SUPERIOR COURT OF THE STATE OF CALIFORNIA

SANTA CLARA COUNTY

LEW COLON, On Behalf of Himself and All Others Similarly Situated,	:	CIVIL ACTION NO. 1 06-CV-075163
	:	CLASS ACTION
Plaintiffs,	:	**ORDER GRANTING MOTION FOR CLASS CERTIFICATION**
vs.	:	
JAGUAR LAND ROVER NORTH AMERICA, LLC.,	:	
Defendant.	:	

The motion for plaintiff Lew Colon for an order certifying the class came on for hearing in Department 1 of this Court on June 29, 2012. James C. Shah and Mark F. Anderson appeared for plaintiff and Paul A. Werner appeared for defendant Jaguar Land Rover North America, LLC.

Having read the motion, the memoranda and declarations filed by the parties, and having heard arguments of counsel, the Court makes the following findings and order:

This is a putative consumer class action. Plaintiff Lew Colon ("Plaintiff") alleges that the tires on his 2005 Land Rover LR3 leased from Land Rover San Jose in March 2005 were wearing unevenly and prematurely because of a defect in the alignment geometry, according to defendant Land Rover North America, Inc.'s ("Defendant") own analysis. Plaintiff alleges that Defendant violated the terms of the express 4-year, 50,000 mile Limited Warranty by refusing to replace all of the tires each time the tires were worn and to pay for any realignment due to the uneven wear, which was caused by a defect in the car. Plaintiff further claims that, despite knowledge of this defect, Defendant failed to notify its customers of the defect that was the cause of premature and uneven tire wear until October 2006, when it belatedly issued Technical Service Bulletin LA 204-005 ("TSB") explaining the defect. The operative Third Amended Complaint ("TAC") was filed on October 17, 2008 and alleges two causes of action: (1) Violation of the Unfair Competition Law ("UCL") (Bus. & Prof. Code, § 17200 et seq.), and (2) Violation of the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790 et seq.) (the"Song-Beverly Act")

Plaintiff originally moved for class certification in January of 2008. However, on December 14, 2009, the Court granted Defendant's motion to stay class certification proceedings, finding that "[t]he class action allegations in this case are for all intents and purposes the same as those in the federal actions, and there is a danger of an 'unseemly conflict' if this Court certifies a class and the Ninth Circuit affirms the federal court's decision to deny class certification."[1]

The federal appeal involved two putative class actions by Kenneth Gable and Brian Wolin against Defendant alleging the same alignment geometry defect as in this case. On August 17, 2010, the Ninth Circuit reversed the District Court's denial of class certification in both actions, finding that the plaintiffs "easily satisfy the commonality requirement" for the claims alleging defective alignment geometry. (*Wolin v. Jaguar Land Rover North Am. LLC* (9th Cir. 2010) 617 F.3d 1168, 1172.)

On January 13, 2012, the Court lifted the stay in this action.

Plaintiff now moves to certify a class of all current and former owners and lessees of the Land Rover LR3 model years 2005 and 2006 ("LR3") purchased or leased in the State of California.[2]

Legal Standards

> Code of Civil Procedure section 382 authorizes class actions "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."
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> The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. [Citations.] The "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. [Citation.]
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> The certification question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." [Citation.] A trial court ruling on a certification motion determines "whether ... the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." [Citations.]
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> The certification question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." [Citation.] A trial court ruling on a certification motion determines "whether...the issues which may be

[1]Order at p. 1 (docket no. 50).

[2]Excluded from the proposed class are officers and employees of Defendant and its parent corporation, as well as any judge to whom this action is assigned.

> jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." [Citation.]
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> (*Sav-On, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

Parties' Arguments

Plaintiff argues the class should be certified because the same class against the same defendant alleging the same defect in alignment geometry of LR3s was certified in Wolin. Plaintiff argues the proposed class is sufficiently numerous because it is composed of the purchasers and lessees of over 10,000 vehicles.

Plaintiff argues common issues predominate because the claims are based on the uniform manner in which Defendant marketed and sold the defective vehicles that were causing damage covered by Defendant's express warranty, in violation of the UCL, California Secret Warranty Act, and the Song-Beverly Act, and they involve the same alleged defect, covered by the same warranty, and found in vehicles of the same make and model. Plaintiff further argues there are common issues as to whether the LR3's alignment geometry was defective, whether Defendant was aware of this defect and concealed the nature of the defect, whether Defendant's conduct violated consumer protection laws, and whether Defendant was obligated to pay for or repair the alleged defect pursuant to the express or implied terms of its warranties. Plaintiff submits that the documents produced by Defendant in discovery demonstrate that the alleged defect is uniform and common to all class members.

Plaintiff argues his claims are typical of the proposed class because he purchased a vehicle with the same alignment geometry defect as all other vehicles, and suffered the same harm as suffered by the other members of the class he seeks to represent. Plaintiff argues his counsel will adequately represent the class, as they are qualified and possess substantial experience in the conduct of litigation of the size, scope and complexity of this case. Plaintiff argue he has no conflicts that would make him an inadequate representative.

Plaintiff argues a class action is superior to other methods for fair and efficient adjudication of this controversy because any individual class member's damages will be modest relative to the time and expense of litigating this case, while Defendant has hundreds of millions of dollars generated by the sale of these vehicles. Plaintiff argues a class action is manageable, particularly if trial is bifurcated into liability and damages phases.

Defendant argues that *Wolin* does not control the determination of this motion because *Wolin* does not address California law, and *Wolin* was expressly rejected in *American Honda Motor Co. v. Superior Court* (2011) 199 Cal.App.4th 1367 (hereinafter "*Am. Honda*"). Defendant argues that under *Am. Honda* and *Hicks v. Kaufman and Broad Home Corp.* (2001) 89 Cal.App.4th 908, a "party moving for class certification must provide substantial evidence of a defect that is substantially certain to result in malfunction during the useful life of the product." (*Am. Honda, supra*, 199 Cal.App.4th at p. 1375.)

Defendant argues there is no common proof showing the proposed class members actually experienced the alleged alignment geometry defect. Defendant contends that Plaintiff's expert

did not identify any vehicle defect or even study the cause of Plaintiff's tire wear. Defendant argues the case will actually require individualized inquiries into whether each class member's LR3 experienced premature and uneven tire wear. Defendant submits that many types of abnormal tire wear have nothing to do with the alleged alignment geometry defect Plaintiff alleges, e.g., heel-toe wear (where the trailing portion of tread block is worn at a greater rater than the leading portion) and alternating lug wear (where tire blocks within the same tread rib are not wearing consistently), and these types of wear cannot be caused by either the camber or toe settings being out of adjustment, but instead are related to the driving style of the operator and the tire design itself, which would be unique from class member to class member. Defendant contends that it will be necessary to engage in a vehicle-by-vehicle analysis of initial alignment specifications when leaving the facility, alignment readings and any adjustments received, tread-depth measurements for each of its tires, each tire's location on the vehicle, tire rotation history, service and maintenance history, mileage at any point the tires were rotated, driving habits and tendencies, elimination of other causes of geometry misalignment (e.g., accidents), elimination of other causes of tire wear (over/under inflation, road surfaces). Defendant argues that the TSB is no proof of a common defect, as held by the court in *Am. Honda*, and furthermore, the 2006 TSB and related service bulletins expressly show that only a small segment of LR3 vehicles potentially experienced any kind of problem.

Defendant argues Plaintiff has no proof of the alleged alignment geometry defect, and the vast majority of the proposed class experienced no factory alignment issue and no premature or uneven tire wear. According to Defendant, it began its investigation a year after the 2005 LR3 came out in September 2005, when the UK quality team began to receive information regarding a possible issue regarding abnormal tire wear. Defendant contends the investigation revealed a small fraction of LR3s experienced changes to the rear toe geometry settings after those vehicles had their alignment geometries calibrated at the production facility, and further investigation revealed that the change in rear toe geometry settings was associated with the setting of the Rear .3 bushing (or the "RP3" or "rear point three") which is located in the rear lower suspension arm. Defendant's engineers called this "bush creep", and according to Defendant, the setting of this bushing could affect the rear toe settings of the LR, and in some cases, the geometry settings changed to a degree that they were no longer within the recommended specifications. Defendant submits that in a smaller number of cases, those geometry alignment settings changed to an extent that they could impact tire wear, and once Defendant's engineers identified the issue, they (1) recalibrated certain geometry settings at the production facility to ensure that even if the vehicle's geometry did change, the change would not cause the vehicle's alignment to fall outside of LR3's specifications; (2) once the new specifications were field tested and confirmed, Defendant issued an October 2006 TSB LA204-005 advising dealerships how to realign the LR3 to compensate for bush creep and providing the target field rear toe specifications for realigning the vehicles.

Defendant argues there are further individualized proof problems because the proposed class includes LR3 owners who purchased their vehicles after the expiration of vehicle's limited warranty, as well as owners who gave Defendant a reasonable number of opportunities to repair any allege defect and either received 100% reimbursement for their tires through Defendant's TSBs, or refused warranty relief.

Defendant argues the UCL claim is not appropriate for class treatment because Plaintiff fails to specify any misrepresentations or omissions that was uniformly applied to the class, has not

articulated any legal theory as to the "unlawful" and "unfair" prongs of the UCL, and has not argued with any specificity that such claims are susceptible to class treatment.

Finally, Defendant argues that Plaintiff's individual claims are not typical of the proposed class because he did not experience the type of tire wear at the heart of the claims, and did not suffer any provable injury.

Discussion

Plaintiff's legal theory in this case is that a factory defect in the alignment geometry in LR3s model years 2005 and 2006 caused premature and uneven wear of tires, and that Defendant became aware of the defect shortly after the 2005 LR3s were brought to market, but continued to sell the vehicles without disclosing the existence of the defect. Plaintiff submits that Defendant issued TSBs to its authorized dealerships stating in a uniform manner corrective actions that should be taken, and the level at which owners and lessees would be reimbursed for replacement tires. Plaintiff submits that the testimony and business records of Defendant, as well as third parties, confirm the widespread existence of this common defect in the Vehicles. Plaintiff also submits the Declaration of Robert Wozniak, a licensed Professional Engineer and Vice President-Engineering for Skogen Engineering Group, Inc., retained by Plaintiff as an expert on motor vehicle defects. Mr. Wozniak states he personally inspected ten LR3s, including Plaintiff's vehicle, and concludes "[t]he uneven and premature tire wear that I observed during my inspections is consistent with the alignment geometry defect that Land Rover has acknowledged to exist in its internal documents. Moreover, the inspections demonstrated that the premature and uneven tire wear observed was essentially identical on all of the Vehicles and entirely consistent with this alignment geometry defect."[3] Mr. Wozniak further states that "[b]ased upon my review of the documents and inspection of the Vehicles to date, it appears to me that the Vehicles all suffer from a common defect that causes an out-of-alignment condition which results in premature and uneven tire wear."[4] Mr. Wozniak disagrees with testimony from John W. Daws (a defense expert who submitted his declaration in *Wolin* and also previously in this case) that heal-toe wear cannot be caused by out of alignment conditions.[5] Mr. Wozniak submits that "I have reviewed a number of publications which indicate that heel-toe wear can be compounded or accelerated by alignment issues on vehicles."[6] Mr. Wozniak attaches these publications as Exhibits U, V, and W to his declaration. Furthermore, "In addition to the various publications that confirm the interplay between alignment issues and heel-toe wear, a review of Land Rover's own documents (LRUK144194-144204) confirms that, consistent with the concepts set forth in the attached literature, Land Rover itself acknowledged that heel-toe wear can be accelerated by alignment issues."[7]

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[3]Decl. Wozniak ¶ 18.

[4]Decl. Wozniak ¶ 20.

[5]Decl. Wozniak ¶ 21.

[6]Decl. Wozniak ¶ 23.

[7]Decl. Wozniak ¶ 27.

As the Ninth Circuit in *Wolin* pointed out, the claims at issue involve the same alleged defect in alignment geometry, covered by the same Limited Warranty, and found in vehicles of the same make (Land Rover) and model (LR3 2005 and 2006). (*See Wolin, supra*, 617 F.3d at p. 1172.) In rejecting Defendant's arguments about the individualized factors affecting tire wear, the Ninth Circuit noted, "we have held that proof of the manifestation of a defect is not a prerequisite to class certification. [Citation.]" (*Id.* at p. 1173.) Defendant argues that California law differs on this point and cites *Am. Honda* in support. In *Am. Honda*, the Court of Appeal (CA2/8) held that under *Hicks*, a party moving for class certification must provide substantial evidence of a defect that is substantially certain to result in malfunction during the useful life of the product. In doing so, the Court of Appeal held that the lower court's reliance on *Wolin* was based on an erroneous legal assumption that the above portion of *Hicks* was dictum. (*Am. Honda, supra*, 199 Cal.App.4th at p. 1374.)

However, the main point of *Hicks* (which reversed a denial of class certification) is no different from the statement of federal law in *Wolin* that "proof of the manifestation of a defect is not a prerequisite to class certification." (*See Wolin*, supra, 617 F.3d at p. 1172.) The *Hicks* court reversed the trial court's denial of class certification for failure to present evidence of common manifest damage. (*See Hicks, supra*, 89 Cal.App.4th at p. 916.) Thus, under both federal and California law, proof of manifest damage is not a prerequisite to class certification. *Am. Honda* extended *Hicks* to impose an affirmative requirement on class certification of warranty claims. However, imposing this certification requirement based on the substantive law of warranty would require plaintiffs to prove the legal and factual merits of the claim at the time of class certification, which goes directly against clear contrary authority (including *Sav-On*). For similar reasons, the U.S. District Court for the Central District of California recently disapproved of the analysis in *Am. Honda*:

> *American Honda*, however, appears to have conflated the substantive requirements of California warranty law and California procedure governing class certification. The *American Honda* court read *Hicks* to require that at the class certification stage, plaintiffs present evidence that the defect common to the product purchased by class members is substantially certain to manifest in a malfunction during the useful life of the product. *Hicks*, however, appears to have addressed this question as a matter of substantive California warranty law, and to have reversed the trial court's denial of class certification because it relied on an erroneous interpretation of California warranty law, i.e., that because each plaintiff had to show that a malfunction had manifested in his or her individual product, common questions did not predominate.[8]

The issue here is not whether Plaintiff has proven the nature of the alleged defect for all of the class (including the substantial certainty of malfunction within the LR3's useful life), for that would turn this motion into a merits determination. The issue here is simply whether Plaintiff

[8]Order Granting in Part and Denying in Part Plaintiffs' Motion for Class Certification in *Keegan, et al. vs. American Honda Motor Co., Inc.*, Case No. 10-09508 MMM (AJWx), available at http://www.impactlitigation.com/wp-content/uploads/2012/06/Keegan-cert-order.pdf (last visited June 26, 2012).

has sufficiently demonstrated that common issues of fact and law will predominate over individualized ones. Plaintiff has submitted common evidence in the form of TSBs and internal documents of Defendant's. Thus, Plaintiff proposes to prove that all of the LR3s contained the same alignment problem at the time of sale based common evidence.

Defendant argues individual issues will predominate because uneven tire wear did not manifest in all of the vehicles in the class. However, this seems to be an issue of individual damages, not liability. "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Hicks*, supra, 89 Cal.App.4th at p. 916.) On this point, *Hicks* makes an important distinction between proving breach of warranty and the damages flowing therefrom: "The question whether an inherently defective product is presently functioning as warranted goes to the remedy for the breach, not proof of the breach itself." (*Hicks, supra*, 89 Cal.App.4th at p. 918.) Here, uneven tire wear is not the alleged defect.[9] Rather, the alleged defect is in the LR3's alignment geometry, which may result in uneven tire wear. Thus, if Plaintiff can prove the existence of an inherent defect in all of the LR3's alignment geometry, Plaintiff will have demonstrated *liability* based on common evidence, and the fact that class members would later have to individually prove that the inherently defective LR3s did not function as warranted for purposes of their *damages* does not defeat class certification. Defendant's argument that each class member must prove individualized tread-depth measurements or disprove that uneven and premature tire wear results from driving habits only demonstrates the individualized nature of proving damages, not liability for an alignment geometry defect that allegedly existed at the time of sale.

As Defendant notes, the court in *Am. Honda* expressly rejected the reliance upon TSBs by trial courts. "A TSB is not and cannot fairly be construed by a trial court as an admission of a design or other defect because TSBs are routinely issued to dealers to help diagnose and repair typical complaints. If a TSB standing alone were sufficient to show a product liability case is proper for class action treatment, then there would be a class action every time a TSB is issued." (*Id.* at p. 1378.) However, the *Am. Honda* court cites no authority whatsoever for its sweeping rule that a TSB is inadmissible as an admission of a design or other defect. More importantly, whether a TSB can or cannot prove the existence of a defect is irrelevant to class certification because the merits of the defect claim are not at issue.

Furthermore, the instant case goes beyond the situation in *Am. Honda* because Plaintiff relies not simply on the TSBs, but on Defendant's internal documents discussing the same problem addressed in the TSB.[10] Among the documents submitted by Plaintiff is a March 29, 2005 email

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[9]After all, tires are explicitly excluded from Defendant's Limited Warranty, which states: "The New Vehicle Limited Warranty covers any factory-supplied component of the Land Rover vehicle that is defective during the basic warranty period, ***with the exception of tires*** and items such as: ... Lubricants ... Normal maintenance items ... Regularly scheduled maintenance, parts and labor ... Wear parts . . . ." (LRNA 00000562, emphasis added, Exh. 6 to Decl. Paul. A. Werner ISO Defendant's MPA in Opp. to Plaintiffs' Mot. Class Cert..)

[10]The court in *Am. Honda* briefly discussed the plaintiff's submission of an internal Honda communication suggesting a design-related problem. While the court expressly rejected the probative value of the TSB, it did not mention the internal communication again, other than noting in a footnote that Honda had not objected to the discussion of this internal correspondence

from Alan Clarke, Defendant's Product Investigation Manager, stating: "We have a ***known factory defect*** causing misalignment and premature tire wear." Defendant disputes Plaintiff's interpretation of the TSB, but the issue here is not to adjudicate the merits of the evidence, but ascertain whether Plaintiff attempts to prove liability for the entire class. Another set of correspondences discusses "an issue with improper alignment from ***the factory on LR3*** and RRS."[11] A presentation slide on tire concerns states: "From our recent Grassroots meetings retailers are unanimous in their displeasure with the warranty policy for prorating worn tires for ***LR3/RRS with misaligned factory settings.*** They believe LR should cover 100% of the tire replacement cost, and are expecting a Company response to this issue. . . . Standard LR warranty policy for tires ***due to a failed part of the vehicle*** is 100% reimbursement." "**RECOMMENDATION**: Revise policy to 100% reimburse customers for tires on vehicles affected by ***bad factory settings.***"[12] Defendant's knowledge of the alleged defect in "factory settings" is also demonstrated through these common, internal correspondences.[13]

Thus, *Wolin* appropriately holds that "[a]lthough individual factors may affect premature tire wear, they do not affect whether the vehicles were ***sold with an alignment defect.***" (*Wolin*, supra, 617 F.3d at p. 1173, emphasis added.) Here, Plaintiff's evidence of a "known factory defect" and "bad factory settings" is submitted to prove that there was a known alignment irregularity affecting all of the vehicles in the class. Similarly, Mr. Wozniak's declaration, though focusing on his personal observations of tire wear in ten class members' vehicles, states: "The uneven and premature tire wear that I observed during my inspections is ***consistent with the alignment geometry defect that Land Rover has acknowledged to exist in its internal documents.***"[14]

If anything, the declaration of George Sherrey, Defendant's engineering expert, serves to support Plaintiff's position that a defect in the alignment geometry can be proven for all of the vehicles in the class based on uniform aspects of the manufacturing process. Mr. Sherrey explains in detail how "[s]uspension geometry specifications are developed and released in line with the vehicle maturing through production"[15] and that "[e]very LR3 has had its suspension geometry set through the Wheel Alignment and Headlight Aim (WAHA) facility."[16] Mr. Sherrey

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at oral argument. (*See Am. Honda, supra*, 199 Cal.App.4th at p. 1378, fn. 2.) The court did not discuss whether this internal communication could constitute common evidence of Honda's knowledge of a design defect affecting all of the cars within the scope of the correspondence, and the *Am Honda* opinion's silence on this point should not act as a bar to the consideration of such evidence in this case.

[11] 3/29/06 email from Chandler Magoon, Exh. 3, Decl. Grenon, emphasis added.

[12] Tire issue slide entitled "LR.Tire.Concern.11", Exh. 21 to Decl. Grenon, emphasis added.

[13] See Exhs. 6, 8, 11, 12, 15.

[14] Decl. Wozniak ¶ 18.

[15] Decl. Sherrey ¶ 13.

[16] Decl. Sherrey ¶ 27.

discusses how suspension bush settlement during the manufacturing process can be dealt with, for example, through a production offset to the geometry setting to shift the manufacturing setting away from the nominal specification to compensate for the average level of settlement.[17] Nothing in Mr. Sherrey's discussion about setting geometry specifications during the manufacturing process suggests that the process is so diversified from vehicle-to-vehicle that a factory alignment defect cannot be proven for all of the cars built within that setting.

Defendant argues that Plaintiff's warranty claim is not amenable to class treatment because Plaintiff cannot show that all members of the proposed class presented their vehicles to a Land Rover dealer for repair, and that for those who did, the dealer was given a "reasonable number" of opportunities to attempt to repair the vehicle. Defendant argues this would require many individualized inquiries on the circumstances of each putative class member's presentment and repair under the Song-Beverly Act.

Civil Code section 1793.2 of the Song-Beverly Act imposes obligations on every manufacturer of consumer goods sold in the state for which an express warranty applies. Those obligations include maintenance of service and repair facilities in reasonable proximity to where the goods are sold to carry out those warranties or entering into warranty service contracts with independent service and repair facilities. (*See* Civ. Code, § 1793.2, subd. (a)(1)(A), (B).) Under section 1793.2, if the manufacturer does not service or repair the goods to conform to the express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer for the purchase price less that amount directly attributable to use prior to the discovery of the nonconformity. (*Id.* at subd. (d)(1).)

However, as Plaintiff points out, failure to service or repair within a reasonable number of attempts or reimburse under section 1793.2 is not the only obligation upon which a buyer may sue under the Song-Beverly Act. Civil Code section 1794, subdivision (a) states: "Any buyer of consumer goods who is damaged by a failure to comply with any obligation under this chapter *or* under an implied or express warranty...may bring an action for the recovery of damages and other legal and equitable relief." Thus, Plaintiff can sue for breach of express warranty rather than sue for failure to comply with the warranty service and repair obligations under section 1793.2. "[T]o prevail on a breach of express warranty claim, the plaintiff must prove (1) the seller's statements constitute an 'affirmation of fact or promise' or a 'description of the goods'; (2) the statement was 'part of the basis of the bargain'; and (3) the warranty was breached. [Citation.]" (*Weinstat v. Dentsply Internat., Inc.* (2010) 180 Cal.App.4th 1213, 1227 [some quotation marks omitted].) Here, there is no dispute as to the existence of an express warranty by Defendant with regard to the LR3s, or that this warranty was part of the bargain. As discussed above, Plaintiff submits common evidence to demonstrate Defendant's breach of the Limited Warranty.

As for the UCL claim, it is evident that Plaintiff is asserting an omissions theory, not one based on misrepresentations. To state a cause of action under the fraudulent prong of the UCL, a plaintiff must demonstrate that the challenged conduct presents the likelihood of public deception. (*Prata v. Superior Court* (2001) 91 Cal.App.4th 1128, 1146.) Defendant argues that in order to be deceived, the public must have had an expectation about the issue in question,

[17]Decl. Sherrey ¶ 35.

but under *Daugherty v. Am. Honda Motor Co.* (2006) 144 Cal.App.4th 824, the only expectation buyers can have is that a product will function properly for the length of the express warranty. In *Daugherty*, the Court of Appeal held that absent a manufacturer representation as to the life span of the part in question, the only expectation that a purchaser could have had was that the product would function properly for the duration of the manufacturer's express warranty, and the manufacturer had no duty to disclose that, "in the fullness of time," a given part might eventually fail, necessitating repairs. Defendant argues that each class member will have to individually prove that the alleged defect manifested during the vehicle's warranty period to prove that any failure to disclose the possibility of premature wear was material under *Daugherty*.

However, Plaintiff's position is not that Defendant had a duty to disclose a possible defect that might manifest outside the warranty period or "in the fullness of time." Rather, Plaintiff's theory is that Defendant concealed a known defect that was viewed with a sense of urgency and concern by Defendant precisely because it presented a possible warranty issue. Plaintiff relies upon Defendant's internal communications discussing tire wear issues, including a "five-fold" increase in the demand for replacement tires,[18] as well as the fact that Defendant sent representatives to nine dealerships in December 2006 to discuss the tire wear issue, and they concluded that tire life was below customer expectations of 30,000 miles, resulting in damage to the brand and goodwill.[19] Moreover, the internal communications discuss warranty issues, including whether the entire repair should be under warranty "since the causal part is the alignment."[20] Also, Plaintiff submits that Defendant implemented a uniform adjustment program for all of the Vehicles, with a reimbursement formula for mileages well under the 50,000-mile scope of the Limited Warranty. Thus, Plaintiff's evidence is meant to show that Defendant concealed a defect it knew was causing widespread tire wear issues within the warranty period. This information would fall within the reasonable expectations of vehicle purchasers and lessees under *Daugherty*.

Defendant argues Plaintiff's individual claim is not typical of the rest of the proposed class because: (1) there is no evidence that Plaintiff's rear total toe has ever been negative, and alignment readings on Plaintiff's LR3 between August 2005 and November 2007 show that the left rear individual toe moved in a toe-in direction (but bush creep simply cannot cause the rear toe setting on the LR3 to move toward toe in); (2) the type of tire wear Plaintiff experienced is not associated with the alleged geometry misalignment, since his LR3 exhibited a type of alternating tread block wear, predominantly on the outside tread rib of the tires, that cannot be caused by geometry misalignment; (3) he leased his vehicle at a time when LR had no knowledge of any alleged fact; and (4) when he replaced his first set of tires in September 2005, he did not pay for three of the four times he received or the alignment he received a month earlier and this 75% reimbursement is more than the SWA06-10 reimbursement rate (50%), so he is entitled to nothing further and thus, his claims are not typical.

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[18]See Exhs. 5-6 to Decl. Grenon, Depo. D. Krumholz at 98:14-23, 109:3-7, 16-25, 110:1-5, 113:6-11, Exh. 8 to Decl. Grenon; Depo. K. McGurl at 78:5-13; Depo. A. Clarke at 124:17-25, 125:1-8.)

[19]See Exh. 9 to Decl. Grenon.

[20]See Exh. 3 to Decl. Grenon

"The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.' [Citation.]" (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) The typicality requirement does not require that a representative's claims be identical to other class members; it is simply meant to ensure that the class representative will have the motive to litigate on behalf of all class members. (*See Classen v. Weller* (1983) 145 Cal.App.3d 27, 45.) Here, Defendant tries to distinguish the particulars of Plaintiff's claim with those of the proposed class. However, Plaintiff sufficiently disputes the claims of Defendant's expert, Mr. Daws, that alignment issues cannot cause heel-toe wear.[21] Plaintiff also submits that he was damaged in a manner typical of the class, since his theory is that Defendant's partial reimbursement policy still breached the express terms of the warranty, because Defendant was required to pay for all of his replacement tires and to repair the geometry defect. The Court finds that Plaintiff's claim is sufficiently similar to the proposed class so that he will have the motive to litigate on its behalf.

Defendant argues class treatment is not superior or manageable because individualized inquiries dominate. As discussed above, the commonality requirement is satisfied, which disposes of Defendant's superiority and manageability arguments.

Defendant does not challenge the elements of ascertainability, numerosity or adequacy of representation. Plaintiff sufficiently demonstrates that these requirements are met. The proposed class is composed of the purchasers and lessees of over 10,000 vehicles.[22] The purchasers and lessees of Defendant's vehicles are likely ascertainable from Defendant's records. Plaintiff demonstrates the qualifications of his counsel and his lack of conflicts with the proposed class.

For all of these reasons, the motion for class certification is **GRANTED**. However, as Defendant points out, the proposed class definition is overbroad as currently phrased and shall only include current and former owners and lessees of the Land Rover LR3 model years 2005 and 2006 ("LR3") purchased or leased in the State of California before the expiration of the vehicle's limited warranty.

Dated: July 12, 2012

Judge of the Superior Court
James P. Kleinberg

Approved as to form:

Audrey Moog
Attorney for Jaguar Land Rover North America, Inc.

[21]See Decl. Wozniak 20, 22; Exhs. 9-10 to Decl. Grenon.
[22]See Exh. 23 to Decl. Grenon.