subsequently known as Old Carco, LLC, but is referred to as "Old Chrysler" in bankruptcy proceedings applicable to this case. Therefore, this Court will use Old Chrysler when referencing Chrysler, LLC/Old Carco, LLC.

proceedings approved an asset sale to Defendant, in a document known as the "Sale Order." *Id.* at 116–64.

Plaintiff filed her initial class action Complaint on September 24, 2018 and her FAC on October 5, 2018. ECF No. 1; FAC. The FAC alleges six causes of action: (1) violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* ("Magnuson-Moss"); (2) breach of contract/common law warranty, based on California law; (3) breach of the duty of good faith and fair dealing, based on California law; (4) violations of California's False Advertising Law, California's Business & Professions Code sections 17500, *et seq.* (the "CFAL"); (5) violation of California's Consumer Legal Remedies Act, California Civil Code sections 1750, *et seq.* (the "CLRA"); and (6) violation of California's Unfair Competition Law, California Business & Professions Code sections 17200, *et seq.* (the "UCL"). FAC at 1. Plaintiff seeks to bring a Nationwide Class action on behalf of "[a]ll persons or entities in the United States who are current original owners of a Class Vehicle and all current and former original owners of a Class Vehicle who were denied coverage under the . . . Warranty based on the Inspection Clause." *Id.* at 15, ¶ 33. Alternatively, Plaintiff seeks to represent a California Class, which is defined in the same way as the Nationwide Class but confined to "all persons or entities in California" instead of the United States. *Id.* at 15, ¶ 34.

In response, Defendant filed several motions, including a Motion to Transfer the Action to Bankruptcy Court in the Southern District of New York (the "Bankruptcy Court"). ECF No. 16. Defendant argued that the Sale Order barred Plaintiff's claims, and that the Bankruptcy Court was in the best position to interpret the Order. *See id.* On August 12, 2019, this Court granted the Motion to Transfer pursuant to 28 U.S.C. § 1412, agreeing that the Bankruptcy Court should interpret the Sale Order. *See* ECF No. 27.

On March 10, 2020, the Bankruptcy Court dismissed Plaintiff's claims under Magnuson-Moss and the UCL, as well as Plaintiff's claim for breach of the duty of good faith and fair dealing. ECF No. 30 at 715. Plaintiff withdrew her claims under the CFAL and the CLRA. *Id.* The Bankruptcy Court did not dismiss Plaintiff's claim for breach of

contract/common law warranty under California law. *Id.* The Court did, however, limit the bases under which the claim could be brought and ordered that Defendant's "liability for damages [be] limited to the costs of repair and labor for fixing the vehicle, and any other claims for compensatory, incidental, punitive or other damages [be] barred by the Sale Order."[3] *Id.*

On December 14, 2020, the case was transferred back to this Court and reopened. *See generally id.* The parties took no action for over one-year and on December 29, 2021, this Court issued an Order to Show Cause for Want of Prosecution. *See* ECF No. 31. On January 24, 2022, a hearing was held and after considering Plaintiff's arguments against dismissing the case, the Court set a deadline for Defendant to file a Motion to Dismiss. ECF No. 33. Before the Court is Defendant's Motion to Dismiss, Motion to Strike, and Request for Judicial Notice. ECF No. 35 ("Motion"); ECF No. 35-2 ("RJN").

III. DISCUSSION

Defendant seeks to dismiss the remaining breach of contract/common law warranty claim pursuant to Federal Rule Civil Procedure 12(b)(6). As explained below, the Court **GRANTS** Defendant's Motion to Dismiss.

A. Motion to Dismiss

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a complaint may be dismissed when a plaintiff's allegations fail to set forth a set of facts which, if true, would entitle the complainant to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (holding that a claim must be facially plausible to survive a motion to dismiss). The pleadings must raise the right to relief beyond the speculative level; a plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S.

[3] The Bankruptcy Court's decision, *see* ECF No. 30 at 714–16, will be referred to as the "Bankruptcy Order." The Bankruptcy Court's hearing on the matter, *see id.* at 693–713, will be referred to as the "Hearing."

at 555. On a motion to dismiss, a court accepts as true a plaintiff's well-pleaded factual allegations and construes all factual inferences in the light most favorable to the plaintiff. *Manzarek*, 519 F.3d at 1031. However, a court is not required to accept as true legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678.

When a motion to dismiss is granted, the court must decide whether to grant leave to amend. The Ninth Circuit has a liberal policy favoring amendments, and thus, leave to amend should be freely granted. *DeSoto v. Yellow Freight System, Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). However, a court need not grant leave to amend when permitting a plaintiff to amend would be an exercise in futility. *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987).

1. <u>Breach of Common Law Contract/Warranty</u>

Defendant challenges Plaintiff's breach of contract/common law warranty claim alleging it: (1) is not viable under California choice-of-law rules; (2) does not sufficiently plead a breach under Rule 12(b)(6); and (3) is barred by the statute of limitations.

a. ***California Choice-Of-Law Viability***

"[A] court ordinarily must apply the choice-of-law rules of the State in which it sits." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 243 n.8 (1981). California courts apply two choice-of-law standards in connection with claims arising under contract law: (1) a statutory test under California Civil Code section 1646; and (2) a common law governmental interest approach.[4] *See Costco Wholesale Corp. v. Liberty Mut. Ins. Co.*, 472 F. Supp. 2d 1183, 1197–98 (S.D. Cal. 2007).

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[4] "[W]here the parties have not made a choice of law . . . , some courts apply a third test, based on Section 188 of the Restatement (Second), Conflict of Laws . . . . [and] determine which state 'has the most significant relationship to the transaction and the parties.'" *Rutherford v. FIA Card Servs., N.A.*, No. CV 11-04433 DDP-MANx, 2012 WL 5830081, at *3 (C.D. Cal. Nov. 16, 2012). Here, the parties address only section 1646 and the governmental interest approach.

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i. *California Civil Code Section 1646*

Under Section 1646, "[a] contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made." CAL. CIV. CODE § 1646 (emphasis added). However, "[s]ection 1646 governs only the interpretation of contractual terms . . . . all other issues in a contract dispute, including the validity of a contract, are governed by [the] governmental interest analysis." *Glob. Commodities Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1111 (9th Cir. 2020); *see also Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 863 n.2 (9th Cir. 2022) ("Because § 1646 presupposes the existence of a contract, it is inapplicable to the antecedent question of whether the parties formed a valid contract."); *Frontier Oil Corp. v. RLI Ins. Co.*, 153 Cal. App. 4th 1436, 1453–54 (2007), *as modified* (Sept. 5, 2007) (criticizing a line of cases citing section 1646 to determine choice-of-law issues not involving contract interpretation, claiming they did so "without explaining why a statute that by its express terms establishes a choice-of-law rule only as to the interpretation of a contract should determine other choice-of-law issues." (citations omitted)).

Defendant argues that section 1646 is the appropriate mechanism to conduct a choice-of-law analysis for Plaintiff's breach of contract/warranty claim. Motion at 8. Defendant contends that Plaintiff has no viable claim under California law, because the contract was entered into in Guam and not California, and "[t]he place of performance for the actual sale contract" also occurred in Guam. *Id.* Defendant explains that because "Plaintiff expressly pleads her contract/warranty claim under California law" but "admits her vehicle purchase and provision/disclosure of the alleged 'unconscionable' Inspection Clause occurred in Guam," Plaintiff has no claim under California law. *Id.*

Plaintiff counters that she has a viable claim under California choice-of-law rules. ECF No. 37 ("Oppo.") at 7–8. Plaintiff contends that because the dispute involves the validity of the Inspection Clause—and not the interpretation of its terms—the governmental interest approach applies and not section 1646. Oppo. at 7. Plaintiff explains

that section 1646 governs interpretation issues only whereas here, the FAC alleges the Inspection Clause is unenforceable. Oppo. at 7–8.

Defendant replies that the California Supreme Court's "strong presumption against extra-territorial application of California law" weighs against applying California law. ECF No. 40 ("Reply") at 7. Defendant further asserts that the relevant inquiry for foreign law application is "whether the conduct which gives rise to liability occurs in California." *Id.* Defendant concludes that the Ninth Circuit "has left no doubt California law cannot be applied extraterritorially to consumers whose transactions occurred outside California." *Id.* at 7–8 (citing *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012) *overruled on other grounds by Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651 (9th Cir. 2022)). The Court disagrees.

Here, there is no choice-of-law clause to be interpreted, and the parties agree to the terms and meaning of the Inspection Clause. *See generally* FAC; *see also* Motion. The parties' arguments go to the validity and enforceability of the Inspection Clause—*i.e.*, whether it was properly disclosed, and whether it is unconscionable. FAC at 14, ¶¶ 30–32; 21, ¶ 62. As such, there is no dispute regarding the contract's interpretation for purposes of section 1646,[5] meaning California's governmental interest approach applies. *See Glob. Commodities*, 972 F.3d at 1111; *see also Costco*, 472 F. Supp. 2d at 1198 ("The second

[5] Even if the Court were to perform a section 1646 analysis, considering the nature of the contract at issue—a lifetime warranty on a vehicle—the Court would not automatically apply Guam law. Although the contract was made in Guam, a lifetime warranty could indicate an intention for the place of performance to occur elsewhere, should someone move or travel with the vehicle and seek repairs in different territories. *See Frontier Oil*, 153 Cal. App. 4th at 1450 ("In our view, Civil Code section 1646 was intended to give effect to the parties' presumed intention that the law of the place a contract is to be performed should govern its interpretation. The parties' intention as to the place of performance sometimes can be gleaned from the nature of the contract and the surrounding circumstances, even if the contract does not expressly specify a place of performance."). Future repairs under the Warranty could be considered future performance under the contract.

test is a common-law 'governmental interest analysis' applicable in cases with no choice-of-law clause.").

ii. *California's Governmental Interest Approach*

"Generally speaking the forum will apply its own rule of decision unless a party litigant timely invokes the law of a foreign state." *Espinoza v. Princess Cruise Lines, Ltd.*, No. 17-cv-08412-FLA-JEMx, 2022 WL 422782, at *8 (C.D. Cal. Jan. 25, 2022) (quoting *Wash. Mut. Bank v. Super. Ct.*, 24 Cal. 4th 906, 919 (2001)). Using the governmental interest approach, "the court first determines whether the applicable rules of law of the potentially concerned jurisdictions are the same or different." *Frontier Oil*, 153 Cal. App. 4th at 1454. The foreign law proponent must identify the pertinent "law in each potentially concerned state and show it materially differs from the law of California." *Wash. Mut.*, 24 Cal. 4th at 919. If there is no identifiable material difference, there is no choice-of-law problem, and the court may proceed to apply California law. *See id.* at 920; *Frontier*, 153 Cal. App. 4th at 1465. However, if the laws are materially different, the court proceeds "to the second step and determine[s] what interest, if any, each state has in having its own law applied to the case." *Wash. Mut.*, 24 Cal. 4th at 920. If both states have an interest in the law being applied, the court must "select the law of the state whose interests would be 'more impaired' if its laws were not applied." *Id.* (citations omitted).

Defendant's foreign law application fails under the governmental interest approach, because Defendant does not identify the corresponding law in Guam, let alone any material difference in California law. *See Frontier*, 153 Cal. App. 4th at 1465; *see generally* Motion. Defendant's contention that "California law cannot be applied extraterritorially to consumers whose transactions, [vehicle purchases], occurred outside California" is misplaced. *See* Reply at 8. In *Mazza*, the Ninth Circuit used the governmental interest approach and concluded that California law did not apply to all proposed class members, because the defendant properly identified material differences in each states' consumer protection statutes. 666 F.3d at 589–94. Here, Defendant does not articulate a difference between California and Guam rules of law as required under the governmental interest

approach. *See generally* Motion; Reply. Because no applicable foreign law was identified—and Defendant bears the burden of proof—no further analysis is required.[6] *See Pokorny v. Quixtar, Inc.*, 601 F.3d 987, 995 (9th Cir. 2010) ("The party advocating the application of a foreign state's law bears the burden of identifying the conflict between that state's law and California's law on the issue, and establishing that the foreign state has an interest in having its law applied."); *Wash. Mut.*, 24 Cal. 4th at 919 ("Under the first step of the governmental interest approach, the foreign law proponent must identify the applicable rule of law in each potentially concerned state and must show it materially differs from the law of California."); *Frontier Oil*, 153 Cal. App. 4th at 1465 ("The party arguing that foreign law governs has the burden to identify the applicable foreign law, show that it materially differs from California law, and show that the foreign law furthers an interest of the foreign state."); *Costco*, 472 F. Supp. 2d at 1198 ("The party advocating for the application of foreign law carries the burden of proof."); *Rutherford*, No. CV 11-04433 DDP-MANx, 2012 WL 5830081, at *3 ("Under the governmental interests analysis, the party seeking to invoke foreign law must establish that 1) the foreign law materially differs from California law, and 2) the jurisdictions' interests in applying their own law truly conflict."). Accordingly, the Court will apply California law.

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[6] If the Court were to find a material difference between California and Guam law and continue the analysis, it would likely find that California has a strong interest in resolving the dispute at hand. The alleged "place of the wrong"—which is the predominant interest for regulating harms in California—occurred in California, in 2018, when Defendant denied Plaintiff coverage for repairs to her Jeep. *See Mazza*, 666 F.3d at 593 (citing *Hernandez v. Burger*, 102 Cal. App. 3d 795, 802 (1980)) ("[W]ith respect to regulating or affecting conduct within its borders, the place of the wrong has the predominant interest."). It could be argued that the wrong occurred in Guam when Plaintiff purchased the Warranty and did not receive the terms of the Inspection Clause. However, for purposes of resolving Defendant's Motion to Dismiss, the Court would likely accept Plaintiff's argument that the alleged wrong occurred in California, where the Inspection Clause was enforced, and coverage was denied. *See Mazza*, 666 F.3d at 593 (citing *McCann v. Foster Wheeler LLC*, 48 Cal. 4th 68, 94–95 (2010) ("California considers the 'place of the wrong' to be the state where the last event necessary to make the actor liable occurred)).

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b. *Failure to State a Claim for Breach of Contract/Warranty*

The elements for a breach of contract claim in California are: "(1) the existence of the contract, (2) the plaintiff's performance or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damages to the plaintiff." *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011) (citing *Reichert v. General Ins. Co. of America*, 68 Cal.2d 822, 830 (1968)). A breach must be based on the nonperformance of express promises or legal duties contained in a contract. *See Dean v. Kaiser Found. Health Plan, Inc.*, 562 F. Supp. 3d 928, 935 (C.D. Cal. 2022) (citing *Samica Enters., LLC v. Mail Boxes Etc. USA, Inc.*, 637 F. Supp. 2d 712, 719 (C.D. Cal. 2008)). "[A]n express warranty is a form of contract . . . ." *Velasco v. Paccar, Inc.*, No. LA CV 13-09407 JAK-ASx, 2017 WL 11632291, at *4 (C.D. Cal. Sept. 22, 2017). "To state a claim for breach of express warranty under California law, a plaintiff must allege (1) the exact terms of the warranty; (2) reasonable reliance thereon; and (3) a breach of warranty which proximately caused plaintiff's injury." *In re Clorox Consumer Litig.*, 894 F. Supp. 2d 1224, 1235 (N.D. Cal. 2012) (citing *Nabors v. Google, Inc.*, No. 10-cv-03897-EJD-PSG, 2011 WL 3861893, at *4 (N.D. Cal. Aug. 30, 2011)).

i. *Disclosure of the Inspection Clause*

Defendant argues that no breach of the Warranty occurred, because Plaintiff's failure to comply with the Inspection Clause voided Defendant's Warranty obligations. Motion at 9. Defendant further argues that Plaintiff is not saved by allegations that she was not "told the precise terms of the Powertrain Warranty until after she completed her . . . purchase," because "[t]he very advertisements Plaintiff pastes into the FAC indicate a consumer must '[s]ee dealer for a copy of the limited warranty and details.'" *Id.* at 11.

Plaintiff counters that Defendant's Motion to Dismiss includes allegations of fact and documents outside of the four corners of the FAC. Oppo. at 9. Plaintiff denies receiving the document attached to Defendant's Request for Judicial Notice and accompanying Inspection Clause. Oppo. at 8; *see also* Exhibit 1 to RJN. Instead, Plaintiff argues "the warranty booklet she received did not contain the Inspection Clause at all."

Oppo. at 8. Plaintiff further argues there is a question of fact as to "Plaintiff's receipt of the Inspection Clause's existence and terms," which is inappropriate for resolution at the motion to dismiss stage. *Id.* at 11. Finally, Plaintiff argues that California law does not allow warranty terms to impose independent obligations on the buyer, beyond enforcing the seller's promises, without adequate notice. *Id.* at 9.

Defendant replies that "[the] only plausible conclusion that can be reached based on the allegations in the FAC is that Plaintiff had notice of the [Inspection Clause] which was part of the Powertrain Warranty." Reply at 9. Defendant contends that because the FAC admits Plaintiff was "provided the terms and conditions of the warranty [] after she [] completed the purchase" and "knew and understood enough about the [Inspection Clause] to comply with it within the designated 5-year sale anniversary window," Plaintiff had sufficient notice that the Inspection Clause was part of the Warranty. *Id.*

The parties agree that the Inspection Clause was not a part of the consolidated booklet at the time Plaintiff purchased the Jeep but dispute how and when the Inspection Clause was disclosed to Plaintiff. *See* FAC at 13, ¶ 27–28; Reply at 6. However, the Court need not reach this analysis. Turning to the Bankruptcy Order, the Bankruptcy Court stated:

> The Second Cause of Action (Breach of Contract/Common Law Warranty) is not dismissed to the extent it is based on a breach of the warranty for the reasons stated in the record at the Hearing, provided, however, that in all circumstances [Defendant]'s liability for damages is limited to the costs of repair and labor for fixing the vehicle, and any other claims for compensatory, incidental, punitive or other damages are barred by the Sale Order.

ECF No. 30 at 715. After evaluating the transcript from the referenced Hearing, the Court finds that any allegations of nondisclosure, or that the Inspection Clause was not made available to Plaintiff are barred by the Sale Order.

When discussing the breach of contract/warranty claim, the Bankruptcy Court explained, "it seems to me there are two claims lurking here. One is that Old Chrysler

failed to disclose the warranty, and I agree with you that that is a claim that's barred by the sale order however it's presented, whether it's under the California Business Act or whatever." *Id.* at 695. Based on the Hearing, it appears that claims relying on allegations of nondisclosure, or failure to make the Warranty terms available, are barred by the Sale Order. *See id.* at 699 (in discussing the Lemon Law/Magnuson-Moss claim, the Bankruptcy Court stated that "failing to make the lifetime warranty available or visible to Plaintiff and other class members . . . . [is] obviously a claim that's barred."); *id.* at 710–11 (dismissing the UCL claim in part because "[if] you look at paragraph 96, it's based on misrepresentation and the notion that the Plaintiff would not have purchased her vehicle if the powertrain warranty had been disclosed."); *id.* at 704 (in discussing the UCL claim, when the Bankruptcy Court asked Plaintiff's counsel if Plaintiff was arguing Defendant's liability for Old Chrysler's bad faith in failing to disclose the warranty, Plaintiff's counsel said no—counsel subsequently affirmed Plaintiff was not contending that Defendant assumed Old Chrysler's liability for any such misrepresentation). Furthermore, during the Hearing, the Bankruptcy Court appeared to limit the breach of contract/warranty claim to Plaintiff's unconscionability argument, stating:

> The second claim [for breach of contract/warranty] is not dismissed to the extent it's based on a breach of the warranty for the reasons I've said. I don't think or I conclude that an assertion that the condition precedent in the warranty is unconscionable is barred by the sale order. The condition is a defense to the contract, and the argument that that's unfair or unconscionable is just a question of contract law. It's not barred by the sale order.

Id. at 710.

When this Court transferred the instant litigation to the Bankruptcy Court, it made clear that the Bankruptcy Court retained jurisdiction over the Sale Order and was in the best position to interpret and enforce it. ECF No. 27 at 8–9; *see also Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009) ("[T]he Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders."). Because the Bankruptcy Court indicated that

those claims supported by allegations of misrepresentation and nondisclosure of the Warranty are barred by the Sale Order—and expressly limited Plaintiff's breach of contract/warranty claim to allegations of unconscionability—this Court will follow suit and not consider Plaintiff's nondisclosure argument as a basis for the claim.

Plaintiff cites *Grundy v. FCA US LLC*, where the court denied a motion to dismiss a breach of express warranty claim and breach of contract/common law warranty claim based on the plaintiffs' allegation that they were unaware of the same Inspection Clause before presenting their vehicles for repair. No. 2:20-cv-11231, 2020 WL 7353515, at *2–3 (E.D. Mich. Dec. 15, 2020). In *Grundy*, the plaintiffs based their claim on an alleged lack of notice regarding the Inspection Clause, and the court cited the above Bankruptcy Order, concluding that the Bankruptcy Court "specifically allowed the breach of warranty claim to proceed." *Id.* at *2. The Court finds *Grundy* unpersuasive, because the Bankruptcy Order limits the claim as set forth in the Hearing, the transcript of which clarifies that claims regarding disclosure of the Warranty terms are barred by the Sale Order. *See* ECF No. 30 at 695, 699, 704, 710–11. The transcript further explains that the surviving breach of contract/warranty claim be based on Plaintiff's unconscionability allegations. *Id.* at 710. Based on this Court's reading of the Bankruptcy Order and the referenced Hearing transcript, any claims supported by allegations of nondisclosure are barred by the Sale Order.

Furthermore, although *Grundy* is similar to the case at hand, there are certain distinctions between the pleadings when comparing the lack of notice allegations to those of nondisclosure.[7] The Court also finds conflict between the FAC's allegations here and

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[7] In *Grundy*, the plaintiffs alleged they were given no notice of the Inspection Clause before presenting their vehicles for repairs. *See Grundy*, No. 2:20-cv-11231, 2020 WL 7353515, at *1–3. Here, when pleading her breach of contract/warranty claim, Plaintiff alleges the Inspection Clause "was not available, much less disclosed until after the purchase of the Class Vehicles." FAC at 22, ¶ 64. Claims supported by allegations of nondisclosure versus notice could be distinguished. For example, in the instant case, the

Plaintiff's subsequent arguments against dismissal.[8] Even so, if the Court were to consider Plaintiff's nondisclosure argument, it may find factual disputes inappropriate for resolution on a motion to dismiss, as observed in *Grundy*. *See* No. 2:20-cv-11231, 2020 WL 7353515, at *3. But the Court finds that Plaintiff's nondisclosure argument is barred by the Sale Order as set forth in the Bankruptcy Order and described above. Accordingly, consistent with the Bankruptcy Order, the Court will not consider the FAC's nondisclosure allegations as the basis for Plaintiff's breach of contract/common law warranty claim.

ii. *Unconscionability*

"Under California law, a contractual provision is unenforceable if it is both procedurally and substantively unconscionable." *See Kilgore v. KeyBank, Nat'l Ass'n*, 718 F.3d 1052, 1058 (9th Cir. 2013) (en banc) (citing *Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal. 4th 83, 114 (2000)). "'Procedural unconscionability' concerns the manner in which a contract was negotiated and the circumstances of the parties at that time, focusing on factors of oppression and surprise." *Parada v. Superior Ct.*, 176 Cal. App. 4th 1554, 1570 (2009) (citing *Morris v. Redwood Empire Bancorp*, 128 Cal. App. 4th 1305, 1319 (2005)). "Oppression arises from an inequality of bargaining power that results in no real negotiation and an absence of meaningful choice . . . ." *Nagrampa v. MailCoups, Inc.*,

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nondisclosure occurred when Plaintiff purchased her Jeep and was given Warranty booklets that did not contain the Inspection Clause. *Id.* at 13, ¶ 28. These allegations are specific to Old Chrysler and not Defendant, because Old Chrysler sold the vehicle to Plaintiff. However, in *Grundy*, the allegation was that notice of the Inspection Clause was not provided until after Defendant refused to cover the repairs. *See Grundy*, No. 2:20-cv-11231, 2020 WL 7353515, at *1–3. Whether *Grundy* is distinguishable for purposes of avoiding the Sale Order, however, is not for this Court to decide.

[8] The FAC admits that the terms and conditions were provided but does not say when or how. *See* FAC at 8, ¶ 7; 10, ¶ 11; 13, ¶ 27. In her Opposition, Plaintiff argues that she never received the terms of the Inspection Clause in writing but in her class allegations, she alleges that when class members received the terms and conditions, the Inspection Clause "was in fine print." *Id.* at 10, ¶ 11; *see also id.* at 8, ¶ 7. These allegations indicate that class members, including Plaintiff, received the Inspection Clause in writing.

469 F.3d 1257, 1280 (9th Cir. 2006). "'Surprise' involves the extent to which the supposedly agreed-upon terms of the bargain are hidden . . . by the party seeking to enforce the disputed terms." *A & M Produce Co. v. FMC Corp.*, 135 Cal. App. 3d 473, 486 (1982) (citations omitted). "[B]road allegations of procedural unconscionability, stating simply that there was unequal bargaining power and there was lack of meaningful choice relating to the limitations on the warranties," are not sufficient to state a claim. *Marchante v. Sony Corp. of Am., Inc.*, 801 F. Supp. 2d 1013, 1022 (S.D. Cal. 2011).

"A provision is substantively unconscionable if it 'involves contract terms that are so one-sided as to "shock the conscience," or that impose harsh or oppressive terms.'" *Parada*, 176 Cal. App. 4th at 1573 (quoting *Morris*, 128 Cal. App. 4th at 1322). An overly harsh allocation of risks or costs occurs when there is no justification for such, given the "circumstances under which the contract was made." *See Navellier v. Sletten*, 262 F.3d 923, 940 (9th Cir. 2001) (citations omitted). "The [substantive] unconscionability doctrine is concerned not with a simple old-fashioned bad bargain but with terms that are unreasonably favorable to the more powerful party." *Poublon v. C.H. Robinson Co.*, 846 F.3d 1251, 1261 (9th Cir. 2017) (quoting *Baltazar v. Forever 21, Inc.*, 62 Cal. 4th 1237, 1244, (2016)). These two prongs operate on a "sliding scale" where the greater the substantive unconscionability the lesser procedural unconscionability is necessary, and vice versa. *See Pinnacle Museum Tower Assn. v. Pinnacle Mkt. Dev. (US), LLC*, 55 Cal. 4th 223, 247 (2012).

As to substantive unconscionability, Defendant contends that because it pays "for the once-every-five-year free inspection and . . . provid[es] [the] extended warranty coverage for getting that inspection" it is implausible that the agreement is so "one sided" or "unreasonably favorable" to Defendant. Motion at 13. Plaintiff counters that because failure to obtain the powertrain warranty within a narrow sixty-day window results in the warranty's cancellation, the terms are "unjustified and overly harsh" and are sufficient to establish substantive unconscionability. Oppo. at 12. The Court agrees with Defendant that the Inspection Clause is not unconscionable.

The Court need not reach Plaintiff's arguments regarding procedural unconscionability, because the FAC fails to sufficiently allege substantive unconscionability. In *Hall v. FCA US LLC*, the Ninth Circuit held that the exact same Inspection Clause was not substantively unconscionable. No. 21-55895, 2022 WL 1714291, at *1 (9th Cir. 2022). There, the Court determined that the plaintiff "had not shown that requiring the vehicle owner to obtain a free inspection every five years in exchange for a lifetime service coverage [wa]s substantively unconscionable because it [wa]s 'so one-sided as to shock the conscience,' or that it 'impose[d] harsh or oppressive terms.'" *Id*. at *2 (quoting *Morris*, 128 Cal. App. 4th at 1332). In *Hall*, the plaintiff's unconscionability claim was not supported by any factual allegations, whereas here, Plaintiff pleads that failure to obtain the inspection is unnecessary for the maintenance of the vehicle and serves no commercial purpose, making cancellation of the Warranty unreasonable. *See* FAC at 10–11, ¶ 12; 11, ¶ 13. However, in *Marksberry*, when the plaintiff made similar allegations, the court cited the Ninth Circuit's decision in *Hall*, holding that the same Inspection Clause was not substantively unconscionable. *See Marksberry v. FCA US LLC*, No. 19-2724-EFM-JPO, 2022 WL 2072717, at *7 (D. Kan. June 9, 2022) ("To the extent that Plaintiff argues that the powertrain inspection is unenforceable, he provides no law to support his position. Instead, he simply opines that he believes the inspection requirement is unnecessary and arbitrary because it is redundant to routine maintenance on the truck. That Plaintiff believes the provision is arbitrary does not change its enforceability or change the uncontroverted evidence that he did not obtain the required powertrain inspection.").

Plaintiff also argues that the 60-day window for the inspection is arbitrarily narrow. Oppo. at 6, 13. It may be arbitrary. But it does not shock the conscience. Even if the terms amount to a bad bargain for Plaintiff, substantive unconscionability requires more—that the terms be *unreasonably* favorable to Defendant. *See Poublon*, 846 F.3d at 1261. Considering the Warranty provided lifetime services in exchange for the Jeep undergoing a paid-for-inspection every five years, within a two-month time frame, the Court does not

find the terms *unreasonably* favorable to Defendant. Without substantive unconscionability, Plaintiff cannot satisfy the sliding scale in pleading both substantive and procedural unconscionability. Accordingly, the Court **GRANTS** Defendant's Motion to Dismiss Plaintiff's breach of contract/common law warranty claim.

Defendant also moves to dismiss based on the statute of limitations and alternatively, seeks to strike Plaintiff's Nationwide Class allegations from the FAC. Motion at 14–15. Because the Court grants Defendant's Motion to Dismiss Plaintiff's only remaining claim, the Court **DENIES** as moot Defendant's Motion to Strike Nationwide Class Allegations and Defendant's argument that Plaintiff's breach of contract/warranty claim is time-barred.

2. Leave to Amend

"The court considers five factors in assessing the propriety of leave to amend—bad faith, undue delay, prejudice to the opposing party, futility of amendment, and whether the plaintiff has previously amended the complaint." *SPRAWLDEF v. City of Richmond*, No. 20-17503, 2022 WL 1500803, at *1 (9th Cir. May 12, 2022) (quoting *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011)). Defendant seeks dismissal with prejudice but provides no specific arguments regarding leave to amend. Motion at 5. Plaintiff's Opposition does not address the issue of whether leave to amend should be granted. *See generally* Oppo.

Although leave to amend is often freely granted, Plaintiff already amended her Complaint when she filed her FAC on October 5, 2018. *See Doe ex rel. United States v. Vratsinas Constr. Co.*, 853 F. App'x 133, 134 (9th Cir. 2021) (quoting *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990)) ("The district court's discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint."). At the Bankruptcy Court Hearing, Plaintiff's counsel stated that if the case were sent "back to the Southern District of California, there will undoubtedly be amended complaints filed," in light of the Bankruptcy Court's ruling. ECF No. 30 at 705–706. However, after the case was transferred back to this Court, Plaintiff did not amend the FAC and took no action for over one-year. Plaintiff acted only after the Court issued an Order

to Show Cause. *See* ECF Nos. 28, 31, 33. Therefore, the Court finds that Plaintiff unduly delayed the proceedings.

In addition, the Court finds that amending the FAC would be futile. Plaintiff's claims relating to nondisclosure are barred by the Sale Order, and the Court has already determined that the terms of the Inspection Clause are not substantively unconscionable. Because the parties agree to the terms of the Clause, and those terms will not change, an attempt to plead that the terms are substantively unconscionable will be futile. Finally, as stated above, Plaintiff set forth no arguments as to why leave to amend should be granted. *See Sweet v. Ruiz*, No. 21-55057, 2022 WL 2452309, at *1 (9th Cir. July 6, 2022) (holding, in the context of a motion for summary judgment, that the district court did not abuse its discretion in denying leave to amend based on undue delay, futility, and for lack of evidentiary arguments by the plaintiff); *see also Reiman v. Jock*, 67 F. App'x 478 (9th Cir. 2003) ("The district court properly denied leave to amend because, given the nature of Reiman's allegations, amendment would be futile."). Accordingly, Plaintiff's claim for breach of contract/common law warranty is **DISMISSED**, *with prejudice*.

B. <u>Request for Judicial Notice</u>

Federal Rule of Evidence 201 authorizes a court to take judicial notice of facts "not subject to reasonable dispute because [they] . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). A court may take judicial notice of documents "whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the plaintiff's pleading." *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005).

Defendant requests that the Court take judicial notice of a Warranty document, which, on its face, is a purported supplement to the Warranty Information Books. ECF No. 35-2 ("RJN") at 2. The Warranty document contains the Inspection Clause as stated in Plaintiff's FAC, and Defendant argues the FAC relies on, and quotes said document. FAC at 14, ¶ 30; RJN at 2. The Court agrees that the language used in Plaintiff's FAC and the Warranty document at issue is nearly identical, with respect to the Inspection Clause. *See*

id.; Exhibit 1 to RJN. However, Plaintiff argues the FAC does not allege that she received this written document and in fact, "the warranty booklet she received did not contain the Inspection Clause at all." Oppo. at 8.

Although the Warranty document contains nearly identical terms to those set forth in Plaintiff's FAC, Plaintiff denies receiving this written document. The Court rejects Plaintiff's argument that no written document, including the Inspection Clause, was ever received because the FAC states that when class members received the terms and conditions after their purchase, the Clause was in the fine print. FAC at 8, ¶ 7; 10, ¶ 11. Plaintiff will not be heard to plead one way in her FAC and argue another in her Opposition. However, the document lodged by Defendant is not consistent with Plaintiff's allegations, because the Clause does not appear to be hidden in the "fine print" of this one-page document. Exhibit 1 to RJN. The Clause is legible, has its own heading, and is separated from the other clauses by spacing. *See id.* More importantly, the Court does not require the document to resolve Defendant's Motion to Dismiss. The parties agree to the text of the Inspection Clause as pleaded in the FAC, and the Court already held that the Clause is not unconscionable. Accordingly, at this stage in the proceedings, the Court **DENIES** Defendant's Request for Judicial Notice.

IV. CONCLUSION

For the above reasons, the Court **ORDERS** as follows:

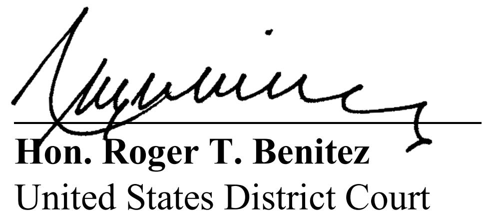
1. Defendant's Motion to Dismiss the FAC Pursuant to Rule 12(b)(6) is **GRANTED**, *with prejudice*.

2. Defendant's Motion to Strike the Nationwide Class Allegations from the FAC is **DENIED** as moot.

3. Defendant's Request for Judicial Notice is **DENIED**.

IT IS SO ORDERED.

DATED: August 10, 2022



Hon. Roger T. Benitez
United States District Court