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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

JENNIFER HOLT,
Plaintiff,
vs.

GLOBALINX PET LLC, et al.,
Defendants.

Case No.: SA CV 13-0041 DOC(JPRx)
ORDER DENYING PLAINTIFF’S
MOTION FOR CLASS CERTIFICATION

Before the Court is Plaintiff Jennifer Holt’s (“Plaintiff’s”) Motion for Class Certification (Dkt. 40). After considering all filings and supplemental briefing related to the motions and oral argument, the Court DENIES Plaintiff’s Motion.

I. Background

The gravamen of the First Amended Complaint (“FAC”) (Dkt. 22) is that Defendants Globalinx Pet LLC and Globalinx Corporation (collectively, “Defendants” or “Globalinx”) marketed and sold tainted dog treats containing chicken jerky that had been made in China.

1 According to her FAC, on December 11, 2011, Plaintiff purchased “a three-pound bag of
2 Kingdom Pets chicken jerky dog treats.” FAC ¶ 12. The dog treats were purchased at a Costco
3 in Austin, Texas. *Id.* Plaintiff selected Defendants’ dog treats over other competitor products
4 because of representations concerning the foods’ quality and ingredients. *Id.* ¶ 13.

5 Plaintiff began feeding the Kingdom Pets chicken jerky dog treats to her dog, Tucker,
6 “one to three times a week” between December 11, 2011, and March 17, 2012. *Id.* ¶ 16. Tucker
7 was brought to a veterinarian beginning on March 19, 2012. *Id.* ¶ 17. Over the following two
8 days, Tucker was brought repeatedly to the veterinarian, and received blood tests. *Id.* ¶ 17. The
9 blood tests reported “acute kidney failure,” which resulted in Tucker being sent to a veterinary
10 hospital in Austin, Texas. *Id.* ¶ 17. Tucker initially received antibiotic treatment; however, tests
11 later showed that Tucker did not have a bacterial infection. *Id.* ¶ 18. Following a week of failed
12 antibiotic treatment, and a seizure, Tucker was euthanized pursuant to the recommendation of
13 two veterinarians on March 28, 2012. *Id.* ¶ 19.

14 Prior to adding Kingdom Pets chicken jerky dog treats to Tucker’s diet, Tucker appeared
15 to be in good health. *Id.* ¶ 14. Tucker received a physical examination in October 2011, which
16 “showed no illnesses or abnormal conditions.” *Id.* ¶ 15. One of Tucker’s treating veterinarians,
17 Sharon Theisen, reviewed Tucker’s file on June 11, 2012, and concluded that the treating team
18 “could not find an infectious [cause] for the renal failure and [that she] now suspect[s] that there
19 was some toxic exposure. The Chicken Jerky Treats that come from China have been
20 implicated in several kidney failure cases in the last year and [Theisen] think[s] that these may
21 have played a role in Tucker’s kidney disease as well.” *Id.* ¶ 20 (citing Ex. C.).

22 The dog treats’ packaging claimed that the food was “made from ‘100% Natural
23 Ingredients’ [salt, vegetable glycerin, and chicken] that were ‘delicious’ and had a ‘taste dogs
24 love.’ . . . [and were] ‘wholesome and nutritious.’” FAC ¶ 22. Plaintiff concludes that these
25 statements asserted that the jerky dog treats were “safe” and “enjoyable” for dogs to eat. *Id.* ¶
26 23. Defendants also placed a press release on their website, which attested to “Kingdom Pets
27 100% safety record . . . [with] not one sample [having] tested positive for known contaminants.”
28 *Id.* ¶ 24.

1 However, in past years, the FDA has warned about dog treats containing chicken jerky
2 from China. *Id.* ¶ 27. Kingdom Pets chicken jerky products contained chicken jerky from
3 China. *Id.* ¶ 28. A number of Defendants’ customers, as well as customers of other chicken
4 jerky dog treat manufacturers, had complained to the FDA about alleged health consequences of
5 their dogs consuming these dog treats, and these complaints were publicized by the FDA. *Id.* ¶
6 30. Plaintiff concludes that Defendants must have been aware of the FDA warnings. *Id.* ¶ 33.
7 Furthermore, news reports from around the world had discussed the alleged dangers of Chinese
8 chicken jerky dog food products. *Id.* ¶¶ 38-40. However, Defendants’ pet food packaging did
9 not warn consumers about the information from the FDA. *Id.* ¶ 35. Rather, Defendants
10 advertised their products as wholesome, and Plaintiff and others relied both on these assertions,
11 and on the fact that Kingdom Pets dog food products were continuing to be sold in stores, when
12 purchasing these products. *Id.* ¶ 42. Defendants allegedly intended to conceal information
13 concerning the unwholesomeness of their product for the purpose of maintaining or increasing
14 their product’s sales. *Id.* ¶ 46. Plaintiff asserts that the continued sales of Defendants’ Kingdom
15 Pets chicken jerky dog treats demonstrated that Defendants “recklessly or maliciously
16 disregarded the rights of plaintiff and class members, for motives of pecuniary gain and to their
17 financial benefit.” *Id.* ¶ 48.

18 On March 4, 2013, Plaintiff filed her FAC alleging eight causes of action for (1)
19 Violation of implied warranties; (2) Violation of express warranties; (3) Common law fraud; (4)
20 Unjust Enrichment; (5) Negligence; (6) Strict products liability (defect); (7) Strict products
21 liability (failure to warn); and (8) Violation of the Texas Deceptive Trade Practices—Consumer
22 Protection Act. Defendants moved to strike (Dkt. 27) portions of Plaintiff’s FAC concerning
23 her class allegations, and also moved to dismiss (Dkt. 29) all eight causes of action pursuant to
24 Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The Court requested additional briefing
25 on whether Texas or California law should govern each of the FAC’s eight causes of action
26 (Dkt. 56), and, after considering the parties’ responses, denied Defendants’ motion to strike and
27 denied in part Defendants’ motion to dismiss. *See* Minute Order (Dkt. 74). While only
28 Plaintiff’s fourth cause of action for unjust enrichment was dismissed, the Court analyzed each

1 cause of action according to California’s conflict of law test and held that Texas law should
2 govern four causes of action (liability based on express warranties, strict products liability and
3 Texas’s Deceptive Trade Practices law) and California should govern the remaining claims. *Id.*

4 In her current motion, Plaintiff seeks class certification of five nationwide classes
5 (collectively, the “Five Classes”).

6 **a. Class A (“Warranties Class”)**

7 All persons in the United States (except Louisiana and Puerto Rico) who purchased any
8 dog treat product containing chicken jerky manufactured or sold by defendants and containing
9 chicken imported from China, on or after a date four years prior to the filing of this action – as
10 to Counts I and II of the amended complaint (Doc. 22), alleging breaches of warranties of
11 merchantability, contrary to the Uniform Commercial Code (codified in California as Cal.
12 U.C.C. §§2313 and 2314).

13 **b. Class B (“Fraud Class”)**

14 All persons who purchased any dog treat product containing chicken jerky manufactured
15 or sold by defendants and containing chicken imported from China, on or after a date three years
16 prior to the filing of this action – as to Count III of the amended complaint, alleging common
17 law fraud.

18 **c. Class C (“Unjust Enrichment Class”)**

19 All persons who purchased any dog treat product containing chicken jerky manufactured
20 or sold by defendants and containing chicken imported from China, on or after a date four years
21 prior to the filing of this action – as to Count IV of the amended complaint, seeking restitution
22 for unjust enrichment.

23 **d. Class D (“Negligence and Product Liability Class”)**

24 All persons who purchased any dog treat product containing chicken jerky manufactured
25 or sold by defendants and containing chicken imported from China, on or after a date four years
26 prior to the filing of this action, whose dogs suffered harm or death due to the consumption of
27 defendants’ products – as to (1) Count V of the amended complaint for damages brought about
28

1 by defendants' negligence, and (2) Counts VI and VII for damages caused by a defective
2 product, and for failure to warn about that same defect.

3 **e. Class E ("Texas Deceptive Trade Practices Class")**

4 All persons who purchased any dog treat product containing chicken jerky manufactured
5 or sold by defendants and containing chicken imported from China, on or after a date two years
6 prior to the filing of this action – as to Count VIII of the complaint, seeking relief pursuant to the
7 Texas Deceptive Trade Practices – Consumer Protection Act, Tex. Bus. & Comm. Code. §17.41
8 *et seq.*

9 **II. Legal Standard**

10 Federal Rule of Civil Procedure 23 governs class actions. Fed. R. Civ. P. 23. A party
11 seeking class certification must demonstrate the following prerequisites: "(1) numerosity of
12 plaintiffs; (2) common questions of law or fact predominate; (3) the named plaintiff's claims and
13 defenses are typical; and (4) the named plaintiff can adequately protect the interests of the
14 class." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citing Fed. R. Civ. P.
15 23(a)). The party may not rest on mere allegations, but must provide facts to satisfy these
16 requirements. *Doninger v. Pac. Northwest Bell, Inc.*, 564 F.2d 1304, 1309 (9th Cir. 1977)
17 (citing *Gillibeau v. Richmond*, 417 F.2d 426, 432 (9th Cir. 1969)).

18 After satisfying the four prerequisites of numerosity, commonality, typicality, and
19 adequacy, a party must also demonstrate either: (1) a risk that separate actions would create
20 incompatible standards of conduct for the defendant or prejudice individual class members not
21 parties to the action; or (2) the defendant has treated the members of the class as a class, making
22 appropriate injunctive or declaratory relief with respect to the class as a whole; or (3) common
23 questions of law or fact predominate over questions affecting individual members and that a
24 class action is a superior method for fairly and efficiently adjudicating the action. Fed. R. Civ.
25 P. 23(b)(1-3).

26 The decision to grant or deny a motion for class certification is committed to the trial
27 court's broad discretion. *Bateman v. American Multi-Cinema, Inc.*, 623 F.3d 708, 712 (9th Cir.
28 2010). However, a party seeking class certification must affirmatively demonstrate compliance

1 with Rule 23—that is, the party must be prepared to prove that there are *in fact* sufficiently
2 numerous parties and common questions of law or fact. *Wal-Mart Stores, Inc. v. Dukes*, 131 S.
3 Ct. 2541, 2550 (2011). This requires a district court to conduct a “rigorous analysis” that
4 frequently “will entail some overlap with the merits of the plaintiff’s underlying claim.” *Id.*

5 **III. DISCUSSION**

6 Any proposed class must satisfy Rule 23(b), and, here, the Plaintiff seeks certification
7 pursuant to Rule 23(b)(3). In order for a class action to be certified under Rule 23(b)(3), the
8 class representatives must show “the questions of law or fact common to the members of the
9 class predominate over any questions affecting only individual members and that a class action
10 is superior to other available methods for the fair and efficient adjudication of the controversy.”
11 Fed. R. Civ. P 23(b)(3).

12 While predominance is “readily met in certain cases alleging consumer . . . fraud,”
13 *Anchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *In re First Alliance Mortg. Co.*, 471
14 F.3d 977, 992 (9th Cir. 2006), and this Court has previously certified nationwide classes in cases
15 where the defendant has failed to show a material difference between the consumer protection
16 laws of different states, *see, e.g., Bruno v. Eckhart Corp.*, 280 F.R.D. 540 (C.D. Cal. 2012), the
17 particular facts and history of this case have convinced the Court that a nationwide class is
18 inappropriate. While the Plaintiff maintains that the laws of California should apply to the
19 proposed nationwide classes, the Defendants have catalogued a series of material differences
20 between the consumer protection laws of several states and those of California, *see* Def’s Mot.
21 to Strike (Dkt. 27), and, crucially, this Court has already performed a case-specific conflict of
22 law analysis and determined that Texas law would govern four of the named Plaintiff’s causes
23 of action. July 30 Minute Order (Dkt. 74) at 14, 21-24.

24 Because the Defendants have met their burden and showed that the relevant consumer
25 protection laws are “materially different” across different jurisdictions covered by the proposed
26 nationwide classes, *see Bruno*, 280 F.R.D. at 550 (citing *Mazza v. Am. Honda Motor Co., Inc.*,

1 666 F.3d 581, 590 (9th Cir. 2012)), the Court concludes that the Plaintiff’s proposed classes do
2 not meet the predominance and superiority requirements of Rule 23(b)(3).¹

3 **a. Predominance**

4 The predominance inquiry “tests whether proposed class actions are sufficiently cohesive
5 to warrant adjudication by representation,” a standard “far more demanding” than the
6 commonality requirement of Rule 23(a). *Anchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623-24
7 (1997). While predominance is “readily met in certain cases alleging consumer . . . fraud,”
8 *Anchem*, 521 U.S. at 625, that is not always the case—when the causes of action in a complaint
9 are based on state statute or common law, material differences in state law across the
10 jurisdictions covered by the class may “compound the disparities” among class members from
11 different states and reveal that a proposed class fails to satisfy the predominance requirement,
12 *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1189, *amended by* 273 F.3d 1266 (9th Cir.
13 2001). The Ninth Circuit has held that a nationwide class should not be certified if “materially
14 different consumer protection laws” would require different state laws to govern different class
15 plaintiffs, based on a conflict of law analysis using “the facts and circumstances of [each
16 specific] case.” *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 590, 594 (9th Cir. 2012).

17 **i. Conflict of Law Test**

18 In California, the government interest test determines the appropriate resolution of
19 conflict of laws issues. *Kearney v. Salomon Smith Barney, Inc.*, 39 Cal. 4th 95, 107 (2006).
20 The government interest test requires the Court to determine (1) whether there is a material
21 difference between the laws of the different jurisdictions; (2) if so, whether “each jurisdiction’s
22 interest in the application of its own law under the circumstances of the particular case” creates a
23 conflict; and (3) if there is a conflict, which jurisdiction’s “interest would be more impaired” if
24 the law of the other were applied in the case. *Id.* at 107-08. The government interest analysis
25 must be applied independently to each individual matter of law. *Beech Aircraft Corp. v.*

27 ¹ Accordingly, the Court does not reach the question of whether Plaintiff’s proposed classes satisfy the threshold
28 requirements of Rule 23(a).

1 *Superior Court*, 61 Cal. App. 3d 501, 519 (1976) (acknowledging that the conflicting interests
2 of the states may not be the same for every law or cause of action).

3 Defendants shoulder the burden for demonstrating that an actual conflict of laws exists
4 between jurisdictions. *Bruno v. Quten Research Inst., LLC.*, 280 F.R.D. 524, 539-40 (C.D. Cal.
5 2011) (denying a conflict of laws issue where the Defendant failed to provide specific laws of
6 any state to contrast the approach taken under California law). Defendants must show “material
7 differences in the law, as shown on the facts of [the] case.” *Id.* at 540 (citations and internal
8 quotation marks omitted). “A state’s law is materially different from California if application of
9 the other state’s law leads to a different result.” *Costco Wholesale Corp. v. Liberty Mut. Ins.*
10 *Co.*, 472 F. Supp. 2d 1183, 1200 (S.D. Cal. 2007).

11 When an actual conflict has not been established by the “foreign law proponent,”
12 California law will be applied by United States District Courts operating in California. *Bruno*,
13 280 F.R.D. at 540 (citations and internal quotation marks omitted). Examples of material
14 differences between jurisdictions may include (but are not limited to) contrasting rules and
15 applications of scienter requirements and reliance requirements, both of which can impact the
16 outcome of a case. *Mazza*, 666 F.3d at 591 (finding in part that California law need not
17 necessarily be applied to claims brought by class members from all states, merely because
18 Defendant Honda was headquartered in California and had its principle place of business in the
19 state).

20 Although California no longer follows the traditional “place of the wrong” rule for
21 conflict of law matters, it “nonetheless continue[s] to recognize that a jurisdiction ordinarily has
22 the predominate interest in regulating conduct that occurs within its borders.” *McCann*, 48 Cal.
23 4th at 97-98 (citations and internal quotation marks omitted). A state’s interest applies not only
24 to in-state companies, but also to out-of-state companies that operate within its jurisdiction. *Id.*
25 at 97. In *McCann*, the California Supreme Court asserted that since the harm in that case
26 (asbestos exposure) occurred in Oklahoma, to a person who was an Oklahoma resident at the
27 time of the harm, the plaintiff “should not expect to subject defendant to a financial hazard that
28 [Oklahoma] law had not created.” *Id.* at 99 (citations and internal quotation marks omitted).

1 The *McCann* court further found that “California has a lesser interest in applying its law in that
2 setting than it would in a case in which a defendant is responsible for exposing a plaintiff to
3 asbestos [harm] within California.” *Id.*

4 **ii. In this case, material differences exist and different states’ laws**
5 **would govern Plaintiff’s various causes of action**

6 Here, in addition to dismissing Plaintiff’s fourth cause of action for unjust enrichment
7 because, “[i]n California, unjust enrichment is not a separate cause of action,” the Court
8 analyzed each remaining cause of action according to California’s conflict of law test. July 30
9 Minute Order at 18. While Plaintiff argued that California’s laws should apply across the board
10 (with the exception of her Texas Deceptive Trade Practices claim), the Court held that Texas
11 law would govern four of the named Plaintiff’s causes of action. *Id.* at 9-24. In doing so, the
12 Court explicitly considered whether there was a material difference between the laws of the
13 different jurisdictions, whether “each jurisdiction’s interest in the application of its own law
14 under the circumstances of the particular case” created a conflict, and which jurisdiction’s
15 “interest would be more impaired” if the law of the other were applied in the case. *Kearney*, 39
16 Cal. 4th at 107. Thus, without looking at the other 48 states that Plaintiff’s proposed class seeks
17 to cover, the Court has already held that a Texas plaintiff would be subject to materially
18 different laws than a California plaintiff in this action. *See, e.g.*, July 30 Minute Order at 14 (in
19 the context of Plaintiff’s express warranty claim, “[i]f a trier of fact determined that Plaintiff did
20 not rely on any express warranty, then in Texas, Plaintiff’s claim would fail, whereas in
21 California, the claim would be unaffected,” and, applying California’s conflict of law analysis,
22 Texas law would apply to a Texas plaintiff’s claims).

23 In addition, Defendants have catalogued a number of ways in which California’s
24 consumer protection laws differ from those of other states, based on Plaintiff’s claims in this
25 particular case. *See* Def’s Mot. to Strike at 7-11. For example, at least three states have passed
26 comprehensive product liability statutes that preempt common law causes of action based on
27 harms caused by a product, which would certainly materially affect the warranty and strict
28 product liability claims of potential class plaintiffs in those states. *Id.* at 7-8 (citing Conn. Gen.

1 Stat. Ann. § 52-572n(a); Ohio Rev. Code Ann. § 2307.71(B); *Macias v. Saberhagen Holdings,*
2 *Inc.*, 282 P.3d 1069, 1073 (Wash. 2012)).

3 Similarly, the split in authority between states whose express warranty laws require a
4 showing of reliance and those that don't, already identified as material by this Court in the
5 context of a comparison between Texas and California, *see* July 30 Minute Order at 14, also
6 reveals conflicts between California and, at least, Minnesota, Kentucky, and Oklahoma. *See*
7 *Def's Mot. to Strike* at 8 (citing *Hendricks v. Callahan*, 972 F.2d 190, 193 (8th Cir. 1992);
8 *Overstreet v. Norden Laboratories, Inc.*, 669 F.2d 1286, 1291 (6th Cir. 1982); *Speed Fasteners,*
9 *Inc. v. Newsom*, 382 F.2d 395, 397 (10th Cir. 1967)). Likewise, in the context of strict products
10 liability, Defendants supplement the Court's holding that Texas and California laws materially
11 differ, *see* July 30 Minute Order at 20-24, with examples of materially different laws from Ohio,
12 *see Birchfield v. Int'l Harvester Co.*, 726 F.2d 1131, 1138 (6th Cir. 1984), and Iowa, *see Olson*
13 *v. Prosoco, Inc.*, 522 N.W.2d 284, 289 (Iowa 1994), which would indicate that Ohio or Iowa law
14 would govern the strict products liability claims of potential class plaintiffs from those states.

15 **iii. Because Defendants have met their burden and demonstrated that**
16 **materially different consumer protection laws would govern the**
17 **claims of class members from different states, nationwide**
18 **certification is improper.**

19 Because of the material differences between the laws of California and those of several
20 states described in the previous section, and this Court's lengthy and detailed holding that the
21 named Plaintiff herself would be subject to different laws than a California plaintiff, the Court
22 must conclude that common questions of law do not predominate over the questions affecting
23 individual class members as required by Rule 23(b)(3).

24 In *Mazza*, the Ninth Circuit vacated the certification of a nationwide class where the
25 plaintiffs, alleging that a car company made various misrepresentations in six marketing
26 campaigns using various media regarding a technology package in its cars, brought claims under
27 four California causes of action. *Mazza*, 666 F.3d at 587. After following the same California
28 conflict of law rules that this Court applied to decide whether California law would govern all of

1 Plaintiff's claims here, the court ultimately concluded that "[u]nder the facts and circumstances
2 of this case, we hold that each class member's consumer protection claim should be governed by
3 the consumer protection laws of the jurisdiction in which the transaction took place." *Id.* at 594.

4 As in *Mazza*, the Defendants here have "detailed the ways in which California law differs
5 from the laws of the . . . other jurisdictions." *Bruno*, 280 F.R.D. at 544 (quoting *Mazza*, 666
6 F.3d at 591). Also as in *Mazza*, the Court here has determined that several material differences
7 exist in the laws governing the class plaintiffs' various claims across different states.

8 Accordingly, as in *Mazza*, the Court must find that the certification of Plaintiffs' proposed
9 nationwide classes would be improper.² See *Mazza*, 666 F.3d at 594; see also *Gianino v. Alacer*
10 *Corp.*, 846 F.Supp.3d 1096, 1099 (C.D. Cal. 2012) (denying nationwide class certification when
11 the defendant "presented a comprehensive nationwide analysis detailing the significant
12 variations in the states' consumer protection and fraud laws," and the court's conflict-of-laws
13 analysis revealed that plaintiffs in different states would be subject to materially different laws).

14 Plaintiff urges the Court to look to its own opinion in *Bruno*, in which this Court
15 certified—then declined to decertify in light of the Ninth Circuit's *Mazza* decision—a
16 nationwide class of purchasers of a liquid dietary supplement alleging false advertising and
17 unfair competition claims under California law. 280 F.R.D. at 545. In that case, however, the

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19 ² While this Order focuses on the predominance analysis, the Court also notes that Defendants have presented
20 evidence showing that the representations on the pet food packaging that form the basis for several of the named
21 Plaintiff's claims are neither uniform nor clearly identified in her proposed class definitions—while Plaintiff's
22 proposed classes cover anyone who purchased a product containing chicken jerky manufactured in China,
23 Defendants note that over a dozen versions of at least six different products containing chicken feature different
24 language and various combinations of phrases like "wholesome," "no artificial colors or flavors," "100% natural
25 ingredients," and many similar phrases. See Def's Opp'n to Class Cert. (Dkt. 66, Ex. 2) at 5-12, 18-20 (citing
26 *Bruno*, 280 F.R.D. at 534 (the plaintiff "failed to show she is typical of those class members exposed to the
27 representation that Defendants' product is '3X' more absorbent because Plaintiff was exposed only to the
28 representation that the product has '6X BETTER ABSORPTION' and is '6 Times More Effective.'")).

1 Court relied on the fact that the defendants had failed to meet their burden by showing that a
2 conflict of laws existed between California and any other state—indeed, the Court pointed out
3 that, in contrast to the defendants in *Mazza*, “Defendants' prior briefing provided *no law from*
4 *any jurisdiction for the Court to consider* and thus Defendants did not meet their burden of
5 showing that there is an actual conflict between California and other law.” *Id.* at 546 (internal
6 quotations omitted and emphasis added). Accordingly, because the defendants “had not met
7 their burden, the Court correctly permitted the application of California law to a nationwide
8 class.” *Id.* at 550 (citing *In re MDC Holdings Securities Litigation*, 754 F.Supp. 785, 803–04,
9 808 (S.D.Cal.1990) (applying California law to nationwide class because defendant “has not
10 made any attempt to satisfy the [California] three-part governmental interest test”); *In re*
11 *Seagate Technologies Sec. Litigation*, 115 F.R.D. 264, 269, 274 (N.D.Cal.1987) (applying
12 California law to nationwide class because “[a]bsent the defendant carrying [its] burden,
13 California law would govern the foreign state plaintiffs' claims” and noting several other
14 decisions reaching this conclusion)).

15 This case is unlike *Bruno* since, as the defendants did in *Mazza*, Defendants have
16 established *on the facts of this case* that material differences exist between the laws of California
17 and the laws of other states. *Contrast Mazza*, 666 F.3d at 594 (decertifying nationwide class
18 when material differences existed between the laws of various states), *with Tait v. BSH Home*
19 *Appliances Corp.*, 289 F.R.D. 466, 471 (C.D. Cal. 2012) *leave to appeal denied*, 13-80000, 2013
20 WL 1395690 (9th Cir. Apr. 1, 2013) (granting certification, in the context of a product defect
21 case involving washing machines, of four state-specific classes of purchasers in California,
22 Illinois, Maryland, and New York).

23 **b. Superiority**

24 The second prong of the analysis under Rule 23(b)(3) also requires a finding that “a class
25 action is superior to other available methods for the fair and efficient adjudication of the
26 controversy.” Fed. R. Civ. P. 23(b)(3). In general, given the small size of each class member’s
27 claim at issue, class treatment should be favored in a consumer fraud claim like the one
28 presented here in order to ensure fair and efficient adjudication of the action. *See Tait*, 289

1 F.R.D. at 486-87; *Pecover v. Elec. Arts Inc.*, 2010 U.S. Dist. LEXIS 140632, at *68 (N.D. Cal.
2 Dec. 21, 2010) (“[T]he modest amount at stake for each purchaser renders individual
3 prosecution impractical.”); *see also Ballard v. Equifax Check Servs., Inc.*, 186 F.R.D. 589, 600
4 (E.D. Cal. 1999) (“Class action certifications to enforce compliance with consumer protection
5 laws are ‘desirable and should be encouraged.’”).

6 However, for the reasons stated in the previous section, the Court cannot consider the
7 Plaintiff’s proposed nationwide classes a superior method for the fair and efficient adjudication
8 of the present controversy. *See Zinser*, 253 F.3d at 1192 (“We have previously held that when
9 the complexities of class action treatment outweigh the benefits of considering common issues
10 in one trial, class action treatment is not the superior method of adjudication.”) (internal
11 quotations omitted).

12 **IV. Disposition**

13 For the foregoing reasons, the Court hereby DENIES Plaintiff’s Motion for
14 Class Certification.

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17 DATED: January 30, 2014



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19 _____
20 DAVID O. CARTER
21 UNITED STATES DISTRICT JUDGE
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