In Re: Kia Hyundai Vehicle Theft Litigation
8:22-ml-03052-JVS (KESx)

TENTATIVE Order Regarding Motion to Strike [307] and Motion to Conduct Jurisdictional Discovery [338]

Before the Court are two motions. Defendants Hyundai Motor America ("HMA") and KIA America, Inc. ("KA") (collectively, "Defendants")[1] move to strike the class allegations in the Subrogation Plaintiffs' Amended Consolidated Complaint ("ACC"). (Mot. to Strike, Dkt. No. 307.) The Class Subrogation Plaintiffs opposed the Motion. (Opp'n to Strike, Dkt. No. 337.) Defendants replied. (Reply to Strike, Dkt. No. 344.)

The Subrogation Plaintiffs move to conduct jurisdictional discovery that Hyundai Motor Company ("HMC") and Kia Corporation ("KC") are subject to specific personal jurisdiction in California. (Mot. for Discovery, Dkt. No. 338.) HMC and KC opposed the Motion. (Opp'n for Discovery, Dkt. No. 346.) The Subrogation Plaintiffs replied. (Reply for Discovery, Dkt. No. 367.)

For the following reasons, the Court **GRANTS** Defendants' Motion to Strike and **GRANTS** Subrogation Plaintiffs' Motion to Conduct Jurisdictional Discovery.

I. BACKGROUND

The parties are familiar with the facts of this multi-district litigation, so the Court recites them here only as necessary to resolve these Motions. (See Order Regarding Motion to Dismiss, Dkt. No. 269.)

The Class Subrogation Plaintiffs—a subset of the Subrogation Plaintiffs—seek to represent two nationwide classes under California law: (1) a "Hyundai Nationwide Class" for "[a]ll insurance carriers that issued automobile and property insurance policies whose Insureds purchased or leased a Hyundai Vehicle"; and (2) a "Kia Nationwide Class" for "[a]ll insurance carriers that issued

[1] Although Hyundai Motor Company ("HMC") and KIA Corporation ("KC") are defendants in this action, they contest this Court's jurisdiction over them and thus did not join in the Motion to Strike. (See Mot. to Strike at 1 n.2.)

automobile and property insurance policies whose Insureds purchased or leased a Kia Vehicle." (ACC, Dkt. No. 283, ¶¶ 359–360.) The Class Subrogation Plaintiffs consist of approximately 200 insurance companies. (Id. ¶¶ 48–248.) The Vehicles are defined as "all 2011-2022 Kia vehicles and 2011-2022 Hyundai vehicles which do not contain an engine immobilizer." (Id. ¶ 361.) The Class Subrogation Plaintiffs also seek to represent over 100 subclasses for all 50 states, Puerto Rico, and Washington, D.C. (Id. ¶ 362.) The Nationwide Class and Subclasses "consist of a large number of property and casualty insurers having Insureds in the hundreds, if not thousands, who have suffered or will suffer property damage losses due to thefts, or attempted thefts of the Vehicles caused by the lack of anti-theft protection in compliance with FMVSS 114." (Id. ¶ 365.)

The Class Subrogation Plaintiffs assert claims in subrogation for breach of implied and express warranties, violation of California's Song-Beverly Act, violation of California's Consumer Legal Remedies Act, violation of California's Unfair Competition Law, fraud, unjust enrichment, breach of warranty under the Magnum-Moss Warranty Act, negligence, negligent failure to warn, and negligent misrepresentation. (Id. ¶¶ 388–4079.) In support of their claims, the Class Subrogation Plaintiffs submitted as Exhibit C "claim spreadsheets[] containing claim data for thefts and attempted thefts of the Vehicles reported and paid to date." (Id. ¶ 22; id., Ex. C.) Exhibit C contains over 300,000 individual insurance claims provided by five of the eight sets of Subrogation Plaintiffs in this case. (Id., Ex. C.)

II. LEGAL STANDARD

A. Motion to Strike

Under Federal Rules of Civil Procedure 12(f), a court "may order stricken from any pleading . . . any redundant, immaterial, impertinent, or scandalous matter." Immaterial matters have "no essential or important relationship to the claim for relief." Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993), rev'd on other grounds, 510 U.S. 517, 534 (1994).

Class allegations are generally not tested at the pleadings stage and instead are usually tested after one party has filed a motion for class certification. See, e.g., Thorpe v. Abbott Labs., Inc., 534 F. Supp. 2d 1120, 1125 (N.D. Cal. 2008); In re Wal-Mart Stores, Inc. Wage & Hour Litig., 505 F. Supp. 2d 609, 615 (N.D. Cal.

2007). However, as the Supreme Court has explained, "[s]ometimes the issues are plain enough from the pleadings to determine whether the interests of the absent parties are fairly encompassed within the named plaintiff's claim." Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 160 (1982). Thus, "a court may grant a motion to strike class allegations if it is clear from the complaint that the class claims cannot be maintained." Clark v. LG Elecs. U.S.A., Inc., No. 13-cv-485, 2013 U.S. Dist. LEXIS 155179, at *52 (S.D. Cal. Oct. 29, 2013); see, e.g., Sanders v. Apple, Inc., 672 F. Supp. 2d 978, 990–91 (N.D. Cal. 2009).

Furthermore, Rule 23(d)(1)(D) provides that a court may issue orders that "require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly." Fed. R. Civ. P. 23(d)(1)(D); see also Tietsworth v. Sears, Roebuck and Co., 720 F. Supp. 2d 1123, 1146 (N.D. Cal. 2010) ("Under Rules 23(c)(1)(A) and 23(d)(1)(D), as well as pursuant to Rule 12(f), this Court has authority to strike class allegations prior to discovery if the complaint demonstrates that a class action cannot be maintained."); Kay v. Wells Fargo & Co. N.A., No. C 07-01351, 2007 U.S. Dist. LEXIS 55519, at *5–6 (N.D. Cal. July 24, 2007). "If it is obvious from the pleadings that the proceeding cannot possibly move forward on a classwide basis, district courts use their authority under Federal Rule of Civil Procedure 12(f) to delete the complaint's class allegations." Manning v. Boston Med. Ctr. Corp., 725 F.3d 34, 59 (1st Cir. 2013) (citing Pilgrim v. Universal Health Card, LLC, 660 F.3d 943, 949 (6th Cir. 2011)).

"Although in some cases a district court should allow discovery to aid in the determination of whether a class action is maintainable, the plaintiff bears the burden of advancing a prima facie showing that the class action requirements of [Rule] 23 are satisfied. . . ." Mantolete v. Bolger, 767 F.2d 1416, 1424 (9th Cir. 1985). "Sometimes the issues are plain enough from the pleadings" to determine that a case should not proceed as a class action. Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 160 (1982).

B. Motion to Conduct Jurisdictional Discovery

District courts have discretion to permit parties to conduct jurisdictional discovery. See Data Disc v. Sys. Tech. Assoc., Inc., 557 F.2d 1280, 1285 n.1 (9th Cir. 1977). Courts should grant a jurisdictional discovery request when "pertinent facts bearing on the question of jurisdiction are controverted or where a more

satisfactory showing of facts is necessary." Boschetto v. Hansing, 539 F.3d 1011, 1020 (9th Cir. 2008) (citing Wells Fargo & Co. v Wells Fargo Express Co., 556 F.2d 406, 430 n.24 (9th Cir. 1977)). The party seeking jurisdictional discovery bears the burden of showing that the denial of discovery would result in actual and substantial prejudice to it. See id. at 1020. "Jurisdictional discovery need not be allowed, however, if the request amounts merely to a fishing expedition." Barantsevich v. VTB Bank, 954 F. Supp. 2d 972, 996 (C.D. Cal. 2013) (internal quotation marks and citation omitted).

Ninth Circuit district courts have consistently ordered discovery when plaintiffs established a "colorable basis" for personal jurisdiction. Martinez v. Manheim Cent. Cal., No. 10-cv-01511, 2011 U.S. Dist. LEXIS 41666, at *10–11 (E.D. Cal. Apr. 18, 2011) (collecting cases). This is "something less than a prima facie showing" that requires "the plaintiff to come forward with 'some evidence' tending to establish personal jurisdiction over the defendant." Id. (quoting Mitan v. Feeney, 497 F. Supp. 2d 1113, 1119 (C.D. Cal. 2007)).

III. DISCUSSION

A. Motion to Strike

To proceed on a class-wide basis, an action must meet all of Rule 23(a)'s requirements (numerosity, commonality, typicality, and adequacy) and "at least one of the three requirements listed in Rule 23(b)." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 345 (2011). Here, the Class Subrogation Plaintiffs contend that their action satisfies Rule 23(b)(3)'s requirements. (ACC, ¶¶ 6, 358, 369; Opp'n at 14–28.) But even assuming that Plaintiffs satisfy Rule 23(a)'s requirements, it is apparent from the face of the ACC that Plaintiffs' action cannot be certified under Rule 23(b)(3).

Rule 23(b)(3) imposes two requirements. First, "the questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). Second, a class action must be "superior to other available methods for fairly and efficiently adjudicating the controversy." Id. Defendants argue that this action fails both requirements. (Mot. to Strike at 2.)

1. Predominance

"The predominance inquiry 'asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.'" Tyson Foods, Inc. v. Bouaphakeo, 577 U.S. 442, 453 (2016) (citation omitted).

> This [predominance inquiry] calls upon courts to give careful scrutiny to the relation between common and individual questions in a case. An individual question is one where "members of a proposed class will need to present evidence that varies from member to member," while a common question is one where "the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof."

Id. (citation omitted). Predominance is not defeated "even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members." Id. (citation omitted); see also Ruiz Torres v. Mercer Canyons Inc., 835 F.3d 1125, 1136 (9th Cir. 2016) ("The presence of individualized damages calculations . . . does not defeat predominance.").

Here, the Class Subrogation Plaintiffs seek to represent "hundreds, if not thousands" of insurers. (ACC ¶ 365.) Those insurers, in turn, assert claims on behalf of thousands of insureds whose claims were submitted and paid. (Id. ¶ 4.) Defendants argue that individual questions predominate here because "the Class Subrogation Plaintiffs are attempting to bring claims on behalf of unnamed insurers who are at the same time trying to bring claims on behalf of unnamed insureds." (Mot. to Strike at 9.)

a. Subrogation Requirements

Under California law,

> [a]n insurer bringing an action based upon a claim of equitable subrogation must establish the following elements: (1) The insured has suffered a loss for which the party to be charged is liable, either because the latter is a wrongdoer whose act or omission caused the loss or because he is legally responsible to the insured for the loss caused by the wrongdoer; (2) the insurer, in whole or in part, has compensated the insured for

> the same loss for which the party to be charged is liable; (3) the insured has an existing, assignable cause of action against the party to be charged, which action the insured could have asserted for his own benefit had he not been compensated for his loss by the insurer; (4) the insurer has suffered damages caused by the act or omission upon which the liability of the party to be charged depends; (5) justice requires that the loss should be entirely shifted from the insurer to the party to be charged, whose equitable position is inferior to that of the insurer; and (6) the insurer's damages are in a stated sum, usually the amount it has paid to its insured, assuming the payment was not voluntary and was reasonable.

Dobbas v. Vitas, 191 Cal. App. 4th 1442, 1449–50 (2011) (internal quotation marks and citation omitted).[2]

The Class Subrogation Plaintiffs argue that "[e]stablishing the first factor is the most critical element, and indisputably involves evidence common to all the Vehicles which contain the same defects, as opposed to individualized proof unique to each vehicle damaged or stolen." (Opp'n to Strike at 16.) But even if the Class Subrogation Plaintiffs prevailed on the common question that Defendants misled or concealed a defect that caused class vehicles to be susceptible to theft, the question of whether each insured's vehicle was stolen or damaged due to Defendants' Thief Friendly Design raises individualized inquiries. In response, the Class Subrogation Plaintiffs argue that "[t]his Court already expressly held it was unnecessary for Class Plaintiffs to plead specifics for each insured." (Opp'n to Strike at 21 (citing Order Regarding Motion to Dismiss).) However, this Motion is not concerned with whether the Class Subrogation Plaintiffs sufficiently alleged causation for pleading purposes. Rather, this Motion deals with whether the Class Subrogation Plaintiffs can proceed as a class despite the individualized inquiries regarding causation. See Castillo v. Bank of Am., NA, 980 F.3d 723, 732 (9th Cir. 2020) (Plaintiff must "provide a common method of proof to establish [defendant's] classwide liability."); Stiner v. Brookdale Senior Living, Inc., 665 F. Supp. 3d 1150, 1199 (N.D. Cal. 2023) (finding that predominance was not satisfied

[2] The Court applies the requirements for subrogation claims under California law only for the purpose of illustrating why this action cannot meet the predominance requirement under Rule 23(b)(3). The Court expresses no view on which jurisdiction's law may apply to the various claims in this action.

where "individualized inquiry [was] necessary to determine [the defendant's] *liability* to any given class member as a threshold matter" (emphasis in original)). Thus, to proceed as a class, the Class Subrogation Plaintiffs must show that causation can be proven, not simply pleaded, with common evidence, which they have failed to do.

Moreover, the Class Subrogation Plaintiffs merely state that the second element "involves common issues as the claimed losses are indisputably all ones for which the insurers were not primarily liable." (Opp'n to Strike at 16 (internal quotation marks and citation omitted).) However, as Defendants point out, the Class Subrogation Plaintiffs fail to explain how the Court can determine that the claimed losses are indisputably ones for which the insurers are not primarily liable without needing to examine individualized evidence as to each insured's claims (e.g., the scope of each insurer's subrogation rights, terms of the applicable subrogation principles). (Reply to Strike at 5.) The Class Subrogation Plaintiffs claim that "each insurer merely requires proof of payment pursuant to an existing policy, a fact easily satisfied through discovery." (Opp'n to Strike at 16.) But mere proof of payment pursuant to an insurance policy does not establish that such payment was "for the same loss for which the party to be charged is liable." Dobbas, 191 Cal. App. 4th at 1449–50. Rather, the Court will need to analyze the specific alleged loss and each insured's specific claims. See, e.g., Fireman's Fund Ins. Co. v. Morse Signal Devices, 151 Cal. App. 3d 681, 691 (1984) (finding that insurer-plaintiff "ha[d] not compensated its insureds for the same losses contemplated under the antitrust claim" because "[n]one of [insurer-plaintiff's] compensation paid to its insured is related to pricing terms of the alarm systems"). And discovery will not provide the necessary evidence to prove the claims of unnamed insurers and insureds.

With respect to the third element, the Class Subrogation Plaintiffs assert that "[b]y law, the very act of payment creates an existing, assignable cause of action against Defendants that each insured could have asserted had they not been compensated by Class Plaintiffs." (Opp'n to Strike at 16 (citing Offer v. Sup. Ct. of San Francisco, 194 Cal. 114, 121 (1924) ("[T]he act of the insurance company in paying the amount of the loss suffered by the collision vested a complete ownership and right of action in such insurance company.)).) In response, Defendants argue that they "must be able to litigate on an individualized basis whether an insured has received compensation from Defendants for his or her losses" outside the settlement agreement. (Reply to Strike at 9.) The Class

Subrogation Plaintiffs do not explain how this can be done on a class-wide basis. (See generally Opp'n to Strike.) Thus, the third element necessitates individualized inquiries as to each insured's claim.

Defendants argue that the fourth element will also require individualized inquiries because insurers must prove "that they made those payments as a result of the alleged defects in a particular insured's vehicle attributable to Defendants." (Mot. to Strike at 12); see, e.g., Fireman's Fund Ins. Co. v. Maryland Cas. Co., 65 Cal. App. 4th 1279, 1292 (1998). According to Defendants, "[t]he extent and cause of payments will be a hotly contested issue based on the practices of individuals insurers, rather than a simple inquiry of whether a payment was made." (Mot. to Strike at 12.)

> For any number of reasons, an insurer may make payment for a loss under its policy only to later determine that the policy did not require any payment. . . . In modern practice, insurers are under several forms of pressure to make relatively prompt payments, from statutory/administrative mandates that actions on claims be taken promptly, to the threat of bad faith or other forms of liability related to claims' handling. These all act as incentives for insurers to pay facially valid claims promptly and, if necessary, seek an adjustment of rights later if circumstances warrant.

Steven Plitt, et al., 16 Couch on Ins. § 226:50 (3d 3d. 2023). The Class Subrogation Plaintiffs allege that they made payments, which establish the basis for their subrogation rights. (See ACC ¶ 18 ("As a result of such payments, Plaintiffs are legally, equitably and contractually subrogated to the rights of their Insureds . . . .") Defendants assert that the claims spreadsheets the Subrogation Plaintiffs attached to the ACC demonstrate that the payments will need to be litigated on an individualized basis. (Mot. to Strike at 12.) This is because the spreadsheets include vehicles that are not even within the proposed class, such as vehicles that were stolen or damaged using methods not attributable to the Thief Friendly Design. (See ACC, Ex. C (revealing instances where vehicles were stolen because keys were left in the vehicle).) Thus, the Court would need to determine whether there was, in fact, a Thief Friendly Design and, if so, whether it was, in fact, caused by the Thief Friendly Design and not some other intervening cause, such as a different defect or the insured's own neglect in protecting his or her vehicle. The Class Subrogation Plaintiffs argue that the "actual aggregated amounts of the payments represent the damages of each insurer and will be

provided in discovery with information connecting the payments to Defendants' negligence." (Opp'n to Strike at 17.) However, the Class Subrogation Plaintiffs fail to explain how the causation issue can be proven through common evidence. (See generally id.) And as stated above, the Class Subrogation Plaintiffs' citation to the Court's prior Order on the Motion to Dismiss is unpersuasive. (See id. at 21.)

According to the Class Subrogation Plaintiffs, the fifth element is "unquestionably common, and the Court has already determined that Plaintiffs are not barred by the superior equities doctrine." (Opp'n to Strike at 17 (citing Order Regarding Motion to Dismiss at 17–18).) Defendants argue that "a weighing of the equities must be done at least on an insurer-by-insurer basis, and will depend on the insurer's knowledge about the alleged theft vulnerability of the vehicles at issue, the premiums the insurer has collected for those vehicles, and likely a host of other issues." (Reply to Strike at 6.) The Court agrees with Defendants. Moreover, as previously mentioned, the Court finds the Class Subrogation Plaintiffs' reference to its Order on the Motion to Dismiss inapposite because that Order turned on the sufficiency of the allegations to state a claim, not on whether the Class Subrogation Plaintiffs will be able to prove their claims through common evidence.

Lastly, Defendants argue that the sixth element "will require analysis of [each insurer's] underlying policies with insureds and the insurance payments it claims to have made." (Mot. to Strike at 11.) The ACC alleges that the Subrogation Plaintiffs "are legally, equitably and contractually subrogated to the rights of their Insureds to recover compensation from the Defendants who are legally liable for having caused the Plaintiffs' damages." (ACC ¶ 18.) Defendants thus argue that "[c]ommon evidence will not substitute for analyzing the individual policies that purportedly grant subrogation rights, given that the Class Subrogation Plaintiffs seek to include policies drafted by insurers across the nation for which language will obviously vary significantly." (Mot. to Strike at 11.) See, e.g., Desai v. Geico Cas. Co., 574 F. Supp. 3d 507, 535–37 (N.D. Ohio 2021) (finding that "individual issues predominate in the face of Defendant's practices for adjusting and settling total-loss claims" based on "the different policy language and practices at issue in a different market").

However, the Class Subrogation Plaintiffs argue that this "factor is satisfied by producing information showing the claim was paid pursuant to a

policy—another fact unlikely to vary by insured." (Opp'n to Strike at 16.) Moreover, the Class Subrogation Plaintiffs contend that the "volunteer issue is inconsequential as 'the courts have given a very liberal interpretation to the interest required to distinguish a person from being a volunteer.'" (Id. (quoting Employers Mut. Liab. Inc. Co. v. Pac. Indemnity Co., 167 Cal. App. 2d 369, 379 (1959)).) According to the Class Subrogation Plaintiffs, "[i]nsurance companies do not just give away money[, so t]he very act of making 'good faith' payments eliminates volunteerism and establishes subrogation." (Id.) Not so. Determining whether the Class Subrogation Plaintiffs "reasonably believed" that they were obligated to pay will require evaluating each underlying insurance policy of each insurer. Because insurance policies can and often do differ, "members of [the] proposed class will need to present evidence that varies from member to member." Tyson Foods, 577 U.S. at 453 (citation omitted). In their Opposition, the Class Subrogation Plaintiffs fail to argue how common evidence can overcome the individualized inquiry into each insurer's underlying policy. (See generally Opp'n to Strike.)

Judge Staton's order granting the motion to strike class allegations in State Automobile Mutual Insurance Company v. Hyundai Motor America, 8:23-cv-00439-JLS-JDE, is instructive. In State Auto. Mut. Ins. Co., the insurer-plaintiffs allege that defects in certain Hyundai and Kia vehicles caused damage to the insurer-plaintiffs' and putative class members' insureds' vehicles. 8:23-cv-00439-JLS-JDE, Order Granting Defendants' Motion to Strike Class Allegations from Plaintiffs' Third Amended Complaint, Dkt. No. 81, at 2. The insurer-plaintiffs, through subrogation, seek to recover payments they made to their insureds for harms allegedly caused by Hyundai and Kia. Id. While the defect-related allegations differ between State Auto. Mut. Ins. Co. and this multi-district litigation, the subrogation claims are similar. As in this case, the insurer-plaintiffs allege that they are "legally, equitably, and contractually subrogated" to their insureds' claims "against all responsible third parties." Compare State Auto. Mut. Ins. Co., 8:23-cv-00439-JLS-JDE, Third Amended Compl., Dkt. No. 61, ¶ 227, with ACC ¶ 22.

In granting the motion to strike class allegations in State Auto. Mut. Ins. Co., the court found that

> [e]ven if Plaintiffs prevailed on their common questions (i.e., that Defendants misled or concealed a defect that caused class vehicles to be susceptible to engine failures and fires), the above-listed subrogation requirements mean that Plaintiffs can

> win on the merits only if they establish a number of individual facts as to each insured covered by each Class Member-Insurer.

8:23-cv-00439-JLS-JDE, Order Granting Defendants' Motion to Strike Class Allegations from Plaintiffs' Third Amended Complaint, at 7. Specifically, the Court noted that

> [t]he fact-finder would have to determine that each insurer has, in fact, "compensated the insured" . . . [; t]he fact-finder would have to evaluate whether each payment was "voluntary" by looking at each underlying insurance policy to determine whether the insurer had a "reasonable belief" regarding its obligation to pay . . . [;] and mini trials would be necessary to determine whether there was, in fact, an engine failure or fire and, if so, whether it was, in fact, caused by the alleged defect and not some other intervening cause, such as a different defect, a collision, or the insurer's own neglect in maintaining his or her vehicle . . . .

Id. Thus, the court held that "core elements of Plaintiffs' subrogation claims require individualized showings not just as to each Class Member-Insurer but as to every insured whose rights are being asserted." Id. at 6. As explained above, that is precisely the case here. The Class Subrogation Plaintiffs fail to cite a single case certifying a nationwide litigation class of subrogating insurers to indicate otherwise. (See generally Opp'n to Strike.)

b. Defenses

In a subrogation claim, each insurer "stand[s] in the shoes" of its insured and "has no greater rights than the insured and is subject to the same defenses assertable against the insured." Fireman's Fund Ins. Co. v. Maryland Casualty Co., 65 Cal. App. 4th 1279, 1292 (1998). "Defenses that must be litigated on an individual basis can defeat class certification." Brown v. Google, LLC, No. 20-cv-3664, 2022 WL 17961497, at *17 (N.D. Cal. Dec. 12, 2022) (citing True Health Chiropractic, Inc. v. McKesson Corp., 896 F.3d 923, 931 (9th Cir. 2018)). However, predominance is not necessarily defeated when there are "some affirmative defenses peculiar to some individual class members." Tyson Foods, 577 U.S. at 453.

Defendants argue that "every claim could potentially be barred by a statute

of limitations defense," which will be individualized for each insurer. (Mot. to Strike at 13–14.) Additionally, Defendants contend that the implied warranty claims are subject to individualized defenses, such as privity. (Id. at 14 (citing Tietsworth v. Sears, 720 F. Supp. 2d 1123, 1142 (N.D. Cal. 2010) ("Vertical privity is a necessary element of an implied warranty claim.")).) In their Opposition, the Class Subrogation Plaintiffs do not dispute that the implied warranty claims are subject to individualized inquiries. (See generally Opp'n to Strike.) Rather, the Class Subrogation Plaintiffs argue that "the presence of individual issues of compliance with the statute of limitations [] does not defeat the predominance of common questions." (Opp'n to Strike at 21–22 (quoting Cameron v. E.M. Adams & Co., 547 F.2d 473, 478 (9th Cir. 1976)).) However, in Cameron, the Ninth Circuit limited its holding to the facts of that case, stating that "the presence of individual issues of compliance with the statute of limitations *here* does not defeat the predominance of common questions." 547 F.2d at 478 (emphasis added). Moreover, in Cameron, the plaintiffs argued that "few, if any, class members" would be subject to the statute of limitations. Id. Meanwhile, in this case, the Class Subrogation Plaintiffs have not made any such argument. Because the Class Vehicles include models from 2011, the statute of limitations will likely be at issue for a substantial number of insureds' claims. Thus, the Court agrees with Defendants because deciding the claim-specific affirmative defenses as to "the hundreds, if not thousands" of insureds weighs strongly against predominance. (See ACC ¶ 365.) For similar reasons, the court in State Auto. Mut. Ins. Co. found that "[w]hile predominance is not necessarily defeated when there are affirmative defenses peculiar to some individual class members, . . . the necessity of individually deciding multifarious claim-specific affirmative defenses as to thousands of claims weighs strongly against predominance." 8:23-cv-00439-JLS-JDE, Order Granting Defendants' Motion to Strike Class Allegations from Plaintiffs' Third Amended Complaint, at 8 (internal quotation marks and citation omitted).

c. Application of Multiple States' Laws

The ACC contemplates that all 50 states' substantive laws may apply to various class members' claims. (See ACC ¶ 370 ("In the event California law does not apply on a nationwide basis, Plaintiffs will seek to apply the laws of the various states, Puerto Rico and the District of Columbia . . . .") In their Opposition, the Class Subrogation Plaintiffs seem to accept Defendants' argument that multiple jurisdictions' laws would apply in this action. (See Opp'n to Strike at

23 (arguing that "variations in state law do not necessarily preclude a nationwide class action" and "the differences in subrogation law are inconsequential").)

"The fact that two or more states are involved does not itself indicate that there is a conflict of law problem. A problem only arises if differences in state law are material, that is, if they make a difference in this litigation." Mazza v. Am. Honda Motor Co., 666 F.3d 581, 590 (9th Cir. 2012), overruled in part on other grounds by Olean Wholesale Grocery Coop, Inc. v. Bumble Bee Foods LLC, 31 F.4th 651 (9th Cir. 2022) (internal quotation marks and citation omitted). Conflict-of-law problems do not necessarily defeat predominance, as a court may be able to certify a nationwide class "with subclasses for class members in different states, with different jury instruction for materially different bodies of state law." Id. at 594. However, the necessity of having to apply different bodies of law weighs against finding predominance in a nationwide class because "the complexity of the trial would be further exacerbated to the extent that the laws of [multiple] states must be consulted." Zinser v. Accufix Rsch. Inst., Inc., 253 F.3d 1180, 1190 (9th Cir. 2001), amended on denial of reh'g, 273 F.3d 1266 (9th Cir. 2001); see also Mazza, 666 F.3d at 596 ("Because the law of multiple jurisdictions applies here to any nationwide class of purchasers or lessees of [Class Vehicles], variances in state law overwhelm common issues and preclude predominance for a single nationwide class."); Schwartz v. Lights of Am., Inc., No. 11-01712, 2012 WL 12883222, at *9 (C.D. Cal. June 15, 2012) ("Considering that the proposed Class would require application of 50 states' laws, the common questions of fact and law do not predominate over the questions affecting individual class members, as required by Rule 23(b)(3).").

Defendants argue that "laws applicable to the putative nationwide class claims—and Defendants' defenses—indisputably vary in material ways from state to state." (Mot. to Strike at 16.) As just one example of state-by-state variation relevant to this action, Defendants cite the Made Whole Doctrine, which is a prerequisite to an insurer recovering in subrogation in some states but not others. (Id.) Compare Sapiano v. Williamsburg Nat. Ins. Co., 28 Cal. App. 4th 533, 536–37 (1994) (recognizing the Made Whole Doctrine as an "established California rule"), with In re Estate of Scott, 567 N.E.2d 605, 607 (Ill. App. Ct. 1991) (refusing to adopt the Made Whole Doctrine in Illinois as a blanket policy), and Am. Auto. Ins. Co. v. Quality Plastering & Stucco, Inc., No. 11-cv-1767, 2013 WL 12149411, at *5 (M.D. Fla. June 26, 2013) (rejecting the Made Whole Doctrine as an affirmative defense but acknowledging its application in Florida

"where the tortfeasor cannot pay the whole value of the damages"). In their Opposition, the Class Subrogation Plaintiffs assert that the "Made Whole Doctrine is irrelevant to this matter." (Opp'n to Strike at 24.) However, their argument actually confirms Defendants' point: they cite to other jurisdictions, New Jersey, New York, and Wisconsin, to describe additional variations of the Made Whole Doctrine. (Id. at 24–25 (citing Scottsdale Ins. Co. v. Kat Constr. LLC, No. 21-00278, 2022 WL 20652788, at *3 (D. N.J. Oct. 5, 2022) (finding that the Made Whole Doctrine applies only "[i]n the absence of express terms in the contract to the contrary" (internal quotation marks and citation omitted)); Winkelmann v. Excelsior Ins. Co., 650 N.E.2d 841, 845 (N.Y. 1995) ("The rule is based upon the nature of the relationship between the insurer and the insured—if the loss of one of the two must go unsatisfied, it should be the insurer who has been paid to assume the risk of loss."); Muller v. Society Ins., 750 N.W.2d 1, 15 (Wis. 2008) ("[T]he made whole doctrine . . . does not apply when the inequitable prospect of an insurer competing with its own insured for limited settlement funds is absent.")).) Thus, "[a]t trial, the Court would have to instruct on and the jury would have to keep straight and apply where appropriate these [multiple] variations of the made-whole doctrine—and likely others." State Auto. Mut. Ins. Co., 8:23-cv-00439-JLS-JDE, Order Granting Defendants' Motion to Strike Class Allegations from Plaintiffs' Third Amended Complaint, at 10; id. at 6 (finding that "because of the nationwide scope of the putative class, the complexity of trial would be exacerbated by the requirement that the fact-finder apply the law of multiple states").

Defendants further assert that "state law also varies as to each individual insured's underlying claims against Defendants." (Mot. to Strike at 17.) In this case, the insureds' claims concern consumer protection, warranty, and negligence laws of all fifty states, Puerto Rico, and the District of Columbia. (See generally ACC.) Defendants argue that while "the Class Subrogation Plaintiffs seek to apply California law across the class, they cannot do so." (Mot. to Strike at 17–18.) See, e.g., Mazza, 666 F.3d at 594 (finding that "each class member's consumer protection claim should be governed by the consumer protection laws of the jurisdiction in which the transaction took place"); Cadena v. Am. Honda Motor Co., No. 18-4007, 2019 WL 3059931, at *8 (C.D. Cal. May, 29, 2019) ("[E]ach class member's claims must be governed by the law of the state in which he or she bought his or her Class Vehicle."); see also Young v. Neurobrands, LLC, No. 18-cv-05907, 2020 WL 11762212, at *9 (N.D. Cal. Oct. 15, 2020) ("[I]t is apparent to this Court that some material differences exist between the laws of different states

with regard to Plaintiffs' common law claims for fraud by omission, negligent misrepresentation, and breach of express and implied warranties."); Zinser, 253 F.3d at 1188 (explaining that the laws of negligence and product liability "all differ in some respects from state to state"); see also Mazza, 666 F.3d at 591 (finding material differences between California and forty-three other states' consumer protection laws where, for example, "the California [consumer protection] laws at issue . . . have no scienter requirement, whereas many other states' consumer protection statutes do require scienter"). The Class Subrogation Plaintiffs do not dispute that state law varies as to each individual insured's underlying causes of action against Defendants. (See generally Opp'n to Strike.) Nor will discovery change the material variations between the states as to subrogation law and the underlying causes of action.

In their Opposition, the Class Subrogation Plaintiffs rely on Mazza to support their assertion that Defendants have failed to meet their burden that material variations in multiple states' laws exist. (Opp'n to Strike at 26.) While the defendant in Mazza "exhaustively detailed the ways in which California law differs from the laws of the 43 other jurisdictions in which class members reside," the Ninth Circuit did not impose such a requirement for defendants arguing against certification of a nationwide class. 666 F.3d at 591. Moreover, the Class Subrogation Plaintiffs reliance on Forcellati v. Hyland's, Inc., 876 F. Supp. 2d 1155 (C.D. Cal. 2012), is inapposite because that case concerned a motion to dismiss. (Opp'n to Strike at 26.) Lastly, this case is distinguishable from the unpublished case of Khorrami v. Lexmark Intern. Inc., No. 07-01671, 2007 WL 8031901 (C.D. Cal. Sept. 13, 2007). (Opp'n to Strike at 26–27.) Unlike this case, in Khorrami, discovery was needed to "reveal where exactly the various class members reside, and the varying state law to which they are subject." 2007 WL 8031901, at *1–3. Nor was Khorrami a subrogation class action. Id. Moreover, since 2007, courts in this Circuit have held that "a court may grant a motion to strike class allegations if it is clear from the complaint that the class claims cannot be maintained." Clark, 2013 U.S. Dist. LEXIS 155179, at *52; Sanders, 672 F. Supp. 2d at 990.

d. Prior Consumer Class Action Settlement

The Class Subrogation Plaintiffs point to the Court's preliminary approval of the consumer class for settlement purposes to argue that certification is possible in this case. (Opp'n to Strike at 11, 21.) However, the Court held that "the

predominance requirement [wa]s satsified here for settlement purposes." (Order Granting Preliminary Approval of Consumer Class Action Settlement, Dkt. No. 256, at 6.) As the Ninth Circuit has explained,

> [t]he criteria for class certification are applied differently in litigation classes and settlement classes. In deciding whether to certify a litigation class, a district court must be concerned with manageability at trial. However, such manageability is not a concern in certifying a settlement class where, by definition, there will be no trial.

In re Hyundai & Kia Fuel Econ. Litig., 926 F.3d 539, 556–57 (9th Cir. 2019) (en banc). Additionally, the Ninth Circuit held that

> whether a proposed class is sufficiently cohesive to satisfy Rule 23(b)(3) is informed by whether certification is for litigation or settlement. A class that is certifiable for settlement may not be certifiable for litigation if the settlement obviates the need to litigate individualized issues that would make a trial unmanageable.

Id. at 558. And the "consumer class did not have the added layer of individual questions required by subrogation's elements." State Auto. Mut. Ins. Co., 8:23-cv-00439-JLS-JDE, Order Granting Defendants' Motion to Strike Class Allegations from Plaintiffs' Third Amended Complaint, at 10. Thus, the Court finds the Class Subrogation Plaintiffs' argument regarding the preliminary approval of the consumer class action settlement unpersuasive.[3]

For the foregoing reasons, the Court finds that individual questions predominate over common ones.

2. Superiority

The class action must also be "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). "[T]he purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy." Wolin v. Jaguar Land Rover N. Am., LLC, 617 F.3d 1168, 1175 (9th Cir. 2010) (internal quotation marks

[3] One obvious takeaway from the foregoing discussion is the fact that there is potentially a certifiable class resolving all the subrogation claims if the parties choose to go down the settlement path.

and citation omitted). "In determining superiority, courts must consider the four factors of Rule 23(b)(3)." Zinser, 253 F.3d at 1190. The Class Subrogation Plaintiffs argue that each factor weighs in favor of superiority. (Opp'n to Strike at 27–28.) The Court disagrees.

a. Class Members' Interest in Controlling Separate Actions

In their Opposition, the Class Subrogation Plaintiffs do not address the first factor—class members' interest in controlling separate actions. (See generally Opp'n to Strike.) Defendants assert that the fact that 166 insurer-plaintiffs "have brought their own cases and have already expressed their intent to opt out of a class further demonstrates that a class action is not the superior method for resolving this controversy." (Mot. to Strike at 19; Reply to Strike at 14; see ACC ¶ 7 ("The Independent Subrogation Plaintiffs assert subrogated insurance claims on their own behalf, and are not seeking class certification. Further, the Independent Subrogation Plaintiffs intend to opt-out of any subrogation class action certified by this Court pursuant to Fed. R. Civ. P. 23(c)(2).").) See, e.g., Urena v. Earthgains Distrib., LLC, No. 16-00634, 2017 WL 4786106, at *11 (C.D. Cal. July 19, 2017) ("While those Distributors' interests could be vindicated through opting out post-certification, the Court frankly believes that it would be undesirable to certify a class purportedly to resolve all Distributors' legal claims only to likely face the need to decertify the class due to opt outs."); Hamilton v. Genesis Logistics, Inc., No. 13-01848, 2014 WL 4187941, at *8 (C.D. Cal. Aug. 22, 2014) (finding that superiority was not satisfied where "more than a fifth" of the putative class members "ha[d] already signaled, through their signing declarations in opposition to class certification, that they would likely opt out of the class").

Defendants also argue that the Class Subrogation Plaintiffs cannot meet the superiority requirements because the "absent insurers that the Class Subrogation Plaintiffs seek to represent are sophisticated litigants with large individual claims and significant resources; such insurers routinely bring their own actions for these types of claims, and nothing unique to this action suggests that practice should be upset." (Mot. to Strike at 18 (citing Zinser, 253 F.3d at 1191 (finding that high minimum claims per class member weighed against class certification)); see ACC ¶¶ 22, 46 (stating that the Class Subrogation Plaintiffs seek at least $1,000,000,000 in damages).) The Class Subrogation Plaintiffs fail to respond to this argument. (See generally Opp'n to Strike.)

Thus, the Court finds that the first factor weight against superiority.

b. Extent and Nature of Current Litigation

The Class Subrogation Plaintiffs argue that the second factor—the extent and nature of any current litigation concerning the controversy—"weighs in favor of superiority because there is currently no other pending theft litigation by any class members against Defendants." (Opp'n to Strike at 28.) However, Defendants assert that "there are 404 named insurer-plaintiffs in this MDL, and thus 404 putative class members bringing their own claims." (Reply to Strike at 15.) And as noted above, 166 of those putative class members have expressed an intention to opt out of a class. (Id. at 14–15; ACC ¶ 7.) The Court agrees with Defendants. The 166 insurer-plaintiffs that have brought their own cases indicates that individual litigation may be sufficient to satisfy potential claims. See Zinser, 253 F.3d at 1191 ("[T]he existence of litigation indicates that some of the interested parties have decided that individual actions are an acceptable way to proceed, and even may consider them preferable to a class action. Rather than allowing the class action to go forward, the court may encourage the class members who have instituted the Rule 23(b)(3) action to intervene in the other proceedings." (internal quotation marks and citation omitted)).

Thus, the Court finds that the second factor weighs against superiority.

c. Desirability of the Forum

The Class Subrogation Plaintiffs argue that the third factor—the desirability of the forum—is satisfied because "[t]his forum is [] plainly preferably for a variety of reasons including that California law applies to many of Class Plaintiffs' claims." (Opp'n to Strike at 28.) In response, Defendants contend that this factor "is not particularly relevant in the context of an MDL" because "[w]hether or not a class is certified, the claims will remain concentrated in this forum." (Reply to Strike at 15.)

Thus, the Court finds that the third factor neither weighs in favor nor against superiority.

d. Difficulties in Managing a Class Action

The Class Subrogation Plaintiffs argue that the fourth factor—the difficulties in managing a class action—weighs in favor of superiority because "[n]umerous individual actions are unrealistic, risk inconsistent outcomes, and unnecessarily strain judicial resources." (Opp'n to Strike at 28.) However, Defendants argue that a class action is not superior because each insurer's recovery "depends on individual state laws, the rights granted in individual insurance policies, the extent of payment to their insureds, and the factual circumstances of their insureds' claims against Defendants, including where and when the insureds purchased a vehicle, what vehicle they purchased, and the supposed problems encountered." (Mot. to Strike at 19.) "Even where there is a common nucleus of fact regarding a defendant's conduct, 'if each class member has to litigate numerous and substantial separate issues to establish his or her right to recover individually, a class action is not superior.'" Brown v. Fed. Express Corp., 249 F.R.D. 580, 587 (C.D. Cal. 2008) (quoting Zinser, 253 F.3d at 1192). Thus, the numerous individualized inquiries regarding causation, the statute of limitations, each insurer's policy, and applicable state laws preclude the Court from finding that a subrogation class action is superior. See, e.g., Zinser, 253 F.3d at 1192 (finding that the fourth factor is not satisfied because "it may be difficult to establish a common cause of injury").

Accordingly, the Court finds that the fourth factor weighs against superiority.

For the foregoing reasons, the Court finds that a class action would not be superior in this case. Because this action fails both the predominance and superiority requirements, it cannot be certified under Rule 23(b)(3). Thus, the Court **GRANTS** the Motion to Strike.

B. Motion to Conduct Jurisdictional Discovery

Jurisdictional discovery "should ordinarily be granted where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary." Laub v. U.S. Dep't of Interior, 342 F.3d 1080, 1093 (9th Cir. 2003) (internal quotation marks and citation omitted). But a mere "hunch that [discovery] might yield jurisdictionally relevant facts," Boschetto v. Hansing, 539 F.3d 1011, 1020 (9th Cir. 2008), or "bare allegations in the face of specific denials," Terracom v. Valley Nat'l Bank, 49 F.3d 555, 562 (9th Cir. 1995) (citation omitted), are insufficient reasons for a court to grant

jurisdictional discovery.

The Subrogation Plaintiffs seek written discovery and corporate deposition testimony on thirty-one topics related to specific personal jurisdiction. (Mot. for Discovery at 6–10.) In the ACC, the Subrogation Plaintiffs allege that HMC "conducts substantial business in the State of California" and has "shipped over 7,500 shipments of vehicles and parts through California's ports for delivery and sale to California facilities." (ACC ¶ 32.) Moreover, HMC allegedly "maintains a research and design facility in California and employs thousands of people within" California and "control[s] details" regarding Hyundai dealer operations in California. (Id. ¶¶ 33, 264.) The Subrogation Plaintiffs allege that KC "conducts substantial business in the State of California" and "initiated over 5,000 shipments of vehicles and parts through California's ports for delivery and sale to California facilities." (Id. ¶ 38.) KC allegedly "control[s] various details" regarding Kia dealer operations, and HMC and KC "promot[e], warrant[], sell[], leas[e], and servic[e] . . . vehicles" in California. (Id. ¶¶ 41, 250.)

In support of their Motion, the Subrogation Plaintiffs attached evidence purporting to show that HMC and KC have purposefully availed themselves of the forum. (See, e.g., Declaration of Nathan Dooley ("Dooley Decl."), Dkt. No. 339, ¶ 16, Ex. 19 (showing that HMC spent over $100 million on advertising in digital, print, and national television in the United States last year); id., ¶ 5(b), Ex. 5 (noting that the Chief Operating Officer of HMC is "based in Fountain Valley, California" and "will report to Hyundai Motor Company's top leadership in Seoul"); id., ¶¶ 5–6, Exs. 2–10 (showing that HMC and KC share board members with their California subsidiaries).) Specifically, the overlapping executives and directors for HMC and HMA include Kyoungjin Min, Randolph E. Parker, Jose Munoz, Jason Erb, Goowon Yoon, Gang Hyun Seo,, and Seon Kim. (Id., Exs. 2, 4–10.) The overlapping executives and directors for KA and KC include JaeJoon Chang, Shin Jae-yong, and Ho-Sung Song. (Id.) The Subrogation Plaintiffs also provided shipping data showing that HMC and KC use California ports, including for the import of testing vehicles in California. (Dkt. No. 335, apps. A, C.)

In response, HMC and KC argue that "[m]uch of the 'evidence' the Subrogation Plaintiffs cite does not demonstrate targeting of California and/or is unconnected to the claims at issue in this action and therefore does not provide even a 'colorable basis' for personal jurisdiction." (Opp'n for Discovery at 6–7.) However, the Subrogation Plaintiffs allege in the ACC that HMC and KC have

shipped thousands of vehicles and parts through California's ports for delivery and sale to California facilities. (See ACC ¶¶ 32–33.) To support their assertion, the Subrogation Plaintiffs submitted data showing that HMC and KC use California ports and send testing vehicles to California. (Dkt. No. 335, apps. A, C.) Thus, the Court finds that the Subrogation Plaintiffs have "come forward with 'some evidence' tending to establish personal jurisdiction" over HMC and KC. Mitan, 497 F. Supp. 2d at 1119. HMC and KC argue that the Subrogation Plaintiffs fail to show "'a connection between the forum and the specific claims at issue.'" (Opp'n for Discovery at 7 (quoting Bristol-Myers Squibb Co. v. Superior Court, 582 U.S. 255, 265 (2017)).) But HMC and KC overlook that "something less than a prima facie showing" is required to be entitled to jurisdictional discovery. Martinez, 2011 U.S. Dist. LEXIS 41666, at *11. Rather, the Subrogation Plaintiffs must present only a "colorable basis" for jurisdiction, which they have done.

Additionally, HMC and KC argue that they "never disputed that they manufacture vehicles in South Korea and sell those vehicles to their subsidiaries, who then import the vehicles in the United States." (Opp'n for Discovery at 8 (citing Declaration of Seung Hyun Baik ("Baik Decl."), Dkt. No. 312, Ex. 1, ¶¶ 21–22; Declaration of Seunghee Shin ("Shin Decl."), Dkt. No. 312, Ex. 2, ¶¶ 20–21).) HMC and KC assert that the "shipping records show nothing more than that HMC and KC placed vehicles into the stream of commerce in South Korea that were then imported into California, whether for wholesale distribution by HMA and KA, for testing by separate U.S. affiliates, or for some other purpose." (Id. at 9.) To support their argument, HMC and KC rely on the declarations of employees at HMA and KA, who state that

> [f]or all [Hyundai- or] Kia-branded vehicles that are manufactured by [HMC or] KC in South Korea and imported into the United States to be sold to consumers in the United States, the vehicles become the inventory of [HMA or] KA at the time the ship containing the vehicles leaves the port in South Korea.

(Id. (quoting Declaration of Michael Orange ("Orange Decl."), Dkt. No. 346-4, ¶ 3; Declaration of Robert Kuntze ("Kuntze Decl."), Dkt. No. 346-5, ¶ 3).) According to those two employees, HMA and KA import vehicles from HMC and KC FOB Origin from South Korea, meaning that "the buyer accepts the title of the goods at the shipment point and assumes all risk once the seller ships the product." (Orange Decl. ¶¶ 6–7; Kuntze Decl. ¶¶ 6–7.) HMA and KA also arrange "port vehicle inspections, processing, unloading, and transportation logistics through

[their] partner, Glovis America." (Orange Decl. ¶ 9; Kuntze Decl. ¶ 8.) Thus, according to the employees, HMC and KC "do[] not have control over HMA's [or] KA's distribution of the vehicles in the United States." (Orange Decl. ¶ 10; Kuntze Decl. ¶ 9.) Moreover, HMC and KC argue that "[t]he same is true with respect to Hyundai and Kia vehicles that HMC's subsidiary, Hyundai America Technical Center, Inc. ("HATCI"), imports for test purposes." (Opp'n for Discovery at 10.) According to a paralegal at HATCI, "HATCI imports all vehicles from HMC and KC FOB Origin from South Korea." (Declaration of Joselyn Smith ("Smith Decl."), Dkt. No. 346-7, ¶ 4.) As a result, HMC and KC contend that the shipping records "show nothing more than that HMC and KC sold vehicles in South Korea that were imported by other entities into the United States." (Opp'n for Discovery at 10.) However, the Subrogation Plaintiffs argue that the financial reports suggest that "the test results are being used by the entire Hyundia and Kia operations." (Reply for Discovery at 7; see also Mot. for Discovery, Exs. 17–18.) The Subrogation Plaintiffs also argue that the shipping reports indicate that HMC and KC "were the consignees for shipments of vehicles and vehicle parts passing through the California's ports." (Reply for Discovery at 10; Dkt. No. 335, apps. A, C.)

Given the allegations in the ACC and the information contained in the exhibits attached to this Motion, the Court finds that the Subrogation Plaintiffs have "demonstrate[d] how further discovery would allow" them to "contradict" HMC's and KC's declarations. Symettrica Ent., Ltd. v. UMG Recordings, Inc., No. 19-01192, 2019 WL 8806093, at *5 (C.D. Cal. Sept. 20, 2019) (internal quotation marks and citation omitted). Therefore, the Court does not believe that jurisdictional discovery as to specific personal jurisdiction over the Subrogation Plaintiffs' claims would amount to a "fishing expedition." See Barantsevich, 954 F. Supp. 2d at 996; see also Macias v. LG Chem Ltd., No. 20-02416, 2021 WL 780478, at *5–6 (C.D. Cal. Feb. 28, 2021) (granting leave to conduct jurisdictional discovery because defendant's contacts with the forum are in dispute); Weaver v. Johnson & Johnson, No. 16-cv-00257, 2016 U.S. Dist. LEXIS 56210, at *17–18 (S.D. Cal. Apr. 27, 2016) (allowing discovery of relationship between parent company and subsidiaries when the plaintiff put forward "some evidence" of jurisdiction and "the record d[id] not foreclose the possibility that additional discovery could reveal the facts that bear on whether the Court may exercise specific jurisdiction"); An Phan v. Grand Bahama Cruise Line, LLC, No. 15-cv-05019, 2016 U.S. Dist. LEXIS 133774, at *8 (N.D. Cal. Sept. 28, 2016) (stating that plaintiffs are not required to provide "significant evidence" to obtain

jurisdictional discovery).

Therefore, the Court **GRANTS** the Motion to Conduct Jurisdictional Discovery to determine whether HMC and KC are subject to specific personal jurisdiction in California.

1. Alter Ego Theory

The Subrogation Plaintiffs also argue that jurisdictional discovery is appropriate "to allow the Court to determine if the entities are mere alter egos." (Mot. for Discovery at 15.) "[T]he alter ego test may be used to extend personal jurisdiction to a foreign parent *or* subsidiary when, in actuality, the foreign entity is not really separate from its domestic affiliate." Ranza v. Nike, Inc., 793 F.3d 1059, 1073 (9th Cir. 2015) (emphasis in original). "To satisfy the alter ego test, a plaintiff must make out a prima facie case (1) that there is such unity of interest and ownership that the separate personalities [of the two entities] no longer exist and (2) that failure to disregard [their separate identities] would result in fraud or injustice." Id. (internal quotation marks and citations omitted). "The 'unity of interest and ownership' prong of this test requires a showing that the parent controls the subsidiary to such a degree as to render the latter the mere instrumentality of the former." Id. (internal quotation marks and citations omitted). "This test envisions pervasive control over the subsidiary, such as when a parent corporation dictates every facet of the subsidiary's business—from broad policy decisions to routine matters of day-to-day operation." Id. (internal quotation marks and citations omitted). In their Opposition, HMC and KC cite the aforementioned requirements to establish personal jurisdiction on an alter ego theory and argue that the Subrogation Plaintiffs have failed to meet both prongs of the alter ego test. (Opp'n for Discovery at 11–14.)

Although HMC and KC rightly point out that the Subrogation Plaintiffs fail to meet the prongs of the alter ego test, the Subrogation Plaintiffs are not required to do so at this stage. The Subrogation Plaintiffs must present only a "colorable basis" that HMC and KC could be acting as the alter egos of their American subsidiaries, which they have done. (See Dooley Decl., Exs. 2, 4–10 (showing the overlapping executives and directors for HMC, HMA, KC, and KA).) Moreover, the Subrogation Plaintiffs contend that "the companies do bear features of alter egos, including the sharing of employees, executives and board members, unquestioned complete control over the subsidiary, [and] the use of subsidiary

office space for parent employees." (Mot. for Discovery at 15.) Thus, the Court finds that the Subrogation Plaintiffs have made a sufficient showing to take jurisdictional discovery based on an alter ego theory. See, e.g., Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd., 328 F.3d 1122, 1135 (9th Cir. 2003) (finding that the district court abused its discretion in denying a motion for jurisdictional discovery to determine whether the alter ego test is met).[4]

Accordingly, the Court **GRANTS** jurisdictional discovery on the issue of whether HMC and KC are alter egos of HMA and KA such that HMA's and KA's California contacts may be imputed to HMC and KC.

2. Scope of Discovery

The discovery shall be limited in scope to aiding the inquiry into whether HMC and KC have purposefully availed themselves of California's jurisdiction through their contacts with the forum or are alter egos of their American subsidiaries. The Court contemplates two depositions and discrete interrogatories or document requests. Any issues as to the scope of discovery requested or compliance with discovery requests are referred to the magistrate judge. The parties should meet and confer to discuss a deadline for the jurisdictional discovery to be completed and a briefing schedule on the motion to dismiss.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendants' Motion to Strike and **GRANTS** Subrogation Plaintiffs' Motion to Conduct Jurisdictional Discovery.

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[4] HMC and KC rely on distinguishable cases to support their argument that "plaintiffs have not provided a sufficient basis to support an alter ego theory." (Opp'n for Discovery at 13.) See, e.g., Reynolds v. Binance Holdings Ltd., 481 F. Supp. 3d 997, 1010 (N.D. Cal. 2020) (denying motion for jurisdictional discovery because plaintiff "simply stat[ed] that facts are disputed and [] offer[ed] insufficient evidence for one of its arguments"); Barantsevich v. VTB Bank, 954 F. Supp. 2d 972, 997 (C.D. Cal. 2013) (denying jurisdictional discovery because "plaintiff has offered nothing but bare allegations that VTB Capital AM and VTB Capital, Inc. are agents or alter egos of VTB Bank"). Here, the Subrogation Plaintiffs have provided the Court with more than just bare allegations. The Subrogation Plaintiffs included several exhibits showing HMC's and KC's shipping records, financial reports, and overlap with the executives and directors of their American subsidiaries.

IT IS SO ORDERED.