SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/02/03		DEPT. 323
HONORABLE Charles W. McCoy	JUDGE	M. GODDERZ — DEPUTY CLERK
HONORABLE	JUDGE PRO TEM	ELECTRONIC RECORDING MONITOR
	Deputy Sheriff	NONE — Reporter

11:30 am	BC195461 KEITH ALAN VS AMERICAN HONDA MOTOR CORPORATIO INC C/W VC023693 (4/4/01)	Plaintiff Counsel Defendant Counsel	NO APPEARANCES

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER/MOTION FOR CLASS CERTIFICATION

The Court, having heard argument in this Motion, and read and considered the papers, now issues its; 'Statement of Decision Re: Alan's Motion for Class Certification' this date.

Copies of this minute order and the Statement of Decision are sent via U.S. Mail on January 2, 2003 to counsel of record in envelopes addressed as follows.

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MINUTES ENTERED
01/02/03
COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KEITH ALAN, an individual, Plaintiff, v. AMERICAN HONDA MOTOR CORPORATION, INC., a California Corporation, and DOES 1 through 500, inclusive, Defendants.	Case No: BC195461 (Consolidated with Case No: VC023693 for Discovery Purposes) STATEMENT OF DECISION RE: ALAN'S MOTION FOR CLASS CERTIFICATION

I

BACKGROUND

Plaintiff Keith Alan (Alan) moves for certification of a nationwide class including "all individuals who now own, or have ever owned, any one or more of the Subject Vehicles." Plaintiff's Third Amended Complaint, ¶ 3. American Honda Motor Corporation, Incorporated (Honda) generally opposes certification on grounds that individual issues predominate, representation falls short of the adequacy requirement, and the Court lacks jurisdiction.

In this case, Honda allegedly misrepresented vehicle condition by failing to inform purchasers that Acura Integra (Integra) timing belts must be replaced at particular mileage intervals. Alan contends Honda's alleged misrepresentation constitutes a commercial injury, in violation of the Consumer Legal Remedies Act (CLRA).

II

DISCUSSION

California judicial policy favors class actions to protect consumers. *State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 471. Doubts as to the appropriateness of class treatment are resolved in favor of certification. *See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 473-75.

A. Predominating Common Questions

Under the CLRA, to certify a class, "[t]he questions of law or fact common to the class [must be] substantially similar and predominate over the questions affecting the individual members." Cal. Civ. Code § 1781(b)(2). Honda contends commonality does not exist because individual issues predominate as to reliance and damages.

1. Reliance

Per the Court's previous ruling regarding Alan's Motion for Leave to Amend, "[r]eliance is an element of a CLRA claim . . . ." June 3, 2002 Statement of Decision Re: Plaintiff's Motion for Leave to Amend, at 4. Notwithstanding this ruling, Alan argues that *Massachusetts Mutual Life Insurance Company v. Superior Court* compels the conclusion that a plaintiff need not show reliance in establishing a cause of action for violation of the CLRA.

The *Massachusetts Mutual* court held that a CLRA claim hinges on plaintiffs' ability to prove causation: "relief requires that plaintiffs in a CLRA action show not only that a defendant's conduct was deceptive but that the deception caused them harm." (2002) 97 Cal.App.4th 1282, 1292. In so holding, the court recognized reliance as an integral component. *See id.* at 1292-94. It concluded that, when a court finds class members subjected to material misrepresentations, an inference of reliance arises. *Id.* at 1292-93. Contrary to Alan's argument, it never hinted that the CLRA does not require establishment of reliance.

Massachusetts Mutual permits courts to infer reliance in class cases. *Id.* at 1293. However, to infer reliance, some showing of reliance must be made: "an inference of reliance arises if a material

false representation was made to persons *whose acts thereafter were consistent with reliance upon the representation.*" *Id.* (emphasis added). Here, Alan proffers no evidence tending to show (1) class members' awareness of the alleged misrepresentation, or (2) how class members suffered detriment by way of the alleged misrepresentation. Alan has not shown that he or other class members read their owner's manuals. Moreover, he has not demonstrated that putative class members either purchased their Integras in reliance on the alleged misrepresentation that timing belts need not be replaced or experienced injury via failure to replace their timing belts. Consequently, the Court finds individual issues predominate regarding whether class members knew of the alleged misrepresentation and whether class members detrimentally relied on the misrepresentation.[1]

As Honda points out, this case is like *Caro v. Procter & Gamble Company*. In *Caro*, plaintiff complained that an orange juice label listing juice as fresh, though it was made from concentrate, constituted a material misrepresentation. (1993) 18 Cal. App.4th 644, 652. The trial court denied certification on ground that plaintiff failed to show common reliance among class members. *Id.* at 667-68. The court reasoned that, unlike plaintiff, who only read the top portion of the label, class members may have read the entire label, which referenced the juice as being made from concentrate, meaning class members, in purchasing the juice, may not have detrimentally relied on the label. *Id.* The Court of Appeal affirmed because determining why class members purchased the juice necessitated individual inquiry. *Id.* at 668. Analogously, it must be individually determined whether putative class members received an owner's manual, read the owner's manual, and/or purchased their

[1] Individual inquiry would be necessary not only to determine if putative class members read their owner's manuals, potentially making them aware of the alleged misrepresentation, but also to determine if they received an owner's manual. The putative class includes all former and current owners of the subject Integras. Current owners, who purchased used Integras from original owners, may not have received an owner's manual from the original owners. If they did not receive an owner's manual, then they cannot have relied on the alleged misrepresentation in the owner's manual.

vehicles because of Honda's alleged misrepresentation.[2]

2. Damages

Alan highlights a few Honda records listing timing belt malfunctions. Alan contends these records sufficiently demonstrate uniform damages among class members.

Honda's records reflect a small number of malfunctions. The number being small, and because Alan lacks other evidence showing common injury, the Court is unpersuaded that nationwide commonality exists. These records, alone, do not establish a causal connection between the malfunctioning belts and Honda's alleged misrepresentation. As explained above with respect to reliance, Alan must submit evidence conveying detrimental change of position among potential class members. Here, however, he has no evidence explaining how anyone experienced injury. He has not shown that class members commonly knew of Honda's alleged misrepresentation or purchased their vehicles in reliance on it.

Countering, Alan posits that his claim center's on Honda's alleged commercial wrong. That is, even if their timing belts never failed, putative class members suffered commercial injury by way of Honda's alleged misrepresentation. Alan misses the point, though. Damages is a CLRA element. Cal. Civ. Code § 1780(a). So, while the alleged misrepresentation might constitute a commercial wrong, without awareness of it, and without detrimental position change because of it, one cannot be injured by the alleged misrepresentation. Alan needs more than just evidence showing the alleged misrepresentation. He needs evidence showing class members' knowledge of the alleged misrepresentation, as well as their reliance on it, for damages flow from detrimental reliance. Because he does not proffer the required evidence, Alan fails to establish predominating commonality.

B. Adequacy of Representation

Having found that common questions do not predominate, thereby making certification inappropriate, the Court does not reach the issue whether Alan demonstrates adequate representation.

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[2] This case does not involve the presumption that one reads his or her contract, and nowhere in law exists a corresponding presumption that one reads his or her owner's manual.

Nevertheless, the Court is troubled by the potential appearance of impropriety rising from Alan's close business relationship with class counsel, John A. Schlaff.

C. Jurisdiction

Likewise, the Court does not reach the issue whether it may exercise jurisdiction over a nationwide class; still, the Court is persuaded that differences in states' consumer laws militate against nationwide certification.

D. Actionable Claim

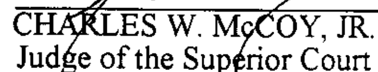
After analyzing the presented issues, it appears to the Court that a fundamental question exists as to whether Alan's claim is actionable at all under the CLRA. A strong argument can be made that the specific claim does not fall within any subsection of § 1770, a prerequisite to CLRA claims for relief. Cal. Civ. Code § 1780(a). The Court does not, at this juncture, reach this question.

III

CONCLUSION

Alan's Motion for Class Certification is denied.

DATED: January 2, 2003



CHARLES W. McCOY, JR.
Judge of the Superior Court