UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GRACE PROUDFOOT, an individual; PAUL MERRITT, an individual; ALEXIS MURRAY-FORBES, an individual; and JENNIFER HOGAN, an individual; LAURA GOLDBERGER, an individual; and JONA ANDREWS-STOCKER, an individual, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC., a Delaware corporation,

Defendants.

Case No. 2:25-CV-09115 JFW (PVCx)

STATEMENT OF DECISION GRANTING DEFENDANT NISSAN NORTH AMERICA INC.'S MOTION TO DISMISS SECOND AMENDED COMPLAINT

This matter comes before the Court on Defendant Nissan North America, Inc.'s ("Nissan") Motion to Dismiss Second Amended Complaint ("Motion"), filed on March 13, 2025. (Dkt. 39.) Plaintiffs Grace Proudfoot ("Proudfoot"), Paul Merritt ("Merritt"), Alexis Murray-Forbes ("Murray-Forbes"), Jennifer Hogan ("Hogan"), Laura Goldberger ("Goldberg"), and Jona Andrews-Stocker's ("Andrews-Stocker") (collectively, "Plaintiffs") filed their Opposition on March 23, 2026 (Dkt. 42) and Nissan filed its Reply on March 30, 2026. (Dkt. 43.)

After considering the arguments of the parties and the papers submitted and for the reasons discussed below, the Court **GRANTS** Nissan's Motion and **DISMISSES without leave** to amend the SAC and **DISMISSES with prejudice** this action.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

Plaintiffs are six current California residents who each purchased or leased a 2019-2020 model year Nissan Leaf electric vehicle, which was designed and manufactured by Nissan. Specifically, Proudfoot purchased a 2019 Nissan Leaf in Oregon in July 2023 from an undisclosed party. Merritt purchased a 2020 Nissan Leaf in California in 2023 from an undisclosed party. Murray-Forbes leased a 2019 Nissan Leaf in California in 2021 from an undisclosed party. Hogan purchased a 2019 Nissan Leaf in California in 2022 from an undisclosed party. Goldberg purchased a 2019 Nissan Leaf in California in 2019 from an undisclosed party. Andrews-Stocker purchased a 2019 Nissan Leaf in California in 2022 from an undisclosed party. Plaintiffs allege that when they purchased their Nissan Leafs, they believed that the Nissan Leaf "could be charged in a variety of manners, including at Level 3 charging stations." In October 2024, Plaintiffs each received a letter from Nissan directing them to avoid Level 3 charging until a software fix was implemented (the "October 2024 Letter"). According to Plaintiffs, a defect in 2019 to 2022 Nissan

Leafs "causes a substantial fire risk during Level 3 fast charging" due to "excessive lithium deposits in their battery cells." Plaintiffs also allege that no software fix has been made available since they received the letter from Nissan in October 2024. None of the Plaintiffs allege that they have experienced any incidents related to Level 3 charging or the battery itself. In addition, none of the Plaintiffs allege that their Nissan Leafs have been rendered inoperable or that their Nissan Leafs have been unavailable for any period of time due to the Level 3 charging issue.

B. Procedural Background

On September 24, 2025, the four original plaintiffs – Proudfoot, Stuart L. Oken ("Oken"), Laura L. Wozniak ("Wozniak"), and Rachel Grossman ("Grossman") – filed this putative class action against Nissan. On October 23, 2025, the Court issued an Order to Show Cause ("OSC") why this action should not be dismissed for lack of subject matter jurisdiction and on October 27, 2026, the four original plaintiffs responded to the OSC by filing a First Amended Class Action Complaint ("FAC"), which added jurisdictional allegations to address the Court's concerns. After the parties conducted a series of comprehensive meet and confer conferences regarding Nissan's anticipated motion to dismiss the FAC, Nissan filed a motion to dismiss the FAC on January 2, 2026. Rather than oppose the motion to dismiss, the four original plaintiffs reached an agreement with Nissan that they would amend the FAC to address the arguments Nissan raised in its motion to dismiss.

On January 30, 2026, the SAC was filed, which removed three of the original four plaintiffs (Oken, Wozniak, and Grossman) and named five new plaintiffs (Merritt, Goldberg, Andrews-Stocker, Murray-Forbes, and Hogan) in addition to Proudfoot. In the SAC, Plaintiffs allege claims for: (1) unjust enrichment; (2) fraud; (3) negligent misrepresentation; (4) violation of California's Consumer Legal Remedies Act ("CLRA"), California Civil Code §§ 1750*, et seq*.; (5) violation of California's Unfair Competition Law ("UCL"), California Business & Professions

Code § 17200; (6) violation of California's False Advertising Law ("FAL"), California Business & Professions Code § 17500; (7) breach of implied warranty pursuant to Song-Beverly Consumer Warranty Act ("Song-Beverly"), California Civil Code §§ 1792 and1791.1, *et seq*.

II. LEGAL STANDARD

A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. "A Rule 12(b)(6) dismissal is proper only where there is either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Summit Technology, Inc. v. High-Line Medical Instruments Co., Inc.*, 922 F. Supp. 299, 304 (C.D. Cal. 1996) (quoting *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988)). However, "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and alterations omitted). "[F]actual allegations must be enough to raise a right to relief above the speculative level." *Id.*

In addition, Rule 9(b) provides: "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). The heightened pleading requirements of Rule 9(b) are designed "to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). In order to provide this required notice, "the complaint must specify such facts as the times, dates, places, benefits received, and other details of the alleged fraudulent activity." *Id.* at 672. Further, "a pleader must identify the individual who made the

alleged representation and the content of the alleged representation." *Glen Holly Entertainment, Inc. v. Tektronix, Inc.*, 100 F. Supp. 2d 1086, 1094 (C.D. Cal. 1999).

In deciding a motion to dismiss, a court must accept as true the allegations of the complaint and must construe those allegations in the light most favorable to the nonmoving party. *See, e.g.*, *Wyler Summit Partnership v. Turner Broadcasting System, Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). "However, a court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations." *Summit Technology*, 922 F. Supp. at 304 (citing *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) *cert. denied*, 454 U.S. 1031 (1981)).

Where a motion to dismiss is granted, a district court must decide whether to grant leave to amend. Generally, the Ninth Circuit has a liberal policy favoring amendments and, thus, leave to amend should be freely granted. *See, e.g.*, *DeSoto v. Yellow Freight Systems, Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). However, a Court does not need to grant leave to amend in cases where the Court determines that permitting a plaintiff to amend would be an exercise in futility. *See, e.g.*, *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile.")."[T]he district court's discretion to deny leave to amend is particularly broad where the plaintiff has previously amended the complaint." *In re Wet Seal, Inc. Securities Litig.*, 518 F. Supp. 2d 1148, 1181 (C.D. Cal. 2007) (citing *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir.1990)).

III. ANALYSIS

In its Motion, Nissan seeks an order dismissing of all seven of Plaintiffs' claims alleged in the SAC. Specifically, Nissan argues that: (1) Plaintiffs have not alleged facts demonstrating showing that their Nissan Leafs are unmerchantable, and

that the five Plaintiffs who concededly purchased used Nissan Leafs cannot bring Song-Beverly Act claims; (2) unjust enrichment is not an independent claim and Plaintiffs have not alleged facts demonstrating that they conferred any benefit on Nissan; (3) Plaintiffs' claims for equitable relief under the CLRA, UCL, and FAL fail because they have not pled any facts demonstrating the lack of an adequate legal remedy; (4) Plaintiffs' claims for fraud, negligent misrepresentation, violation of the CLRA, violation of the UCL, and violation of the FAL fail because they are insufficiently pleaded under both Rule 8 and Rule 9(b); and (5) Plaintiff Proudfoot is barred from bringing any claims under California consumer protection statutes because she purchased her Nissan Leaf in Oregon. In their Opposition, Plaintiffs argue that they have adequately alleged all of the claims in their SAC and argue that their claims are supported by the October 2024 Letter.

A. Plaintiffs Fail to State a Claim Under the Song-Beverly Act.

The Song-Beverly Act is a remedial "lemon law" statute with an implied warranty that requires products to be "fit for the ordinary purposes for which [they] are used." Cal. Civ. Code § 1791.1(a)(2). A vehicle is "fit" for its ordinary purpose so long as it "provides for a minimum level of quality and is not unsafe to operate." *Fish v. Tesla, Inc.*, 2022 WL 1552137, at *12 (C.D. Cal. May 12, 2022) (internal citation omitted); *see also Pilgrim v. Gen. Motors Co.*, 2020 WL 7222098, at *9 (C.D. Cal. Nov. 19, 2020) ("[W]here a car can provide safe, reliable transportation, it is generally considered merchantable") (quoting *Carlson v. General Motors Corp.*, 883 F.2d 287, 297 (4th Cir. 1989), *cert. denied*, 495 U.S. 904 (1990)).

In addition, the Song-Beverly Act's implied warranty of merchantability extends to manufacturers but only to the sale of "consumer goods." Cal. Civ. Code § 1792. "Consumer goods" is defined to include only "new product[s]." Cal. Civ. Code § 1791(a); *Rodriguez v. FCA US LLC*, 17 Cal. 5th 189, 202 (2024) ("For new products, liability extends to the manufacturer; for used products, liability extends to

the distributor or retail seller and not to the manufacturer, at least where the manufacturer has not issued a new warranty or played a substantial role in the sale of a used good"). Consequently, Song-Beverly implied warranty claims cannot be brought against the manufacturer of vehicles purchased as used. *Fish*, 2022 WL 1552137, at *12 (collecting cases); *see also Goldstein v. General Motors LLC*, 445 F. Supp. 3d 1000, 1018–19 (S.D. Cal. 2020); *Johnson v. Nissan N. Am. Inc.*, 272 F. Supp. 3d 1168, 1178–79 (N.D. Cal. 2017).

1. Most of the Plaintiffs Purchased or Leased A Used Nissan Leaf

Plaintiffs do not dispute that Plaintiffs Proudfoot, Merritt, Murray-Forbes, Hogan and Andrews-Stocker purchased or leased used vehicles and only Goldberg bought a new Nissan Leaf. As a result, the Court concludes that Plaintiffs Proudfoot, Merritt, Murray-Forbes, Hogan and Andrews-Stocker cannot assert a Song-Beverly claim. *Travelers Casualty Ins. Co. of Am. v. Geragos and Geragos*, 495 F. Supp. 3d 848, 854 (C.D. Cal. 2020) ("Arguments to which no response is supplied are deemed conceded."). Accordingly, Plaintiffs Proudfoot, Merritt, Murray-Forbes, Hogan and Andrews-Stocker's Song-Beverly claims must be dismissed on this basis alone.

2. Plaintiffs Have Failed to Plead Facts Demonstrating That Their Nissan Leafs Cannot Be Safely Operated

In addition, the Court agrees with Nissan that Plaintiffs have failed to plead facts demonstrating their Nissan Leafs have not been and cannot be operated safely. Their claims are based on the October 24, 2024 Letter which informed them of a potential risk of thermal incidents that can be avoided by not using Level 3 charging. However, Plaintiff do not allege in the SAC that any of their vehicles have malfunctioned, that they have stopped using their vehicles, or that the potential defect giving rise to the recall exists in their particular vehicle. Instead, Plaintiffs allege, at best, a mere inconvenience as a result of being required to utilize other standard methods of charging, which does not render their Nissan Leafs incapable of providing

safe transportation. *Troup v. Toyota Motor Corp.*, 545 Fed. Appx. 668, 669 (9th Cir. 2013) (affirming dismissal of a merchantability claim premised on diminished mileage capacity, where the diminished capacity did not impair the vehicle's operability but only required the plaintiff to refuel more often); *Fish*, 2022 WL 1552137, at *13 ("[S]imply because [plaintiff] would need to charge his vehicle more often than he expected does not mean that it is no longer fit for ordinary use."). The Court also agrees with Nissan that Plaintiffs cannot show that their vehicles are defective by relying on recall notices advising them that their vehicles *may* have a defect. *McGee v. Mercedes-Benz USA, LLC*, 612 F. Supp. 3d 1051, 1059 (S.D. Cal. 2020) (holding that the existence of a recall letter alone does not constitute an admission that the vehicle has a nonconformity and noting the referenced defect was present only in certain vehicles, not including plaintiff's); *Rodrigues v. General Motors LLC*, 2023 WL 8852740, at *4 (N.D. Cal. Dec. 21, 2023) (when "asserting [an implied] warranty claim, 'it is not enough to allege that a product line contains a defect or that a product is at risk for manifesting this defect; rather, the plaintiffs must allege that their product *actually exhibited the alleged defect*'") (citing *McGee*) (emphasis in original); *Campos v. Polaris, Inc.*, 2024 WL 1816945, at *3 (C.D. Cal. Mar. 5, 2024) (dismissing breach of implied warranty claims because notices of potential defects alone cannot be used to infer that the vehicles actually manifested the defects).

Finally, the Court declines to consider Plaintiffs' arguments regarding whether their Nissan Leafs "[p]ass without objection in the trade under the contract description;" "[a]re adequately contained, packaged, and labeled;" and "[c]onform to the promises or affirmations of fact made on the container or label." (Opp. at 9–10.) Plaintiffs' SAC does not base their Song-Beverly claim on any of these theories and, "[i]n determining the propriety of a Rule 12(b)(6) dismissal, a court *may not* look beyond the complaint to a plaintiff's moving papers, such as a memorandum in

opposition to a defendant's motion to dismiss." *See Schneider v. Cal. Dept. of Corrections*, 151 F. 3d 1194, 1197 & n.1 (9th Cir. 1998) (emphasis in original).

Accordingly, the Court grants Nissan's Motion with respect to Plaintiffs' seventh claim for breach of implied warranty under the Song-Beverly Act, and that claim is dismissed.

B. Plaintiffs Cannot Maintain Claims for Equitable Relief Because They Have Not Alleged Fact Showing a Lack of Adequate Legal Remedies.

Several of Plaintiffs' claims provide only equitable remedies, including the UCL, the FAL, and unjust enrichment. Plaintiffs also seek injunctive relief -- an equitable remedy, *see Franckowiak v. Scenario Cockram USA, Inc.*, 2020 WL 9071697, at *3 (C.D. Cal. Nov. 30, 2020) -- under the CLRA. (SAC ¶ 126.) Federal courts have jurisdiction to award equitable relief only where a plaintiff lacks an adequate legal remedy based on the same harm. *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 842 (9th Cir. 2020). As an initial matter, the Court agrees with Nissan that claims seeking equitable relief can be dismissed, rather than having to wait until the summary judgment stage to dispose of such claims. *See id.* at 838–39 (confirming that *Sonner* involved an appeal from an order dismissing the complaint under Rule 12(b)(6)); *Guzman v. Polaris Indus. Inc.*, 49 F. 4th 1308, 1314 (9th Cir. 2022) (holding that dismissal for lack of jurisdiction is the appropriate remedy where plaintiffs fail to plead the jurisdictional requirements for equitable relief); *see also In re Macbook Keyboard Litig.*, 2020 WL 6047253, at *2 (N.D. Cal. Oct. 13, 2020) ("The question is not whether or when Plaintiffs are required to choose between two available inconsistent remedies, it is whether equitable remedies are available to Plaintiffs at all. In other words, the question is whether Plaintiffs have adequately pled their claims for equitable relief, and that question is not premature on a motion to dismiss"). Although Plaintiffs are correct that they may plead equitable and legal remedies in the alternative, the Ninth Circuit held in *Sonner* that

"regardless of whether California authorizes its court to award equitable restitution under the UCL and CLRA when a plain, adequate, and complete remedy exists at law, we hold that federal courts rely on federal equitable principles before allowing equitable restitution in such circumstances." *Franckowiak*, 2020 WL 9071697, at *3 (citing *Sonner*, 971 F.3d at 845).

In this case, Plaintiffs allege only that they have been injured by the loss of value of their vehicles due to the unavailability of Level 3 charging during a portion of the time in which they have owned those vehicles. As a result, the Court concludes that damages will adequately compensate Plaintiffs for their alleged loss of product value. *See Sonner*, 971 F.3d at 844; *Sharma v. Volkswagen AG*, 524 F. Supp. 3d 891, 908 (N.D. Cal. 2021) (concluding that loss of money or loss in value are "exactly the type of injur[ies] for which legal remedies are appropriate").

Accordingly, Nissan's Motion is granted with respect to Plaintiff's first claim for unjust enrichment[1], fifth claim for violation of the UCL, sixth claim for violation of the FAL, and fourth claim for violation of the CLRA to the extent Plaintiffs seek equitable relief, and those claims are dismissed. *See Gibson v. Jaguar Land Rover North America, LLC*, 2020 WL 5492990, at *3–4 (C.D. Cal. Sept. 9, 2020) (dismissing the plaintiff's UCL claim and CLRA claim for equitable relief with prejudice because the plaintiff failed to allege that he lacked an adequate remedy at law); *Julian v. TTE Technology, Inc.*, 2020 WL 6743912, at *5 (N.D. Cal. Nov. 17, 2020) (dismissing the plaintiffs' Section 17200, Section 17500, CLRA, and

[1] The Court concludes that Plaintiff's first claim for unjust enrichment must also be dismissed because "unjust enrichment" is not an independent cause of action under California law. *See De Havilland v. FX Networks, LLC*, 21 Cal. App. 5th 845, 870 (2018) ("Unjust enrichment is not a cause of action"); *see also Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir. 2015) (holding that "in California, there is not a standalone cause of action for 'unjust enrichment'"); *Sotelo v. Rawlings Sporting Goods Co., Inc.*, 2019 WL 4392528, at *8 (C.D. Cal. May 8, 2019) (dismissing unjust enrichment claim "under California law . . . because it cannot serve as a standalone claim for relief").

unjust enrichment claims "to the extent they seek equitable relief because Plaintiffs have not demonstrated the inadequacy of a legal remedy").

C. Plaintiffs Cannot Maintain Their Fraud-Based Claims Because They Have Failed to Allege Them With the Requisite Particularity.

Plaintiffs' second, third, fourth, fifth, and sixth claims for fraud, negligent misrepresentation, violation of the CLRA, violation of the UCL, and violation of the FAL, respectively, are each expressly based on alleged misrepresentations and omissions by Nissan. (SAC ¶¶ 1, 8–9, 33, 64, 91–95, 102, 105–106, 120–121, 128, 133–135.) Where claims pled in a complaint "sound in fraud," the plaintiff must satisfy both the plausibility requirement of Rule 8 and the particularity requirement of Rule 9(b). *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124–25 (9th Cir. 2009); *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (holding that allegations of fraudulent conduct must be pleaded with particularity even where fraud is not an essential element of the claim they support); *see also* Fed. R. Civ. P. 9(b) (a party must "state with particularity the circumstances constituting fraud or mistake").

Rule 9(b) requires plaintiffs to plead "the who, what, when, where, and how" of the alleged fraud, as well as the circumstances demonstrating their reliance on the allegedly fraudulent representations or omissions. *Vess*, 317 F.3d at 1106 (citation omitted); *see also Kearns*, 567 F.3d at 1124. In addition, "the circumstances constituting the alleged fraud must be specific enough to give defendants notice of the particular misconduct so that they can defend against the charge and not just deny that they have done anything wrong." *Kau v. Lawrence*, 2024 WL 3458018, at *7 (C.D. Cal. May 21, 2024) (citing *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 558 (9th Cir. 2010)) (cleaned up).

Plaintiffs argue that their UCL, FAL, and CLRA claims are not in fact "exclusively" fraud based (Opp. at 23–25), and that they have satisfied the Rule 9(b) pleading standards for all of their fraud-based claims in any event. (*Id.* at 19–23.) The

Court rejects Plaintiffs' argument that their claims, and indeed their entire case, are not based on fraud. *See* SAC ¶ 8 ("by making false, fraudulent and/or misleading statements to consumers, Defendants made substantial profits and deceived thousands of customers, including Plaintiffs, who purchased or leased the Class Vehicles under the false belief that they could quickly charge their vehicles at Level 3 fast charging stations"); ¶ 9 ("[c]onsumers have been misled, induced and defrauded into spending money and thus harmed by Defendants' fraudulent misrepresentations, false advertising, and unfair, unlawful and fraudulent business practices"); ¶¶ 114, 119 (alleging that the CLRA claim is based on misrepresentations and "fail[ure]to disclose or concealing the defective nature of the charging systems"); ¶¶ 128–129 (premising the UCL claim on "fraudulent conduct"); ¶¶133–134 (alleging that the FAL claim is premised on "false statements [made] in commercial advertisements directed at the public" which "deceived or had the tendency to deceive a substantial segment of their audience and the class").

The Court agrees with Nissan that Plaintiffs have not adequately alleged the contents of the specific misrepresentations they purportedly viewed when deciding to purchase their vehicles, the circumstances in which they were presented with those representations, and their reliance on the representations in informing their decisions to purchase their vehicles. *See* SAC ¶ 33; *see also id.* ¶¶ 64, 91–95, 102, 114, 133. Plaintiffs' allegations of the elements of fraud do not meet the particularity standard set by Rule 9(b) and fail to plead "the who, what, when, where, and how" of the alleged fraud. *Vess*, 317 F.3d at 1106 (citation omitted). In addition, Plaintiffs' allegations fail to specifically identify the circumstances demonstrating their reliance on the allegedly fraudulent representations or omissions. *Lee v. Toyota Motor Sales, U.S.A., Inc.*, 992 F. Supp. 2d 962, 974–77 (C.D. Cal. 2014) (dismissing fraud and statutory claims where plaintiffs failed to identify particular actionable statements or omissions).

Finally, the Court finds that Plaintiffs have not pled facts demonstrating that Nissan knew that any of its alleged representations were false at the time they were made or communicated to Plaintiffs. *See Daugherty v. Am. Honda Motor Co., Inc.*, 144 Cal. App. 4th 824, 834 (2006) (dismissing CLRA claim because complaint failed to identify a representation that a vehicle had any characteristic it did not have). In their Opposition, Plaintiffs argue only that information that would fill any of the gaps in their SAC must be in Nissan's exclusive possession. (Opp. at 20.) "While it is true that Rule 9(b)'s specificity requirement may be relaxed as to matters within the opposite party's exclusive knowledge," a complaint must *actually demonstrate* "that the evidence of the alleged fraud is exclusively within [Nissan's] possession or that Plaintiffs have no knowledge of the relevant facts." *Sacramento E.D.M., Inc. v. Hynes Aviation Indus., Inc.*, 965 F. Supp. 2d 1141, 1151 (E.D. Cal. 2013) (citing *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989)); *Cho v. Hyundai Motor Co., Ltd.*, 636 F. Supp. 3d 1149, 1167 (C.D. Cal. 2022) (cleaned up) ("To successfully allege a manufacturer was aware of a defect, a plaintiff is typically required to allege how the defendant obtained knowledge of the specific defect prior to the plaintiff's purchase of the defective product"). The SAC's bare allegations of generic pre-sale "testing" and an unrelated prior lawsuit do not satisfy the Rule 9(b) pleading standard. *See Neu v. FCA US LLC*, 2023 WL 10406710, at *5 (C.D. Cal. Nov. 13, 2023) (concluding that allegations of specific tests insufficient where the plaintiffs failed to plead how the tests would have given the defendant knowledge of the defect); *Sweeny v. Toyota Motor Sales, U.S.A., Inc.*, 2023 WL 2628697, at *8 (C.D. Cal. Feb. 9, 2023) (finding that general allegations of pre-sale testing do not give rise to an influence of knowledge).

Accordingly, Nissan's Motion is granted with respect to Plaintiffs' second claim for fraud, third claim for negligent misrepresentation, fourth claim for violation

of the CLRA, fifth claim for violation of the UCL, and sixth claim for violation of the FAL, and those claims are dismissed.

D. Plaintiff Proudfoot Cannot Bring Claims Under California Statutes Because She Purchased Her Vehicle in Oregon.

A plaintiff can bring suit under California's consumer protection laws only if there is evidence that "the actual law violations occurred in this state." *People v. Ashford Univ., LLC*, 100 Cal. App. 5th 485, 524 (2024); *Sullivan v. Oracle Corp.*, 51 Cal. 4th 1191, 1207 (2011) ("[T]he presumption against extraterritoriality applies to the UCL in full force"); *In re Toyota Motor Corp.*, 785 F. Supp. 2d 883, 917–18 (C.D. Cal. 2011) (dismissing UCL and CLRA claims because "Plaintiffs have not alleged with sufficient detail that the point of dissemination from which advertising and promotional literature *that they saw or could have seen* is California") (emphasis in original); *id.* at 918 ("The FAL prohibits false or misleading statements 'made or disseminated before the public in [California]' and 'from [California] before the public in any state'") (citing Cal. Bus. & Prof. Code § 17500). The statutes at issue do not govern transactions in other states. Because Proudfoot purchased her vehicle in Oregon, these statutes cannot apply to her purchase.

Accordingly, the Court concludes that Nissan's Motion is granted with respect to Plaintiff Proudfoot's CLRA, UCL, and FAL claims, and those claims are dismissed.

E. Leave to Amend Would Be Futile

The Ninth Circuit has instructed that "a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *See, e.g.*, *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)). However, "[a] district court may dismiss a complaint without leave to amend if amendment would be futile." *Airs Aromatics,*

LLC v. Opinion Victoria's Secret Stores Brand Mgmt., Inc., 744 F.3d 595, 600 (9th Cir. 2014) (citation and quotation marks omitted); *Gardner v. Martino*, 563 F.3d 981, 992 (9th Cir. 2009) (finding no abuse of discretion in denying leave to amend when amendment would be futile); *Rutman Wine Co.*, 829 F.2d at 738 ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile").

In this case, the Court concludes that it would be futile and thus, unnecessary to provide Plaintiffs another opportunity to amend their claims for relief. *See, e.g.*, *Chaset v. Fleer/Skybox Int'l, LP*, 300 F.3d 1083, 1087–88 (9th Cir. 2002) ("The basic underlying facts have been alleged by plaintiffs and have been analyzed by the district court and us. We conclude that the plaintiffs cannot cure the basic flaw in their pleading. Because any amendment would be futile, there is no need to prolong the litigation by permitting further amendment"); *Lipton v. Pathogenesis Corp.*, 284 F.3d 1027, 1039 (9th Cir. 2002) ("Because any amendment would be futile, there was no need to prolong the litigation by permitting further amendment"); *Klamath–Lake Pharmaceutical Ass'n v. Klamath Med. Serv. Bureau*, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that "futile amendments should not be permitted"). Plaintiffs have had three opportunities to allege their claims against Nissan and have failed to do so despite numerous meet and confer conferences between the parties. In addition, Plaintiffs have failed to indicate in their Opposition what additional facts they could allege in order to state viable claims against Nissan.

Accordingly, the Court concludes that Plaintiffs have failed to demonstrate that there are additional facts they could allege in order to state viable claims against Nissan and, as a result, their claims are **DISMISSED without leave to amend**.

IV. CONCLUSION

For all the foregoing reasons, Nissan's Motion is **GRANTED**. Plaintiffs' SAC is **DISMISSED without leave to amend**, and this action is **DISMISSED with**

prejudice. The parties are ordered to meet and confer and agree on a joint proposed Judgment which is consistent with this Order. The parties shall lodge the joint proposed Judgment with the Court on or before May 8, 2026. In the unlikely event that counsel are unable to agree upon a joint proposed Judgment, the parties shall each submit separate versions of a proposed Judgment along with a Joint Statement setting forth their respective positions on or before May 8, 2026.

IT IS SO ORDERED.

Dated: May 1, 2026

Honorable John F. Walter
United States District Judge