No. 21-16282

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAHAN TALESHPOUR; RORY FIELDING; PETER ODOGWU; WADE BUSCHER; GREGORY KNUTSON; DARIEN HAYES; LIAM STEWART; NATHAN COMBS, on behalf of themselves and all members of the putative class,

Plaintiffs-Appellants,

v.

APPLE, INC.,

Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of California
Case No. 5:20-cv-3122 | Hon. Edward J. Davila

BRIEF OF *AMICUS CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF APPELLEE

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INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation.[1] The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million businesses and professional organizations of every size, in every industry sector, and from every region of the country.

An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community. *See, e.g.*, *Pharm. Rsch. & Mfrs. of Am. v. Landsberg*, No. 21-16312, Dkt. 12 (9th Cir. Nov. 23, 2021); *Pirani v. Slack Techs., Inc.*, No. 20-16419, Dkt. 20-2 (9th Cir. Nov. 2, 2020); *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, No. 19-56514, Dkt. 23-2 (9th Cir. May 21, 2020).

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[1] No counsel for a party authored this brief in whole or in part. No entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Many of the Chamber's members engage in the manufacture and sale of goods of diverse kinds and in various sectors. Those businesses often rely on express, limited warranties to explain the nature of their products and what consumers' expectations should be. As this Court has correctly recognized, under California law a manufacturer has no duty to disclose defects beyond "'its warranty obligations,'" "'absent either an affirmative misrepresentation'" or "an unreasonable safety defect." *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1141, 1145 (9th Cir. 2012). That rule comports with longstanding public policy favoring limits on warranty obligations. The contrary rule that plaintiffs have proposed would drastically expand manufacturers' disclosure obligations, resulting in virtually unlimited perpetual warranties and harming businesses and consumers alike. The Chamber has a strong interest in ensuring that the Court hews to California law and rejects plaintiffs' efforts to expand it beyond recognition.

INTRODUCTION

The question presented in this appeal is whether the Court should apply settled precedent, enforcing express, limited warranties under California law, or instead accept plaintiffs' invitation to abandon those limits and create virtually perpetual warranties that would impose unjustified costs on manufacturers and consumers alike. The Court should follow its precedent correctly interpreting California law and affirm.

Warranties eliminate uncertainty and allocate risks between both sides of a commercial transaction. With limited exceptions, the seller becomes responsible for repairing or replacing products that do not live up to specified standards for the limited period of the warranty, and the buyer becomes responsible for any repair or replacement issues that arise after the warranty expires. As a result, buyers gain confidence about what they're buying, and sellers can quantify the limited extent of their potential liability should their products fall short of their promises.

Given those benefits, California courts have long enforced the limits of manufacturer warranties, holding that manufacturers need not disclose or pay for defects that arise—if at all—only *after* the expiration

of the warranty period. Exceptions to that rule are few and far between: The California legislature has recognized certain implied warranties, but only in limited circumstances and never for a period longer than a year; and although manufacturers can be liable for failing to disclose defects that carry unreasonable safety risks, that is a unique accommodation for the public policy of protecting consumers and the general public from bodily injury. So absent an unreasonable risk of physical injury or a specific representation from the manufacturer, a manufacturer is not liable for defects that appear after the warranty has ended.

Plaintiffs ask this Court to jettison that rule. The Court should reject plaintiffs' bid to upend California warranty law for two reasons. *First*, there is no legal basis to revisit this Court's precedent that forecloses plaintiffs' position. The basic principles of California law underlying that precedent are both long settled and sensible, and plaintiffs have not identified any California decision in this context that calls those principles into question. *See Miller v. Gammie*, 335 F.3d 889, 892–93 (9th Cir. 2003) (en banc).

Second, there is no sound policy to support plaintiffs' proposed rule. Current law allows manufacturers and consumers to understand their

rights and to arrange their affairs according to their preferences. Manufacturers can choose a warranty duration that fits the products they sell, and customers can either accept the standard warranty or pay for an extended warranty. Plaintiffs' rule would replace that system with one in which *every* consumer is deemed to have purchased a virtually limitless warranty, under which any potential defects that might arise beyond the warranty period would have to be disclosed. But warranties aren't free, and the inevitable result of forcing all manufacturers to provide perpetual warranties (far beyond the limited implied warranties that the California legislature has enacted) would be increased consumer prices and reduced consumer options. To date, both this Court and California's appellate courts have avoided that result by enforcing warranties according to their terms. This Court should do the same.

ARGUMENT

I. It is settled that manufacturers in California have no duty to disclose non-safety-related defects that arise after the warranty period.

The thrust of plaintiffs' argument is that California law is unsettled with respect to manufacturers' duty to disclose latent defects that manifest only after an express warranty period. It is not. California law

requires courts to strictly enforce the limits of manufacturer warranties. And although that rule yields to the uniquely strong interests associated with risks of bodily injury, that exception is *sui generis*. So if an alleged defect does not contradict a warranty or some other affirmative representation, the manufacturer cannot be liable unless the defect raises an unreasonable risk of bodily injury. This Court has correctly recognized that rule for nearly a decade. And try as plaintiffs might, they cannot identify any subsequent California decision that has undercut the Court's precedent—let alone any decision that provides the sort of irreconcilable conflict that is necessary to overrule a prior panel decision of this Court. The Court should affirm.

A. Public policy requires courts to enforce the limits of a manufacturer's warranty.

California law is well settled with respect to manufacturers' liability for the products that they make and sell. Generally, consumers buy products at their own risks; manufacturers may be liable only to the extent that they take active responsibility for how their products will function through express warranties or other affirmative representations.

California courts have long recognized that product failure is a fact of life. "'All parts will wear out sooner or later,'" and all goods "'have a limited effective life.'" *Daugherty v. Am. Honda Motor Co.*, 144 Cal. App. 4th 824, 830 (2006). So when a consumer buys a manufactured product, he is "fairly charged with the risk that the product will not match his economic expectations." *Seely v. White Motor Co.*, 63 Cal. 2d 9, 18 (1965).

The only way a manufacturer can be "held liable for 'the level of performance of his products'" is if it "agrees that the product was designed to meet the consumer's demands." *Jimenez v. Superior Ct.*, 29 Cal. 4th 473, 482 (2002) (quoting *Seely*, 63 Cal. 2d at 18). By specifically "agree[ing]" that a product will conform to certain "economic expectations," the manufacturer subjects itself to liability if the product falls short of those standards. *Seely*, 63 Cal. 2d at 18. That has been the law for over a century. *See, e.g.*, *Lamb v. Otto*, 51 Cal. App. 433, 436 (1921) (when "'the seller giv[es] no express warranty and mak[es] no representations tending to mislead,'" the buyer "'is holden to have purchased entirely on his own judgment'").

But even where a manufacturer provides a warranty, California courts have long demanded strict adherence "to the language used

therein." *Am. Steel Pipe & Tank Co. v. Hubbard*, 42 Cal. App. 520, 523 (1919). That is because an express warranty is simply a term of the parties' contractual relationship, *A.A. Baxter Corp. v. Colt Indus., Inc.*, 10 Cal. App. 3d 144, 153–54 (1970), and when it comes to "commercial controversies," parties are free to "set the terms of their own agreements." *E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 872–73 (1986). As a result, when a manufacturer includes an express warranty, it may be liable up to the limits of that warranty, but no further. That gives both parties to a commercial transaction certainty about who bears the risk of product failure, and at which times, during the product's life. *Seely*, 63 Cal. 2d at 16–18.

The California legislature has departed only rarely, and in targeted and limited ways, from the rule requiring enforcement of the express limits of manufacturer warranties. The most notable example is the Song-Beverly Consumer Warranty Act, originally enacted in 1970 and amended on several occasions since then, which recognizes implied warranties of merchantability and fitness in connection with the sale of certain goods. But those implied warranties can last "no[] more than one year" following sale (which is the length of the express warranty at issue

in this case), Cal. Civ. Code § 1791.1(c), and can be disclaimed by manufacturers, *id.* § 1791.3. Even in crafting new rights for consumers, therefore, the state legislature made sure to protect manufacturers from unlimited liability through a strictly limited warranty period.

B. Safety defects are a limited exception to the longstanding rule that manufacturers need not disclose defects arising after the warranty period.

Even where there is "no breach" of any "express warranties," a manufacturer must disclose concealed defects that give rise to "personal injury or safety concerns." *Daugherty v. Am. Honda Motor Co.*, 144 Cal. App. 4th 824, 835–36 (2006) (citing *Bardin v. Daimlerchrysler Corp.*, 136 Cal. App. 4th 1255, 1261–62 (2006)). Plaintiffs treat this line of cases as more of an illustrative example of exceptions to the general rule rather than a unique exception. AOB 4. They are wrong: The cases recognizing an exception for unreasonable safety-related defects represent a narrow, limited accommodation for the uniquely strong interests in protecting consumers and the general public from bodily injury.

California public policy calls on courts to "protect consumers from injuries caused by defective products." *Westlye v. Look Sports, Inc.*, 17 Cal. App. 4th 1715, 1747 (1993). In fact, California courts were "perhaps

the first" in the nation to recognize liability "to insure that the costs of injuries resulting from defective products" would be "borne by the manufacturer." *Daly v. GM Corp.*, 20 Cal. 3d 725, 732–33 (1978) (quoting *Greenman v. Yuba Power Prods., Inc.*, 59 Cal. 2d 57, 63 (1963)). Because the cost of physical injuries caused by defective products "may be an overwhelming misfortune to the person injured," California law ensures that they are assigned to the manufacturer. *Brown v. Superior Ct.*, 44 Cal. 3d 1049, 1056 (1988); *see Price v. Shell Oil Co.*, 2 Cal. 3d 245, 251 (1970). So although mine-run disagreements over a product's usefulness are better left to the domain of "[s]ales warranties," when personal injury is at issue, it makes no difference whether the defect that caused the injury falls within an express warranty. *Greenman*, 59 Cal. 2d at 62–64.

The policy of protecting consumers from bodily injury is so strong that it can overcome express contract language. In *Westyle v. Look Sports, Inc.*, 17 Cal. App. 4th 1715 (1993), for instance, the plaintiff sued to recover for injuries resulting from allegedly defective ski equipment, and the defendant responded that the plaintiff had "expressly assumed the risk of injury" in the rental agreement. *Id.* at 1723–24. Enforcing California's "strong policy" of "protect[ing] consumers from injuries," the

court held that product suppliers "cannot insulate themselves from strict liability" simply "by obtaining a consumer's signature on an express assumption of risk." *Id.* at 1743–47. In short, parties are usually free to define their obligations by contract; but when it comes to the risk that products will cause consumers *physical harm*, the calculus is different.

It was against this backdrop that California courts began recognizing unreasonable safety defects as a narrow exception to the rule that express warranties limit manufacturers' liability. Generally, a manufacturer cannot "be held liable for 'the level of performance of his products . . . unless he agrees that the product was designed to meet [certain] demands.'" *Jimenez*, 29 Cal. 4th at 482 (quoting *Seely*, 63 Cal. 2d at 18). But "regardless of the terms of any warranty," a manufacturer *can* be held liable "for physical injuries" if the alleged defects "create unreasonable risks of harm." *Id.* at 482, 490.

That same balance applies to claims, like those of plaintiffs here, alleging that manufacturers failed to disclose latent defects. In *Bardin v. Daimlerchrysler Corp.*, 136 Cal. App. 4th 1255 (2006), for instance, the court rejected consumer-protection and fraudulent-omission claims based on a car company's use of steel rather than cast iron in exhaust

manifolds. *Id.* at 1260–61. The court began by noting that the plaintiffs had not alleged that the defendant's use of steel "violated any warranty" or any express "representations regarding the performance of" the exhaust manifolds. *Id.* at 1270, 1273–75. That left only the question whether the use of steel "violate[d] public policy." *Id.* at 1270. And as the court explained, the "general public policy" is that every consumer is "fairly charged with the risk that the product will not match his economic expectations unless the manufacturer agrees that it will." *Id.* (quoting *Seely*, 63 Cal. 2d at 18). Because the manifolds lived up to the manufacturer's express warranty, and because they did not create any actual "personal injury or safety concerns," the plaintiffs' claims failed as a matter of law. *Id.*

The court in *Daugherty v. American Honda Motor Co.*, 144 Cal. App. 4th 824 (2006), took the same approach. There, the plaintiffs sued another car company, claiming that it had "fail[ed] to disclose an engine defect that did not cause malfunctions in the automobiles until long after the warranty expired." *Id.* at 827. Because "[a]ll of plaintiffs' automobiles functioned as represented throughout their warranty periods," there was no basis for any breach-of-warranty claim. *Id.* at 834–

35. Nor did the alleged defects constitute any "fact the defendant was obliged to disclose," the court explained, because the complaint was "devoid of factual allegations showing any instance of physical injury or any safety concerns posed by the defect." *Id.* at 835–36 (citing *Bardin*, 136 Cal. App. 4th at 1261–62). In other words, absent legitimate "personal injury or safety concerns" stemming from an "'unreasonably dangerous'" defect, the only potential bases for liability were the defendant's "express warranties, as to which no breach occurred." *Id.* at 836, 838 n.8.

In sum, California law embodies two stable, predictable legal rules based on well-established policies regarding warranties:

- the "general public policy" that a consumer is "'fairly charged with the risk that the product will not match his economic expectations unless the manufacturer agrees that it will'" through warranty language or other affirmative representations, *Bardin*, 136 Cal. App. 4th at 1270, which recognizes the reality that "'[a]ll parts will wear out sooner or later'" and that manufacturers must be able to rely on "the limits of [their] written warrant[ies]," *Daugherty*, 144 Cal. App. 4th at 830; and

- a limited exception for defects that raise unreasonable risks of "personal injury," *Daugherty*, 144 Cal. App. 4th at 836, which recognizes the strong public policy of redistributing the uniquely "overwhelming" costs of physical injuries from defective products "among the consuming public," *Brown*, 44 Cal. 3d at 1056.

C. This Court has correctly interpreted California law on manufacturers' disclosure obligations.

When sitting in diversity, this Court's task is to apply state law and, if necessary, to predict how the state's highest court would resolve the relevant issue. *U.S. Bank, N.A. v. White Horse Estates Homeowners Ass'n*, 987 F.3d 858, 863 (9th Cir. 2021). This Court already did so a decade ago regarding the issue presented in this case.

In *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136 (9th Cir. 2012), the Court correctly recognized that under California law, unless a defect is "contrary to a representation actually made" in a warranty or elsewhere, manufacturers have no duty to disclose latent defects that do not "cause[] an unreasonable safety hazard." *Id.* at 1141–43 (quoting *Daugherty*, 144 Cal. App. 4th at 835–36). Several years later, this Court reaffirmed that principle in *Williams v. Yamaha Motor Co.*, 851 F.3d 1015 (9th Cir. 2017), again explaining that "where a defendant has not made an affirmative

misrepresentation," the plaintiff "must allege the existence of an unreasonable safety hazard" in order to prevail on a fraudulent-omission claim. *Id.* at 1026. The unreasonable safety hazard cannot be merely hypothetical; there must be a strong "factual basis" for the plaintiff's allegation. *Wilson*, 668 F.3d at 1144.

Plaintiffs do not argue that *Wilson* incorrectly summarized California law as of the date it was decided. Instead, they contend that there has been a "pronounced shift in California law" since *Wilson*. AOB 44. But this Court cannot depart from *Wilson* unless one or more intervening California precedents are so "clearly irreconcilable" with that decision's reasoning as to render it "effectively overruled." *Miller*, 335 F.3d at 893. Plaintiffs come nowhere close to satisfying that standard.

Plaintiffs' discussion of recent California decisions ignores a fundamental distinction. If an alleged defect is inconsistent with a manufacturer's warranty (or some other affirmative representation), there is no requirement that the defect create an unreasonable risk of bodily harm. Only if the manufacturer's warranty or affirmative representation does *not* cover the defect does the limited accommodation for unreasonable risks of personal injury spring into effect.

The decision in *Collins v. eMachines, Inc.*, 202 Cal. App. 4th 249 (2011), illustrates that distinction. There, the plaintiffs alleged an undisclosed microchip defect that caused data loss from floppy disks "before the warranty expired." *Id.* at 252–54. The California Court of Appeal rejected the defendant's argument that it could not be liable under *Daugherty* and *Bardin* because the defect did not involve an unreasonable risk of bodily injury. *See id.* at 256. As the court explained, the core feature in *Bardin* and *Daugherty* was an "attempt[ed] . . . end-around the warranty laws," in that the plaintiffs were trying to hold defendants liable for defects that did not arise "during the warranty period." *Id.* at 256–58. Only in that circumstance must a consumer "allege . . . safety concerns" to plead a fraudulent-omission claim. *Id.* at 257. When the alleged defect arises "during and before the warranty expire[s]," there is no such requirement. *Id.* at 257–58.

That distinction also explains *Rutledge v. Hewlett-Packard Co.*, 238 Cal. App. 4th 1164 (2015). In *Rutledge*, the plaintiffs alleged a defect in their notebook computer screens. *Id.* at 1168–71. As in *Collins*, in *Rutledge* the California Court of Appeal rejected the defendant's argument that the plaintiffs could not state a claim because the alleged

defect did not pose an "unreasonable risk of 'physical injury or other safety concern.'" *See id.* at 1173–74 (quoting *Daugherty*, 144 Cal. App. 4th at 836). And just as in *Collins*, the court did so in the context of allegations that the screens began malfunctioning *within the warranty period*. *Id.* at 1171. So *Rutledge*, too, had nothing to say about alleged defects (like those here) that manifest only after the warranty period.

Moreover, *Rutledge* ultimately found "a triable issue of fact as to the nature of [the defendant's] representations" about the screens and whether those affirmative representations "triggered a duty to disclose the defect." 238 Cal. App. 4th at 1176. Far from a "pronounced shift" (AOB 44), that analysis is on all fours with California law, which has always recognized that a defendant can be liable for failing to disclose a latent defect where "the omission is 'contrary to a representation actually made by the defendant.'" *Wilson*, 668 F.3d at 1141 (quoting *Daugherty*, 144 Cal. App. 4th at 835).

Plaintiffs contend *Rutledge* "rejected" the argument that the term of a warranty period is relevant for fraudulent-concealment claims. AOB 43. That misreads *Rutledge*, which involved a plaintiff who experienced screen problems "shortly *before* the expiration of his one-year

warranty" but who did not notify the defendant of the problem "until two months *after* the warranty had expired." 238 Cal. App. 4th at 1171 (emphasis added). In the portion of the opinion that plaintiffs cite, the court held that consumers can bring fraudulent-omission claims related to undisclosed defects that arose *during* a warranty, even if they *initiate* those claims after the warranty expires. *Id.* at 1175. *Rutledge* did not suggest, much less hold, that manufacturers could be liable for failing to disclose non-safety-related defects that *arose entirely after the warranty period*. That latter question is the only one relevant to this appeal, and *Bardin* and *Daugherty*—not *Rutledge* or *Collins*—provide the answer.

That leaves *Hodsdon v. Mars, Inc.*, 891 F.3d 857 (9th Cir. 2018), in which plaintiffs contend this Court "declined to follow *Wilson*." AOB 3, 43. That is the opposite of what occurred in *Hodson*. Instead, this Court explained it would *not* "reexamine" *Wilson* because even if it assumed that *Collins* and *Rutledge* had changed California law, the defendant would have no duty to make the disclosures that the plaintiffs were seeking in any event. 891 F.3d at 860, 862.

Moreover, what little *Hodsdon* did say about those decisions is nothing like the seismic shift that plaintiffs suggest. *Hodsdon*

emphasized that both decisions involved alleged defects that "manifested . . . during the warranty period," making them different in kind from "*Daugherty*—on which *Wilson* is based." *Id.* at 862–63. And with respect to *Rutledge* in particular, *Hodsdon* explained that its analysis was "far from clear," particularly given the court's "ultimate[] conclu[sion]" that there was a triable issue about whether the defendant had triggered a duty to disclose through affirmative representations. *Id.* at 863.

The most *Hodsdon* said about *Collins* and *Rutledge* is that they "are somewhat vague about the test for determining whether a defendant has a duty to disclose." 891 F.3d at 863. That is worlds away from the "clearly irreconcilable" change in California law necessary for a three-judge panel to depart from *Wilson*. *Miller*, 335 F.3d at 892–93. And because *Collins* and *Rutledge* arose in a fundamentally different context and did not undercut the reasoning of either *Daugherty* or *Bardin*, it is no wonder that *Hodsdon* did not treat *Wilson* as overruled—particularly when *Hodsdon* itself found no duty to disclose on other grounds. *See* 891 F.3d at 860, 862.

Plaintiffs otherwise rely on suggestions from district courts that the "'state of the law on the duty to disclose [in] California . . . is in some disarray.'" AOB 41. Saying that does not make it so, and a smattering of observations from lower courts cannot justify a departure from this Court's precedent.

In short, whatever rules apply to alleged defects that manifest during a warranty period, when the defects arise only *after* the warranty expires, the manufacturer cannot be liable for failure to disclose, absent either an express representation or an actual and unreasonable risk of physical injury. *Wilson*, 668 F.3d at 1141. Because this case involves neither express representations nor allegations that any defect creates an unreasonable risk of personal injury, the district court correctly ruled that plaintiffs could not state fraudulent-omission claims, and this Court should affirm.

II. Expanding manufacturers' disclosure obligations as plaintiffs propose would defy California public policy and harm businesses and consumers alike.

Plaintiffs' theory—that manufacturers should be required to disclose latent defects that might appear years after their products' warranties expire—not only contravenes longstanding California law,

but also threatens serious negative consequences. Express warranties are voluntary, intelligible, and administrable; they clearly mark the boundaries of potential claims against the manufacturer, giving both consumers and manufacturers a clear picture of what they can expect. Plaintiffs' approach, by contrast, has no limiting principles. If plaintiffs' view were to prevail, warranties would become mandatory and virtually perpetual, and consumers would ultimately shoulder the expense.

A. Plaintiffs' proposed rule would effectively extend warranties indefinitely.

Products do not last forever, and it is unreasonable to expect them to. *Daugherty*, 144 Cal. App. 4th at 830. But if plaintiffs' view were accepted, consumers would have a fraudulent-omission claim every time a product failed outside the warranty period in a way the manufacturer could have anticipated, absent disclosure of all of the various ways the product could fail over time. This boundless vision of manufacturer liability defies case law from both California courts and this Court making clear that warranties, by their nature, are (and must remain) limited.

In *Daugherty*, for instance, the California Court of Appeal affirmed a trial-court decision holding that the plaintiffs' "'new theory of

liability'"—much the same as plaintiffs' theory in this case—"'would change the landscape of warranty and product liability law in California.'" 144 Cal. App. 4th at 829. By the plaintiffs' lights, "'[f]ailure of a product to last forever would become a 'defect,' a manufacturer would no longer be able to issue limited warranties, and product defect litigation would become as widespread as manufacturing itself.'" *Id.* As *Daugherty* explained, that would be unworkable, because "'[m]anufacturers always have knowledge regarding the effective life of particular parts,'" all of which "'will wear out sooner or later.'" *Id.* at 830. "[A] rule that would make failure of a part actionable based on such 'knowledge'" therefore "'would render meaningless [the] limitations in warranty coverage.'" *Id.*

This Court has repeatedly respected that overriding policy concern. In *Wilson*, it explained that "broaden[ing] the duty to disclose beyond safety concerns 'would eliminate term limits on warranties, effectively making them perpetual or at least for the "useful life" of the product.'" 668 F.3d at 1141. And *Wilson* was not the first time this Court held that it makes no sense for merchants to "'be forever liable for breach of warranty on any goods which they sold.'" *W. Recreational Vehicles, Inc. v. Swift Adhesives, Inc.*, 23 F.3d 1547, 1551–53 (9th Cir. 1994). In *Western*

Recreational Vehicles, the Court reversed a decision holding that the defendant had committed "fraud" by not disclosing that its adhesive might not work after the four-year warranty period. *Id.* at 1552. "[I]n reality," this Court explained, it was not fraud, but "the commonplace running of a statute of limitations." *Id.*

B. Plaintiffs' approach would lead to increased costs and uncertainty.

Plaintiffs seek a sea change in the scope of California warranty law that would harm manufacturers and consumers alike.

When consumers buy products, they also buy warranties of varying scope and length. Warranties are not free; they materially affect the price of the product. All things equal, a shorter warranty will reduce a product's price. *E. River*, 476 U.S. at 873 ("the purchaser pays less for the product" when the manufacturer "disclaim[s] warranties or limit[s] remedies"). And an extended warranty, naturally, comes with a cost. For example, certified pre-owned cars, which generally provide an extra year of warranty protection, can cost thousands of dollars more than similar, uncertified cars. Jon Linkov & Mike Monticello, *The Truth About Certified Pre-Owned Cars*, Consumer Reports (Aug. 3, 2021), https://tinyurl.com/3zx69e2. And extended warranties for electronic

devices can cost hundreds of dollars. *See, e.g.*, *Geek Squad Laptop Protection*, Best Buy, https://tinyurl.com/2p8bmeru (last visited Jan. 10, 2022) (offering a three-year plan protecting a $499.99 laptop for $224.99).

"A warranty functions essentially as an insurance policy," allowing the consumer to "protect himself against the uncertainties inherent in owning a product that likely will require parts and service over time." *SMS Sys. Maint. Servs., Inc. v. Digit. Equip. Corp.*, 188 F.3d 11, 14 (1st Cir. 1999). Under the longstanding California rule that manufacturers need not disclose non-safety-related defects that manifest outside the warranty period, consumers are able to make their own choices about the level of protection that they wish to buy.

Many will opt for the standard warranty, choosing to run the risk that the product might fail after the warranty expires. In many contexts the speed of innovation, which can quickly make even cutting-edge products obsolete, means that consumers may *prefer* shorter warranty periods, which allow them to pay less for new products at more frequent intervals. Other consumers may prefer to buy an extended warranty for a variety of reasons, such as their assessment that the product is likely

to fail, their inability to pay the full cost of repair if it does fail, or the peace of mind that a warranty can provide.

Plaintiffs' theory would put an end to warranties as we know them. In their view, *everyone* should be deemed to have bought extra insurance of virtually indefinite duration. But if the law comes to reflect that outlook, manufacturers will be compelled to raise prices. Instead of buying a product and an extended warranty separately, everyone would effectively be forced to buy them together—even those who would never have considered buying an extended warranty.

That would increase prices. Consumers would pay not only the cost of the extended warranty protection itself, but also the higher costs, passed on by the manufacturer, associated with making products less likely to fail in the distant future. And that increase in prices would make products unaffordable to many consumers. Someone who can buy a $35,000 car might not be able to buy a $45,000 car. Someone who can buy a $1,500 laptop might not be able to buy a $2,000 laptop. Deciding that manufacturers owe duties to consumers far into the future, no matter the words used in a sales agreement and no matter the specific representations that the manufacturer makes in a warranty, will serve

only to drive up consumer prices and to make otherwise affordable products unattainable to many people who want them. Products and extended warranties are unbundled for a reason. They allow consumers to make their own choices and to spend their money how they see fit.

Moreover, weighing the various costs associated with adopting plaintiffs' rule, both in terms of economic cost and lost freedom of choice in the marketplace, is a task poorly suited to the judiciary—and especially a federal court sitting in diversity. The California legislature would be well positioned to hear from relevant stakeholders, debate the merits of different rules, and craft new legislation if there is widespread support for it, as it did in enacting the Song-Beverly Act in 1970 and in subsequent amendments to the Act.

To make their theory appear more palatable, plaintiffs suggest that only some cases will be subject to their proposed requirement that manufacturers disclose defects that manifest after the warranty requirement. They say that only defects that "go to the central function of the product" must be disclosed. AOB 46. But that is hardly a limiting principle. It is difficult to imagine what part of a laptop plaintiffs would say does *not* "go to the central function of the product." Without a long

list of components—hard drive, motherboard, RAM, and cooling fan, to name a few—a laptop simply won't work. The same is true of cars, which have even more parts that are "central" to their operation—everything from engines and brakes to dozens of sensors.

Because just about any component of a complex manufactured product can be considered "central" to its operation, plaintiffs' "central function" test does little more than invite quibbling about how close the purportedly defective component is to the product's purpose. That test is not a meaningful way to distinguish worthy cases from unworthy ones. And there is, and always has been, a better way: Holding manufacturers to the terms of their express warranties.

CONCLUSION

The Court should affirm the judgment.

Dated: January 12, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The motion complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 673 words, excluding the portions exempted by Rule 32(f).

The brief complies with the word limit of Federal Rules 29(a)(5) and 32(a)(7)(B)(i) and Circuit Rule 32-1(a) because it contains 5,309 words, excluding the portions exempted by Rule 32(f).

The motion and reply comply with the typeface and type-style requirements of Rule 32(a)(5)(A) and (a)(6) because they have been prepared in a proportionally spaced typeface using Microsoft Word in 14-point, New Century Schoolbook font.

Dated: January 12, 2022

Respectfully submitted,

/s/ Theane Evangelis

Counsel for Amicus Curiae *the Chamber of Commerce of the United States of America*

CERTIFICATE OF SERVICE

I certify that on January 12, 2022, the foregoing motion and accompanying *amicus curiae* brief were filed with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit through the appellate CM/ECF system, which will send a notification of such filing to all counsel of record.

Dated: January 12, 2022

Respectfully submitted,

/s/ Theane Evangelis

Counsel for Amicus Curiae *the Chamber of Commerce of the United States of America*