

No. 09-55376

In the

United States Court of Appeals

for the Ninth Circuit

Michael Mazza, Janet Mazza, and Deep Kalsi,
Plaintiffs-Appellees,

v.

American Honda Motor Co., Inc.
Defendant-Appellant

On Appeal from the United States District Court
for the Central District of California
Hon. Valerie Baker Fairbank
Case No. 2:07-cv-7857

**BRIEF OF *AMICUS CURIAE*, PUBLIC CITIZEN, INC.,
IN SUPPORT OF APPELLEES
AND OF AFFIRMANCE OF THE DECISION BELOW**

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CORPORATE DISCLOSURE STATEMENT

Amicus curiae Public Citizen, Inc. has no corporate parent. It issues no stock, and, accordingly, no publicly-held corporation owns 10 percent or more of its stock.

INTEREST OF AMICUS CURIAE

Public Citizen is a nonprofit membership organization that was founded in 1971 to represent the interests of consumers in Congress, before the executive branch, and in the courts. For 37 years, Public Citizen has fought for the right of consumers to seek redress in the courts, including through class actions. In the automotive area, Public Citizen has fought for effective safety and emissions standards, and for vigorous protection of consumers' rights to hold automakers accountable in court. Public Citizen's national membership includes more than 10,000 members in California.

This Court's decision has the potential broadly to affect the rights of consumers, including Public Citizen's members. Public Citizen is familiar with the issues presented by this case and has confined its discussion here to the choice-of-law issues as they bear on the District Court's ruling on the motion of plaintiffs-appellants (collectively, "Mazza") for nationwide class certification. Public Citizen believes its perspective about those issues can be of valuable assistance to the Court. Public Citizen has sought and obtained the consent of both parties to file this brief.

SUMMARY OF ARGUMENT

In certifying a nationwide class of consumers in this case, the district court ruled that common questions predominate because (among other things) California law applies to all class members' claims. In reaching that conclusion, the district court found that Appellant American Honda Motor Co., Inc. ("Honda"), had failed to meet its burden of demonstrating (1) that other states' consumer-protection laws and unjust-enrichment jurisprudence differ from the law of California in a way that is material to this litigation, (2) that the other states have a legitimate interest in applying their laws, and (3) that other states' interests would be more impaired than California's would be if their law was not applied.

Honda's burden was extraordinarily heavy. In addition to being incorporated under the laws of California, Honda maintains its corporate headquarters here, where it designed the product at issue in this case. In addition, Honda hired two California advertising agencies to help it market that product throughout the United States, while engaging in conduct that allegedly violated California consumer-protection statutes—conduct that emanated from California to affect consumers throughout the country.

In an effort to show that California law does not apply to all class members' claims, Honda relies on a conflicts analysis that does not apply to cases like this one. Although Honda professes to employ California's governmental-interest test

in support of its arguments, it actually relies on the “most significant relationship” test set forth in Section 148 of the RESTATEMENT (SECOND) OF THE LAW OF CONFLICTS OF LAW (“Restatement”) and on cases involving choice-of-law agreements, which have nothing to do with this case.

The governmental-interest test shows that California law applies here. No non-forum state has a legitimate interest in applying its own laws with respect to available remedies to injured consumers because no state offers any greater remedies than those that are available under California law. No non-forum state has a legitimate interest in applying its laws that protect defendants by imposing limits on recovery (such as standing or prohibitions against class actions) because Honda is a California corporation that allegedly engaged in unlawful conduct in California, and because California is the only state that has a legitimate interest in regulating the conduct of its own domiciliaries. Even if another state did have a legitimate interest in applying its law, however, it would be outweighed by California’s substantial interest in preventing fraudulent practices in this state that have an effect both in California and throughout the country.

ARGUMENT

A. HONDA URGES THE COURT TO APPLY THE WRONG CONFLICTS TEST, AND IGNORES CRITICAL ASPECTS OF THE CONFLICTS RULES THAT APPLY HERE

A federal court presiding over a diversity action must apply the forum state's conflicts of law rules. *Klaxon v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). California courts apply two distinct approaches to conflicts of law questions, depending on whether the case involves a contractual choice-of-law provision:

California has two different analyses for selecting which law should be applied in an action. When the parties have an agreement that another jurisdiction's law will govern their disputes, the appropriate analysis for the trial court to undertake is set forth in *Nedlloyd [Lines B.V. v. Superior Court]*, 3 Cal. 4th 459 (1992), ***which addresses the enforceability of contractual choice-of-law provisions.*** Alternatively, ***when there is no advance agreement on applicable law, but the action involves the claims of residents from outside California, the trial court may analyze the governmental interests of the various jurisdictions involved to select the most appropriate law.***

Washington Mut. Bank, FA v. Superior Court, 24 Cal. 4th 1071, 1077 (2001) (emphasis added).

The distinction is important because the two analyses differ substantially. The governmental-interest analysis requires the proponent of non-forum law to demonstrate that a conflict exists by showing a material difference between forum and non-forum law *and* by showing that another state has a legitimate interest in applying its law to the claims on which the case is based. *Kearney v. Salomon*

Smith Barney, Inc., 39 Cal. 4th 95, 107-08 (2006). If a true conflict does exist, the proponent must then demonstrate that the non-forum state's interest would be more impaired than the interests of the forum state if its law were not applied. *Id.* at 107-08.

That approach is significantly different from the one described in *Nedlloyd*, which provides that when parties have agreed on the law that will govern their disputes by including a choice-of-law provision in a contract, a court may find, as a matter of law, that the parties “intended that law to apply to *all* disputes arising out of the transaction or relationship.” *Washington Mutual*, 24 Cal. 4th at 1078 (quoting *Nedlloyd*, 3 Cal. 4th at 469) (emphasis in original). The court must then determine whether the choice-of-law provision is enforceable by applying “the analytical approach reflected in section 187, subdivision (2) of the Restatement Second of Conflict of Laws (Restatement).” *Id.*

Honda agrees that the governmental-interest analysis applies to this case, but nonetheless cites to *Nedlloyd* for the proposition that, when deciding conflicts-of-law issues, “California courts seek guidance from “the modern, mainstream approach adopted in the Restatement [(Second) of Conflict of Laws.]” AOB at 30 (quoting *Nedlloyd*, 3 Cal. 4th at 464). According to Honda, California uses the “most significant relationship” test set forth in Restatement Section 148 when analyzing conflict-of-law issues in cases involving fraud-based claims. *Id.* at 30.

From that premise, Honda argues that the application of Section 148 demonstrates that non-forum states have a more significant relationship to the claims, and hence (according to Honda) a greater interest in applying their law than does California, because “in almost every instance each class member’s home state—and not California—would be both the place where the plaintiff acted in reliance upon the defendant’s representations and the place where the plaintiff received the representations.” *Id.* (citations and inner quotation marks omitted).

In fact, in *Nedlloyd*, California adopted Restatement Section **187**—**not** Section 148—and **only** for use in cases involving contractual choice-of-law provisions, **which have no application to this case**. See *Nedlloyd*, 3 Cal. 4th at 464-65 (“In determining the enforceability of arm’s-length contractual choice-of-law provisions, California courts shall apply the principles set forth in Restatement section 187, which reflect a strong policy favoring enforcement of such provisions.”). Thus, the cases on which Honda relies that involve choice-of-law agreements or Restatement Section 148 are inapplicable here. See, e.g., *Offshore Rental Co. v. Continental Oil Co.*, 22 Cal. 3d 157, 161 (1978) (“Questions of choice of law are determined in California, as plaintiff correctly contends, by the ‘governmental interest analysis’ rather than by the trial court’s ‘most significant contacts theory’”); *Mercedes-Benz Tele Aid Contract Litig.*, 257 F.R.D. 46, 57-58 (D.N.J. 2008) (explaining that California’s governmental-interest analysis requires

the courts to consider only those facts that pertain to the policies involved in determining the interests of each state in applying its law, whereas the Restatement Section 148's "most significant relationship" test "requires the Court to consider a number of factors in addition to the policies underlying the various states' laws.").

B. HONDA HAS NOT ESTABLISHED THE EXISTENCE OF A CONFLICT UNDER THE GOVERNMENTAL-INTEREST TEST

Under the governmental-interest approach, the forum will apply its own law unless the proponent of foreign law establishes a compelling reason it should not. *E.g., Hurtado v. Superior Court*, 11 Cal. 3d 574, 581 (1974).

In the present case, Mazza alleged that California is the state (1) in which Honda is incorporated; (2) in which Honda maintains its corporate headquarters; (3) in which Honda designed and marketed its Collision Mitigation Braking System ("CMBS"); (4) in which both agencies Honda hired to advertise the CBMS are located; and (5) from which all the allegedly unlawful and deceptive conduct giving rise to Mazza's claims emanated. *Mazza v. Am. Honda Motor Co., Inc.*, 254 F.R.D. 610, 620 (N.D. Cal. 2008). Honda does not dispute those facts. *See* AOB at 4-14. Rather, Honda contends that the district court erred by engaging in a choice-of-law analysis that "presumed away the individualized inquiries required under the varying laws of 44 jurisdictions." *Id.* at 15.

Honda is mistaken. By relying on the wrong conflicts test, and by ignoring critical aspects of the conflicts analysis that does apply to this case, it is ***Honda***

that has “presumed away” issues that are fundamental to the task that was before the district court. In so doing, Honda has not carried its burden of demonstrating that California law does not apply to out-of-state class members’ claims.

1. ***Step One: Honda Failed to Demonstrate the Existence of Material Difference Between California Law and That of the Other Potentially Affected Jurisdictions***

Addressing the first prong of the governmental-interest analysis, Honda contends that there is “substantial variation” between California’s consumer-protection statutes—the Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750-1784, and the Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200-17209¹—and those of the other potentially affected jurisdictions. AOB at 21. More specifically, Honda contends that procedural and substantive aspects of the relevant consumer-protection laws differ from state to state. *Id.* at 21-25. Honda makes essentially the same argument with respect to “unjust enrichment jurisprudence.” *Id.* at 25-29.²

¹ “A violation of the UCL’s fraud prong is also a violation of the false advertising law.” *In re Tobacco II Cases*, 46 Cal. 4th 298, 312 n. 8 (2009) (citing Cal. Bus. & Prof. Code § 17500).

² In *In re Inkjet Printer Litig.*, 2008 WL 2949465 (N.D. Cal., July 25, 2008), the court declined to certify a nationwide class based solely on ostensible differences between California law and other states’ laws. Rather than requiring the proponent of ***non-forum law*** to satisfy the criteria pertaining to each of the three steps in the governmental-interest analysis, however, the court placed the burden on the ***plaintiffs*** to demonstrate that ***forum law*** applied, and concluded that
(Footnote continues on next page.)

The district court ruled that Honda had not met its burden of establishing that the laws of the non-forum states differ from California law because Honda failed to demonstrate that the purported differences on which it relied were *material* to this litigation. *Mazza*, 254 F.R.D. at 622. Honda’s attempts to challenge the district court’s holding by pointing to ways that other states’ laws are supposedly more protective of consumers than California’s are unavailing.

Honda points out that some states’ consumer-protection laws do not contain a reliance requirement, but that the UCL and the CLRA do. AOB at 21-22. However, to the extent that reliance is an issue at all in a UCL claim, it applies only to whether the class representative has standing; there is no reliance requirement with respect to absent class members. *See, e.g., Tobacco II*, 46 Cal. 4th at 320 (California “courts repeatedly and consistently [have held] that relief under the UCL is available without individualized proof of deception, reliance and injury.”) (citations and internal quotation marks omitted). Moreover, reliance may be *inferred* under both the UCL and the CLRA in any event. *See id.* at 327 (“a presumption, or at least an inference, of reliance arises wherever there is a showing that a misrepresentation was material.”) (citation and internal quotation marks

it did not after reaching the *first step* of the analysis. *See Inkjet*, 2008 WL 2949465 at *7 (finding a conflict that precluded the application of California law after reviewing “a detailed analysis of the variations in state consumer protection and deceptive trade practice laws” that the defendant had submitted).

omitted); *Massachusetts Mut. Life Ins. Co. v. Superior Court*, 97 Cal. App. 4th 1282, 1292-93 (2002) (same, regarding CLRA).

Nor would the application of California’s consumer-protection laws leave any out-of-state class members with fewer remedies than they would have under their own laws. AOB at 23-24. As the district court found, “a CLRA violation, which serves as a predicate UCL violation under the UCL’s ‘unlawful’ prong, provides for each of the remedies that Defendant contends would be unavailable with the application of California law to a nationwide class.” *Mazza*, 254 F.R.D. at 622.

Nonetheless, Honda contends that the district court erred by considering the remedies that are available under the CLRA and the UCL cumulatively, instead of separately comparing each of those statutes to other states’ consumer-protection statutes. AOB at 24. According to Honda, the district court failed to apply “‘the conflicts test . . . to *each* claim upon which certification is sought.’” AOB at 24 (quoting *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1188, *amended*, 273 F.3d 1266 (9th Cir. 2001)) (emphasis in original).³

³ By citing *Zinser* in this context, Honda appears to have misapprehended the nature of the test to which *Zinser* referred. *See Kearney*, 39 Cal. 4th at 110 (second step of analysis requires courts to “carefully examin[e] what might at first blush appear to be a single subject or rule of law in order to identify the distinct state interests that may underlie separate aspects of the issue in question”).

Honda does not (and cannot) legitimately dispute the district court’s findings regarding the nature and scope of the remedies available under the CLRA. *See* Cal. Civ. Code § 1780(a)(1)-(5) (providing for actual damages, injunctive relief, restitution of property, punitive damages, and “[a]ny other relief the court deems proper”). Likewise, Honda cannot deny that, although the UCL’s equitable nature does not allow it to provide an additional basis for recovering damages, it does provide an additional basis on which to seek restitution and injunctive relief. *Tobacco II*, 46 Cal. 4th at 312. In short, California consumer-protection law provides every member of the nationwide class with the full panoply of legal and equitable remedies.

Honda contends, however, that Massachusetts provides for an award of statutory damages that California does not. In support of that contention, Honda points to *Leardi v. Brown*, 474 N.E.2d 1094, 1101 (Mass. 1985), *see* AOB at 32, which held that the Massachusetts consumer-protection statute (Mass. Gen. L. c. 93A (“Chapter 93A”)) “provides for recovery ‘of actual damages or twenty-five dollars, whichever is greater.’ Accordingly, under circumstances where there has been an invasion of a legally protected interest, but no harm for which actual damages can be awarded, . . . the statute provides for the recovery of minimum damages in the amount of \$25.” However, in *Hershenow v. Enterprise Rent-a-Car Co. of Boston*, 840 N.E.2d 526 (2006), the Massachusetts Supreme Judicial Court

explained that *Leardi* held that although statutory damages could be awarded if the plaintiff showed that the defendant had “invaded any legally protected interest” within Chapter 93A’s compass, *id.* at 534, “what *Leardi* did not do was to eliminate the required causal connection between the deceptive act and an adverse consequence or loss.” *Id.* Consequently, the court held that the plaintiffs could **not** recover under Chapter 93A even though they had shown a *per se* violation of that statute in the car-rental contracts at issue in that case—even if the contracts were *per se* unfair and deceptive—because “the statutorily noncompliant terms in Enterprise’s automobile rental contracts did not and could not deter the plaintiffs from asserting any legal rights. Nor did the plaintiffs experience any other claimed economic or noneconomic loss.” *Id.* at 534-35.⁴

California law is no different. *See Meyer v. Sprint Spectrum L.P.*, 45 Cal. 4th 634, 643 (2009) (declining to extend recovery under CLRA “to situations in

⁴ Equally baseless is Honda’s contention that New York’s consumer-protection statute (N.Y. Gen. Bus. L. § 349 (“Section 349”)) should be applied because it “has relaxed standing requirements which require that plaintiffs prove actual injury, but not necessarily pecuniary harm.” AOB at 37. As under Chapter 93A, however, a claim is not actionable unless the alleged violation of Section 349 has resulted in economic harm or the inability to exercise legal rights. *See, e.g., Smith v. Chase Manhattan Bank, U.S.A., N.A.*, 293 A.D.2d 598, 599 (N.Y. App. Div. 2002) (claim that defendant violated Section 349 by distributing confidential customer information to third parties that used the information to solicit sale of products and services not actionable because “the ‘harm’ at the heart of this purported class action, is that class members were merely offered products and services which they were free to decline”).

which an allegedly unlawful practice under the CLRA has not resulted in some kind of tangible increased cost or burden to the consumer”).⁵

Honda also fails to demonstrate material differences between California law and that of other jurisdictions with respect to Mazza’s unjust enrichment claims. As the district court correctly found, although courts in different jurisdictions may not always phrase their unjust enrichment decisions identically, there are no *material* differences between California law and non-forum law. *Mazza*, 254 F.R.D. at 622.

In all states, the focus of an unjust enrichment claim is whether the defendant was unjustly enriched. At the core of each state’s law are two fundamental elements—the defendant received a benefit from the plaintiff and it would be inequitable for the defendant to retain that benefit without compensating the plaintiff. . . . [R]egardless of which state’s unjust enrichment elements are applied, the result is the same. Thus, there is no real conflict surrounding the elements of the cause of action.

Mercedes-Benz, 257 F.R.D. at 58 (citation and internal quotation marks omitted).

At bottom, the district court correctly found that Honda failed to meet its burden of establishing that there is a *material* difference between California

⁵ Honda contends that Florida would have a legitimate interest in applying its law because its consumer-protection statute provides recovery for unconscionable acts and practices and the CLRA does not. AOB at 32. But Honda fails to explain how that distinction has any practical impact on the claims at issue here—particularly in light of the strict liability the UCL imposes for acts of unfair competition, which the UCL defines expansively. (See discussion at Section B.2., below).

consumer-protection law and unjust enrichment jurisprudence and the law of non-forum states in the same areas, because there is none. *Mazza*, 254 F.R.D. at 622. Other courts, including this one, have reached similar conclusions for similar reasons. *See, e.g., Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1021 (9th Cir. 1998) (“[T]here is no structural conflict of interest based on variations in state law, for the named representatives include individuals from each state, and the differences in state remedies are not sufficiently substantial so as to warrant the creation of subclasses.”); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 242 (2001) (“Rudolph’s comparison of the laws of different jurisdictions is not persuasive. In fact California’s consumer protection laws are among the strongest in the country.”); *Parkinson v. Hyundai Motor Am.*, 258 F.R.D. 580, 598 (N.D. Cal. 2008) (quoting same passage from *Wershba* to explain rejection of similar argument in connection with motion to certify nationwide litigation class: “the Court does not find a conflict between California’s consumer protection laws and the applicable laws of the non-forum states and decision”).⁶

⁶ Honda urges the Court to disregard *Hanlon* and *Wershba* on the ground that they involved review of certification orders that were the product of less rigorous review because they involved settlement, rather than litigation, classes. *See* AOB at 19-20 n. 3 (citing *Amchem Prods., Inc. v. Windsor*, 421 U.S. 591, 620 (1997)). As this Court made clear in *Hanlon*, however, “the inquiry is *especially* critical when the a class settlement is tendered along with a motion for class certification. *Amchem* instructs us to give *heightened* scrutiny to cases in which
(Footnote continues on next page.)

2. ***Step Two: Honda Failed to Establish a Legitimate Interest in Applying Non-Forum Law***

In the second step of the governmental-interest analysis, if there is a material difference between forum and non-forum law, the court must examine each aspect of each claim to determine the nature and extent (if any) of the interests a state may have in applying its law to those claims, to determine whether a true conflict exists. *Kearney*, 39 Cal. 4th at 110. If the proponent of foreign law cannot establish that a non-forum state has a legitimate interest in applying its law, the analysis ends and the law of the forum applies. *See, e.g., Abrogados v. AT&T, Inc.*, 223 F.3d 932, 935 (9th Cir. 2000) (“If only one jurisdiction has a legitimate interest in the application of its rule of decision, there is a ‘false conflict’ and the law of the interested jurisdiction is applied.”) (citation and internal quotation marks omitted); *Hurtado*, 11 Cal. 3d at 580-82 (same). Here, even if there are some differences in forum and non-forum law, Honda cannot establish a true conflict.

Honda contends that “‘every state has an interest in having its law applied to its resident claimants[,]’” and an interest in determining the scope and adequacy of compensation for its residents. AOB at 29 (quoting *Zinser*, 253 F.3d at 1187). But

class members may have claims of different strength.” 150 F.3d at 1020 (emphasis added). *See also Wershba*, 91 Cal. App. 4th at 240 (“California courts have recognized that class action settlements should be scrutinized **more** carefully if there has been no adversary certification”) (emphasis added; citation and internal quotation marks omitted).

whether a state has a legitimate interest in applying its own law to a dispute is entirely dependent on the facts underlying the dispute—which is precisely the reason California adopted the governmental-interest analysis in the first place. *See Reich v. Purcell*, 67 Cal. 2d 551, 555 (1967) (“We conclude that the law of the place of the wrong is not necessarily the applicable law for all tort actions.”).

The California Supreme Court’s decision in *Hurtado* is illustrative. *Hurtado* was a wrongful death case that arose from an automobile collision between the plaintiff, a resident of Mexico, and the defendants, who were residents of California. *See* 11 Cal. 3d at 578. Mexican law limited the amount of damages a plaintiff could recover in a wrongful death action. *Id.* at 578-79. Nonetheless, the court found that only California had a legitimate interest in applying its law to the case because the California defendant’s conduct that gave rise to the lawsuit occurred in the forum state, California:

The creation of wrongful death actions insofar as plaintiffs are concerned is directed toward compensating decedent’s beneficiaries. California does not have this interest in applying its wrongful death statute here because plaintiffs are residents of Mexico. However, the creation of wrongful death actions is not concerned solely with plaintiffs. As to defendants the state interest in creating wrongful death actions is to deter conduct. We made this clear in *Reich*: ‘Missouri (as the place of wrong) is concerned with conduct within her borders and as to such conduct she has the predominant interest of the states involved.’ . . .

It is manifest that one of the primary purposes of a state in creating a cause of action in the heirs for the wrongful death of the decedent is to deter the kind of conduct within its borders which wrongfully takes life. It is also abundantly clear that a cause of action

for wrongful death without any limitation as to the amount of recoverable damages strengthens the deterrent aspect of the civil sanction: the sting of unlimited recovery more effectively penalizes the culpable defendant and deters it and others similarly situated from such future conduct. Therefore when the defendant is a resident of California and the tortious conduct giving rise to the wrongful death action occurs here, California's deterrent policy of full compensation is clearly advanced by application of its own law. This is precisely the situation in the case at bench. California has a decided interest in applying its own law to California defendants who allegedly caused wrongful death within its borders.

Id. at 583-84 (citations, internal quotation marks, and ellipses omitted). Under *Hurtado*, “[t]he key step in this process is delineating the issue to be decided.” 11 Cal. 3d at 672-73. *See also Kearney*, 39 Cal. 4th at 110 (“*Hurtado* teaches the importance of carefully examining what might at first blush appear to be a single subject or rule of law in order to identify the distinct state interests that may underlie separate aspects of the issue in question.”).

Mercedes-Benz correctly followed this analysis when it applied California's governmental-interest test to claims under New Jersey's Consumer Fraud Act, noting that “the NJCFA is designed to serve two purposes: compensating victims of consumer fraud and regulating companies within New Jersey.” 257 F.R.D. at 64. Because the defendant was located in New Jersey and had engaged in the allegedly fraudulent conduct there, the court applied New Jersey law to the claims of a nationwide class because New Jersey had the only legitimate interest in regulating resident companies. *Id.* at 63-64.

The CLRA and the UCL serve similar purposes, reflecting interests in recovery by victims and in regulating unlawful, fraudulent, and unfair conduct within California. The interests that inform the CLRA can be found in the CLRA itself. *See* Cal. Civ. Code § 1760 (stating that the CLRA is to be construed liberally to serve its underlying purposes: “to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection”). The CLRA achieves those purposes not only by providing for awards of compensatory and punitive damages, but also by providing injunctive relief, the purpose of which “is not to resolve a private dispute but to remedy a public wrong.” *Broughton v. Cigna Healthcare Plans of Cal.*, 21 Cal. 4th 1066, 1080 (1999).

The UCL also serves the interests of recovery and deterrence, imposing strict liability for engaging in “unfair competition,” which the UCL defines

as any “unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising. . . .” (§ 17200.) The Legislature intended this sweeping language to include anything that can properly be called a business practice and that at the same time is forbidden by law. . . .

Section 17203, which incorporates the broad, statutory definition of “unfair competition,” permits “any court of competent jurisdiction” to enjoin “[a]ny person performing or proposing to perform an act of unfair competition. . . .” (§ 17203.) The section also authorizes courts to make such orders as “may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.” (*Ibid.*) The purpose of such orders is “to deter future violations of the unfair trade practice statute and to foreclose retention

by the violator of its ill-gotten gains.” *The Legislature considered this purpose so important that it authorized courts to order restitution without individualized proof of deception, reliance, and injury if necessary to prevent the use or employment of an unfair practice.*

Bank of the West v. Superior Court, 2 Cal. 4th 1254, 1266-67 (1992) (citing *Committee on Children’s Television, Inc. v. General Foods Corp.*, 35 Cal. 3d 197, 211 (1983); *Fletcher v. Sec. Pac. Nat’l Bank*, 23 Cal. 3d 442 (1979); *People v. Superior Court (Jayhill)*, 9 Cal. 3d 283, 288-89 & n. 3 (1973)) (emphasis added); see also *Paduano v. Am. Honda Motor Co., Inc.*, 169 Cal. App. 4th 1453, 1468 (2009) (“Section 17200 is not confined to anticompetitive business practices, but is also directed toward the public’s right to protection from fraud, deceit, and unlawful conduct. Thus, California courts have consistently interpreted the language of section 17200 broadly. The statute imposes strict liability. It is not necessary to show that the defendant intended to injure anyone.”) (citations and internal quotation marks omitted).⁷

After first arguing that California law does not provide *enough* remedies to justify the application of forum law to the claims in this case (an argument that, as shown above, fails the first step of the conflicts analysis), Honda argues that

⁷ The scope of the UCL’s substantive provisions remain unchanged in the wake of Proposition 64. *Tobacco II*, 46 Cal. 4th at 313-14; *Morgan v. AT&T Wireless Servs., Inc.*, 177 Cal. App. 4th 1235, 1252-53 (2009).

features of the laws of non-forum states that would *limit* class members' recovery should govern the claims of class members who are resident in those states. *See, e.g.*, AOB at 35-37. On the contrary, it is California that has an interest in applying its law to regulate the conduct of Honda at issue here, and other states lack a legitimate interest in providing additional protections to Honda.

As discussed above, California's consumer-protection statutes provide the full panoply of legal and equitable remedies. *See* Cal. Civ. Code § 1780(a)(1)-(5) (CLRA); *Kraus v. Trinity Mgmt. Servs., Inc.*, 23 Cal. 4th 116, 126 (2000) (UCL). Those remedies are cumulative. Cal. Civ. Code § 1752; Cal. Bus. & Prof. Code §§ 17205, 17534.5. Thus, even if every other state has an interest in maximizing class members' recovery, that interest would not conflict with the application of California law because no state provides greater relief to class members than California does.

Conversely, even if it were true that one or more unidentified states would deem the conduct at issue in this case to be lawful (and it is not), those states would have no legitimate interest in applying their law because Honda is not domiciled there and did not engage in the alleged conduct there. *Hurtado*, 11 Cal. 3d at 586-87. For the same reason, Honda's contention that other states impose limitations on recovery (such as standing (AOB at 37); scienter (*id.* at 22-23); limitations on prosecuting claims in a class action (*id.* at 23); statutes of limitation

(*id.*); and the scope of prohibited conduct (*id.* at 31-38)), fails to establish those states' interest in applying their law to their residents' claims. *Id.* at 22-38.

A limitation on recovery “reflects the state’s interest in protecting defendants from excessive financial burdens.” *Kearney*, 39 Cal. 4th at 110. Where, as here, the conduct that forms the basis for the plaintiff’s claims occurred outside a state’s borders, that state has no legitimate interest in protecting that defendant by limiting the plaintiffs’ recovery. *Compare Hurtado*, 11 Cal. 3d at 586-87 (“Because Mexico has no interest in applying its limitation of damages in wrongful death actions to nonresident defendants or in denying full recovery to its resident plaintiffs, the trial court both as the forum, and as an interested state, correctly looked to its own law.”) *with Offshore Rental*, 22 Cal. 3d at 163-64 (finding Louisiana had legitimate interest in applying statute prohibiting recovery for loss of key employee’s services, which reflected “policy to protect negligent **resident tort-feasors acting within Louisiana’s borders** from the financial hardships caused by the assessment of excessive legal liability or exaggerated claims resulting from the loss of services of a key employee,” because defendant was a Louisiana corporation and allegedly negligent conduct occurred in Louisiana) (emphasis added; citation omitted).

Because the wrongful conduct alleged in this case occurred in and emanated from California, where Honda maintains its corporate headquarters, other states

have no legitimate interest in applying limitations on recovery. *Hurtado*, 11 Cal. 3d at 586-87; *see also Mercedes-Benz*, 257 F.R.D. at 64 (“New Jersey’s interest in regulating Mercedes, a corporation located within its borders, requires the application of New Jersey law to Plaintiffs’ consumer fraud claims under the ‘government interest’ choice of law test utilized by California.”).

Honda recognizes that California has a legitimate interest in regulating the conduct that occurs within its borders, but it contends that “[t]here is a strong presumption against the extraterritorial application of state statutes.” AOB at 34. Similarly, Honda argues that “applying California law to the entire nationwide class asserted here would severely undermine the varying and equally considered policy judgments of 43 other jurisdictions.” *Id.* at 36.

California choice-of-law doctrine decisively rejects Honda’s arguments. As the California Supreme Court explained in a case involving the nationwide application of California securities-fraud statutes (Cal. Corp. Code §§ 25400, 25500), the presumption against extraterritorial application of California law “has never been applied to an injured person’s right to recover damages suffered as a result of an unlawful act or omission committed in California.” *Diamond Multimedia Systems, Inc. v. Superior Court*, 19 Cal. 4th 1036, 1059 (1999). The court went on to explain that

Civil Code section 3281 provides that “[e]very person who suffers detriment” from unlawful acts or omissions in California may recover

damages from the person at fault. Product liability actions against California manufacturers by persons injured elsewhere by a defective product manufactured in California are a prime example of actions authorized by Civil Code section 3281.

Id. at 1059-60. The court then addressed California's interest in applying its antifraud statutes to residents of other states:

Even were there some indirect burden on interstate commerce, that burden would not be constitutionally impermissible. ***While petitioners and several amici curiae argue that California has no legitimate interest in protecting out-of-state investors, it has a clear and substantial interest in preventing fraudulent practices in this state which may have an effect both in California and throughout the country.*** That is the purpose of section 25400. While substantial criminal penalties are available, the Legislature might reasonably conclude that imposing civil liability for all trading losses occasioned by proscribed manipulative conduct will be a substantial deterrent to violation. . . .

California also has a legitimate and compelling interest in preserving a business climate free of fraud and deceptive practices. California business depends on a national investment market to support our industry. The California remedy for market manipulation helps to ensure that the flow of out-of-state capital necessary to the growth of California business will continue. The Court of Appeal rejected a claim similar to that of petitioners and recognized the importance of extending state-created remedies to out-of-state parties harmed by wrongful conduct occurring in California in *Clothesrigger, Inc. v. G.T.E. Corp.* (1987) 191 Cal.App.3d 605 [236 Cal.Rptr. 605]. . . .

We conclude for all of these reasons that out-of-state purchasers and sellers of securities whose price has been affected by the unlawful market manipulation proscribed by section 24500 may avail themselves of the remedy afforded by section 25500. ***The remedy is not limited to transactions made in California.*** . . .

Id. at 1063-64 (emphasis added) (citing *Edgar v. MITE Corp.*, 457 U.S. 624, 644 (1982)). See also *Norwest Mort., Inc. v. Superior Court*, 85 Cal. App. 4th 214,

222, 228 n. 17 (1999) (“California law was potentially applicable to claims in *Diamond* and *Clothesrigger* because the injury-producing conduct occurred in California. Similar reasons justified potential application of California law to the claims in the other cases cited by plaintiffs.”) (citing *Bernhard v. Harrah’s Club*, 16 Cal. 3d 313, 317-18 (1976); *Hurtado*, 11 Cal. 3d at 578; *Application Group, Inc. v. Hunter Group, Inc.*, 61 Cal. App. 4th 881, 894-905 (1998); *Sommer v. Gabor*, 40 Cal. App. 4th 1455, 1461-62 (1995); *In re Title U.S.A. Ins. Co.*, 36 Cal. App. 4th 363, 372 (1995); *Shields v. Singleton*, 15 Cal. App. 4th 1611, 1621 (1993); *North Am. Asbestos Corp. v. Superior Court*, 180 Cal. App. 3d 902, 906 (1986); *Robert McMillan & Son, Inc. v. United States Fid. & Guar. Co.*, 103 Cal. App. 3d 198, 200-01 (1980)); *Parkinson*, 258 F.R.D. at 598 (same).

The same is true here. *See, e.g., America Online, Inc. v. Superior Court*, 90 Cal. App. 4th 1, 14-15 (2001) (“The CLRA parallels the Corporate Securities Law of 1968 [Cal. Corp. Code § 25000, *et seq.*] insofar as the CLRA is a legislative embodiment of a desire to protect California consumers and furthers a strong public policy of this state. ‘The CLRA was enacted in an attempt to alleviate social and economic problems stemming from deceptive business practices’ Certainly, the CLRA provides remedial protections that are *at least* as important as those under the Corporate Securities Act of 1968.”) (quoting *Broughton*, 21 Cal. 4th at 1077)) (emphasis in original).

Accordingly, Honda has not established—and cannot establish—that California has no legitimate interest in the application of its law to out-of-state class members’ claims, much less that other states have a greater interest in applying their law. Although all states could reasonably have an interest in conduct that affects them in some way, the key question to be resolved in the second step of the governmental-interest analysis is whether that interest is a *legitimate* one in light of the nature of the interests at issue in a particular case. Indeed, that is precisely how the governmental-interest test differs from the traditional “place of the wrong” test. Thus, as the courts have made clear repeatedly since Chief Justice Traynor wrote the opinion for a unanimous court in *Reich* more than 40 years ago, a state has no *legitimate* interest in deterrence where the conduct occurred outside of its borders and the defendant does not reside there. 67 Cal. 2d at 555-56; *Kearney*, 39 Cal. 4th at 110; *Offshore Rental*, 16 Cal. 4th at 161; *Hurtado*, 11 Cal. 3d at 586-87.

Despite the interest of California in regulating Honda’s conduct and the lack of interest of other states in protecting it, Honda goes so far as to assert that California law may over-compensate certain class members in violation of the Due Process Clause. AOB at 24-25. Honda takes aim at the availability of punitive damages under the CLRA, suggests that the conduct that forms the basis for the claims this case may be lawful in some (unidentified) states, then argues that the

Due Process Clause would, therefore, prohibit California from awarding punitive damages to class members who reside in those states:

[I]f plaintiffs recovered punitive damages under the CLRA, extending them to a nationwide class would violate the Due Process Clause because “[a] State cannot punish a defendant **for conduct that is lawful where it occurred**. . . . Nor, as a general rule, does a State have a legitimate interest in imposing punitive damages **for unlawful acts committed outside of the State’s jurisdiction**.”

Id. (quoting *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 421 (2003)) (emphasis added).

State Farm is inapplicable to this case. The question addressed in *State Farm* was whether a \$145 million punitive-damage award was so excessive that it violated the Due Process Clause where, in a non-class insurance bad faith action, the award of compensatory damages was \$1 million and the award of punitive damages **was based in part on the insurer’s bad-faith conduct toward other insureds who had nothing to do with the litigation, which occurred out-of-state and bore no relation to the insureds’ harm**. See 538 U.S. at 411, 422-23. The present case has nothing to do with California attempting to regulate out-of-state conduct that bears no relation to the plaintiffs’ harm through the imposition of punitive damages in an individual action. Rather, this is a class action in which **the conduct giving rise to the claims occurred within—and emanated from—California** and bears a **direct** relation to each class member’s harm.

Under the circumstances, if Honda's liability were established in this case, California would have a legitimate interest in imposing punitive damages to punish that conduct and to deter others from engaging in it. *E.g.*, *Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 613-15 (1987) (observing that "to apply its law constitutionally to the claims of nonresident class members, the forum state must have 'a significant contact or aggregation of contacts to the claims asserted by each member of the plaintiff class, contacts creating state interests in order to ensure the choice of forum law is not arbitrary or unfair'" and noting California's interest in deterring fraud and unfair business practices) (quoting *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821-22 (1985)).⁸

⁸ *See also Diamond*, 19 Cal. 4th at 1063-64 ("Even assuming arguendo that California had no interest in protecting investors in other states, the Legislature may reasonably conclude that California does have a legitimate interest in discouraging unlawful conduct that has a potential to harm California investors as well as persons in other states. Extending the civil liability remedy to all investors serves that purpose") (citations omitted); *accord Mercedes-Benz*, 257 F.R.D. at 64 ("The intended deterrent effect of the NJCFA would be compromised if Mercedes were allowed to escape liability for the treble damages, attorneys' fees, and litigation costs mandated by New Jersey law simply because its alleged misconduct defrauded citizens of states whose laws do not provide for similar punitive damages"). *Cf. Norwest*, 85 Cal. App. 4th at 225 n. 13 ("*Diamond* supports inclusion of Category II members [*i.e.*, out-of-state class members harmed by in-state conduct] as claimants entitled to state a UCL claim. Although they may be non-California residents, the injury arose from offending conduct occurring in California").

3. ***Step Three: Even If There Was a True Conflict No State's Interest Would Be More Impaired Than California's If Forum Law Was Not Applied to the Claims in This Case***

Because no other state has a legitimate interest in applying its law to this case, the most that could be said of Honda's argument is that it presented a false conflict. Even if a true conflict could be presumed, however, the third step of the governmental-interest test would demonstrate that California's interests would be more impaired if its law was not applied.

Honda contends that the states in which class members consummated the transactions in which they purchased their vehicles have a legitimate interest in applying their law those class members' claims because those transactions constitute in-state conduct that they have an interest in regulating. *See* AOB at 30-34. But Honda has not even attempted to establish the factual basis for that contention by showing that it was involved in those transactions, either by selling the vehicles directly to class members or by selling them through dealers who were Honda's agents. To the contrary, Honda said just the opposite when it moved to dismiss this case. *See* MPAs ISO Motion to Dismiss (available at district court docket entry No. 8) at 15 ("AHM distributes vehicles to *independent* authorized dealers who, in turn, enter into transactions with consumers. *AHM did not sell or lease vehicles to plaintiffs, and was not a party to a transaction with*

plaintiffs. . . . It is fatal to plaintiffs’ CLRA claim that their claims do not arise from ‘a transaction’ with AHM.”) (emphasis added).⁹

But even if Honda could establish that it was involved in the sales transactions it claims create a more significant contact with other states, whatever interest non-forum states may have had in applying their laws would pale in comparison to California’s interests in regulating Honda’s conduct—particularly in light of the fact that a substantial percentage of sales transactions occurred in California as well. Again, unlike non-forum states, California is the state under whose laws Honda is incorporated and is the state in which Honda maintains its corporate headquarters. Honda also designed the CMBS in California, hired two California advertising agencies to market it throughout the country, and California was where Honda is alleged to have engaged in the fraudulent conduct on which each of the claims for relief is based.

Under the circumstances, California’s interests would be *far* more impaired if California law were not applied to the claims in this action. *See, e.g., Diamond*, 19 Cal. 4th at 1063-64; *Fletcher*, 23 Cal. 3d at 450-51; *AOL*, 90 Cal. App. 4th at

⁹ Contrary to Honda’s assertion, the distribution of products to independent retailers who resell the products to consumers is not fatal to a claim under the CLRA. *See, e.g., Kielholtz v. Superior Fireplace Co.*, 2009 WL 839076, *6 (N.D. Cal., Mar. 30, 2009); *In re Onstar Contract Litig.*, 600 F. Supp. 2d 861, 872-73 (W.D. Mich. 2009); *Chamberlan v. Ford Motor Co.*, 369 F. Supp. 2d 1138, 1144 (N.D. Cal. 2005).

14-15; *see also Sommer*, 40 Cal. App. 4th at 1464-70 (declining to apply German law limiting recovery to defamation claim even though defamatory comments were published in Germany by German publication and all parties owned property in Germany, because all parties were residents of California, where the defamatory comments were made, and hence Germany had no legitimate interest in applying its law). Indeed, even courts that apply the “most significant contacts” test that Honda urges the Court to apply here have reached this conclusion where the conduct of the defendant in its home state is the focal point of the litigation. *See Cuesta v. Ford Motor Co.*, 209 P.2d 278, 283-86 (Okla. 2009) (finding that Michigan’s interest in the conduct of its resident automaker gave Michigan the greatest interest in applying its law to claims by nationwide class of plaintiffs).

CONCLUSION

Given that Honda is domiciled in California and all the conduct that gave rise to each claim in this case occurred here, Honda had a heavy burden to carry when it sought to establish that California law does not apply to this action. As California courts have made clear for more than four decades, the proponent of the application of foreign law must do more than simply enumerate perceived differences between the laws of the forum and the laws of potentially affected foreign jurisdictions. Honda has failed to do that.

