

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-01578-RGK (FFMx)	Date	August 2, 2011
Title	KRUSZKA v. TOYOTA MOTOR CORP., et al.		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE		
Sharon L. Williams	Not Reported	N/A	
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:		
Not Present	Not Present		

Proceedings: (IN CHAMBERS) Order Re: Plaintiff’s Motion for Class Certification (DE 22)

I. INTRODUCTION

On February 23, 2011, Neal Kruszka (“Plaintiff”), a resident of Wisconsin, filed a Class Action Complaint against Toyota Motor Corporation, Toyota Motor Sales USA, Inc., Toyota Motor North America, and Lexus alleging (1) violation of the California Consumer Legal Remedies Act (“CLRA”) (California Civil Code section 1750 *et seq.*); (2) violation of California’s Unfair Competition Law (“UCL”) (California Business and Professional Code section 17200 *et seq.*); (3) breach of contract; and (4) breach of express warranty. On May 27, 2011, Plaintiff filed a First Amended Complaint (“FAC”) against only Toyota Motor Sales USA, Inc. (“Toyota” or “Defendant”), a California corporation with its principal place of business in California.

Presently before the Court is Plaintiff’s Motion for Class Certification. As discussed below, the Court **DENIES** the Motion.

II. FACTUAL BACKGROUND

Plaintiff alleges that on May 19, 2010, he purchased a new 2010 Lexus IS250 automobile that he purchased directly from a “dealer of Defendant.” (Pl.’s Am. Compl. ¶ 11). Plaintiff further alleges the vehicle’s paint began chipping, scratching, and marring, immediately after he purchased it. After contacting the Lexus dealership as well as Toyota’s regional warranty resolution office, Plaintiff alleges that he was denied any relief.¹ Plaintiff

¹ Defendant submitted a Declaration, with its Opposition, from a Toyota employee claiming that Plaintiff’s complaints about his vehicle only concerned fingerprint-like spots on the hood of his vehicle. (Shook Decl. ¶ 6). The declarant further states that during his inspection of the vehicle he did not observe any noticeable chipping, peeling, or scratching. *Id.* Plaintiff disputed the declarant’s claims in his Reply.

contends that the chipping is a result of a defect in the process and paint used by Toyota and that the defect is one that occurs on all model year 2007 through 2011 Lexus vehicles.

Furthermore, Plaintiff alleges that Toyota and its dealers knew or had reason to know that there was a latent defect or problem with the paint on Lexus automobiles that caused the very problems Plaintiff experienced with his vehicle. "Toyota obtained this knowledge through warranty claims and complaints made by other owners of Lexus vehicles, made through channels that Toyota has created to receive that kind of information." (Pl.'s Am. Compl. ¶ 19). Plaintiff alleges that Toyota has a policy of denying any and all responsibility for this condition and instead blames it on the driving habits of individual drivers.

Plaintiff moves for certification of a Class consisting of "[a]ll current owners or lessees of model year 2007-2010 Lexus automobiles in the United States outfitted with the manufacturer's original paint." (Pl.'s Mot. for Class Certification at 1).

III. JUDICIAL STANDARD

For certification of a class action under Federal Rule of Civil Procedure 23, the plaintiff bears the burden of establishing each of the prerequisites set forth in Rule 23(a). *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). "[C]ertification is proper only if the trial court is satisfied, after rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied

. . . ." *Wal-Mart Stores, Inc. v. Dukes*, No. 10-277, 2011 WL 2437013, at *7 (U.S. June 20, 2011) (citations omitted) (internal quotation marks omitted). Rule 23(a) requires that "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(a). Rule 23(a)'s requirements are also known as: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

"Frequently [the] 'rigorous analysis' [of Rule 23(a)] will entail some overlap with the merits of the plaintiff's underlying claim." *Wal-Mart*, 2011 WL 2437013, at *7. However, "[a]lthough some inquiry into the substance of a case may be necessary to ascertain satisfaction of the commonality and typicality requirements of Rule 23(a), it is improper to advance a decision on the merits to the class certification stage." *Staton v. Boeing Co.*, 327 F.3d 938, 954 (9th Cir. 2003) (citations omitted) (internal quotation marks omitted).

In addition to finding that the requirements of Rule 23(a) have been satisfied, the Court must find that at least one of the following three conditions of Rule 23(b) are satisfied: (1) the prosecution of separate actions would create risk of (a) inconsistent or varying adjudications, or (b) individual adjudications dispositive of the interests of other members not a party to those adjudications; (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class; or (3) the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. See Fed. R. Civ. P. 23(b).

"Rule 23 does not set forth a mere pleading standard. A party seeking class certification

must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc.” *Wal-Mart*, 2011 WL 2437013, at *7. “[S]ometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question” *Id.* (internal quotation marks omitted).

IV. DISCUSSION

Plaintiff contends that the putative class should be certified under Rule 23. Defendant argues that certification is unwarranted because Plaintiff fails to meet the evidentiary requirements of Rule 23. As discussed below, the Court agrees with Defendant and finds that Plaintiff fails to satisfy the commonality requirements of Rule 23(a)(2).

A. Rule 23(a)(2) Commonality

As the Supreme Court held in *Wal-Mart*, “[a] party seeking class certification must . . . be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc.” 2011 WL 2437013, at *7. More specifically, to show commonality under Rule 23(a)(2), the plaintiff must “demonstrate that the class members have suffered the same injury.” *Id.* (internal quotation marks omitted).

Here, Plaintiff fails to put forth evidence that members of the proposed class, “[a]ll current owners or lessees of model year 2007-2010 Lexus automobiles in the United States outfitted with the manufacturer’s original paint,” have suffered the same injury. In the FAC, Plaintiff states that a “veritable library of internet sites have arisen dedicated to reporting and cataloging the ‘Lexus paint problem.’” (Pl.’s Am. Compl ¶ 22). Within the Complaint, Plaintiff includes twelve internet posts on the subject. *Id.* The Court finds that Plaintiff’s submission of a small number of internet posts ascribed to individuals identified only through usernames such as “draperysewer,” “Carhop1,” and “roadrunner4” is insufficient. Plaintiff makes no other attempt in his Motion to prove that the putative class members suffered the same injury.

Therefore, because Plaintiff does not provide sufficient evidence that the class suffered the same injury, Plaintiff’s Motion for Class Certification fails to meet the requirements of commonality under Rule 23(a)(2).

B. Untimely Declarations

On July 5, 2011, Plaintiff submitted eight Declarations from putative class members with his Reply. The declarants made nearly identical allegations related to defective paint on their respective lexuses and Defendant’s unwillingness to take corrective action.

The Ninth Circuit has held that arguments raised for the first time in a reply are waived. *United States v. Patterson*, 230 F.3d 1168, 1172 n.3 (9th Cir. 2000). District courts have interpreted this rule to apply to evidence as well. “[T]he Court will not consider evidence presented for the first time in a reply.” *In re Hansen Natural Corp. Secs. Litig.*, 527 F.Supp.2d 1142, 1150 (C.D. Cal 2007) (citing *Patterson*, 230 F.3d at 1172). Furthermore, Local Rule 7-5(b) of the Central District of California specifies that “[t]he evidence upon which the moving party will rely in support of the motion,” “shall be served and filed with the notice of the motion.” C.D. Cal. L.R. 7-5(b). Accordingly, the Court declines to consider Plaintiff’s untimely

submissions.²

C. Failure of Commonality is Dispositive

In *Wal-Mart*, the Supreme Court noted that the Rule 23(a) requirements of commonality, typicality, and adequacy of representation tend to overlap. 2011 WL 2437013, at *7. The Court further stated that because the plaintiffs had failed to meet the requirements of commonality, the Court did not need to evaluate the plaintiffs' other Rule 23(a) contentions. *Id.* at 7 n.5.

Accordingly, the Court declines addressing the other Rule 23(a) prerequisites in this case. Furthermore, the Court declines addressing Plaintiff's arguments for class certification under Rule 23(b)(2) and (3), as those arguments are now moot.

V. CONCLUSION

In light of the foregoing, the Court **DENIES** Plaintiff's Motion for Class Certification.

IT IS SO ORDERED.

Initials of
Preparer

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slw

² Additionally, the Court notes that none of the eight Declarations were signed under the penalty of perjury, as 28 U.S.C. § 1746 requires for unsworn declarations. Furthermore, none of the eight Declarations state that the declarant purchased the vehicle equipped with the manufacturer's original paint, that the declarant is the original purchaser, or that they purchased the vehicle in "new" condition.