SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 20, Honorable Eric Geffon, Presiding

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DATE: Tuesday, December 12, 2023
TIME: 9:00 A.M.

"A person's name is to him or her the sweetest and most important sound in any language."—Dale Carnegie. All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, "with a name like mine, I try to be careful how I pronounce the names of others." Please inform the Court how you, or if your client is with you, you and your client prefer to be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in court papers. You might also try www.pronouncenames.com but that site mispronounces my name.

You may use these links for Case Management Conferences and Trial Setting Conferences without Court permission. Informal Discovery Conferences and appearances on Ex Parte applications will be set on Order by the Court.

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APPEARANCES.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See ***Jensen v. Superior Court (San Diego)*** (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwith. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California ***Rules of Court***, rule 3.672.

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 8(E) and ***California Rules of Court***, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

Please notify this Court immediately if the matter will not be heard on the scheduled date. ***California Rules of Court***, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. ***California Rules of Court***, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. California

Rules of Court, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will malke it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are required in all courthouses. If you appear in person, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will helpful if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: Line #/name/party. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

COURT REPORTERS.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); ***California Rules of Court***, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

PROTOCOLS DURING THE HEARINGS.

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with ***California Rules of Court***, rule 3.1312.

TROUBLESHOOTING TENTATIVE RULINGS.

To access a tentative ruling, move your cursor over the line number, hold down the "Control" key and click. If you see last week's tentative rulings, you have checked prior to the posting of the current week's tentative rulings. You will need to either "REFRESH" or "QUIT" your browser and reopen it. Another suggestion is to "clean the cache" of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

This Court's tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates, Inc.* (2010) 185 Cal.App.4th 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court's final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	22CV409062	*Nico Kenn De Balinthazy v. Google, LLC, et. al.*	Defendant brings this second demurrer to each of Plaintiff's causes of action. An initial demurrer, which was unopposed, was sustained with leave to amend on June 29, 2023. A First Amended Complaint was filed on July 7, 2023, essentially repeating the allegations from the original complaint. Defendant now brings the instant motion. Plaintiff has not filed an opposition to the demurrer. A failure to oppose a motion may be deemed a consent to the granting of the motion. (CRC Rule 8.54c.) Failure to oppose a motion leads to the presumption that Plaintiff has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489.) Defendant has met its burden. This is the second demurrer brought on essentially the same facts. The demurrer is SUSTAINED WITHOUT LEAVE TO AMEND. Defendant is to prepare an order for court signature.
LINE 2	23CV412792	*Gilberto Torres, et. al. v. General Motors, LLC*	Defendant's demurrer is OVERRULED. See, tentative decision, below.
LINE 3	23CV412792	*Gilberto Torres, et. al. v. General Motors, LLC*	Defendant's Motion to Strike is DENIED. See, tentative decision, below.
LINE 4	23CV416446	*Michael Carpenter v. General Motors, LLC*	Defendant's demurrer is OVERRULED IN PART, AND GRANTED IN PART. See, tentative decision below.
LINE 5	23CV416446	*Michael Carpenter v. General Motors, LLC*	Defendant's Motion to Strike is DENIED. See, tentative decision below.
LINE 6	23CV422209	*Yaakov Nemoy, et. al. v. SN Servicing Corp*	Defendant SN Servicing Corp. filed this demurrer to the complaint. Subsequent to the filing of the demurrer, Plaintiff filed a First Amended Complaint. The filing of an Amended Complaint renders the demurrer moot. The demurrer is overruled as MOOT.
LINE 7	23CV422209	*Yaakov Nemoy, et. al. v. SN Servicing Corp*	See, Line 6

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 8	21CV382422	*Elizabeth Brierley v. Costco Wholesale Corp.*	Plaintiff brings a Motion to Compel Further Responses and for Sanctions against Defendant Costco Wholesale Corporation. Plaintiff's motion requests the court order Defendant to provide a "full response" to the special interrogatories, but does not give any more specificity regarding what responses Plaintiff believes were inadequate. It is clear from response filed by Defendant that responses were given to the interrogatories. It is Plaintiff's obligation to specifically state which interrogatory responses are deficient, along with reasons supporting the request for further responses. Plaintiff has failed to do that, and instead simply attached to her motion the correspondence between the parties concerning the objections and responses. Plaintiff therefore has not complied with the requirements of a motion to compel. The motion to compel is DENIED without prejudice. If Plaintiff chooses to renew this motion, Plaintiff must include a specific list of the special interrogatories in question, the responses given, and an argument concerning why those answers are insufficient under the code.
LINE 9	23CV417047	*Jeffery Leng v. FCA US LLC*	Plaintiff's motion to compel and for sanctions is DENIED without prejudice. See, tentative decision below.
LINE 10	21CV385759	*BMC Futures, LLC v. FCA US LLC*	The court, on its own motion, is continuing this matter to February 6, 2024 at 9:00 in Department 20.
LINE 11	21CV387110	*Michael Meredith v. Donald Williams, et. al.*	Plaintiff brings this motion for leave to file a Fourth Amended Complaint. Defendants have filed an opposition to the motion. Defendants opposition, among other points, references a previous agreement to attend mediation to attempt to resolve the issues in the case. That agreement was ultimately rescinded. The court encourages the parties to reengage in that process. As for the motion to amend, a parties' ability to amend is to be liberally construed, and while there have been several amended complaints already filed, there is not currently a trial date set and the court does not believe Defendants will be prejudiced by the amendment. Plaintiff's motion for leave to file a Fourth Amended Complaint is GRANTED.
LINE 12	22CV403402	*Jesse Sanchez, et. al. v. The City of Gilroy*	The court, on its own motion, is continuing this matter to February 6, 2024 at 9:00 in Department 20.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 13	22CV409322	*Rajiv Behl v. Specialized Loan Servicing, LLC, et. al.*	Attorney Fernando Leone moves to withdraw as attorney of record for Plaintiff Rajiv Behl. Mr. Leone has served notice of the motion and the hearing date on Plaintiff, who has not filed any opposition or response. Motion to withdraw is GRANTED. The court will sign the order provided.
LINE 14	23CV414246	*Juanita McFerrin, et. al. v. Valerie Barrientos, et. al.*	Plaintiff attorney Angela Storey seeks to withdraw as counsel for Plaintiff Juanita McFerrin. Notice has been given to Plaintiff and no opposition has been filed. Attorney Storey is listed as the attorney for both Plaintiffs, Juanita McFerrin and Louise Knox. The motion to withdraw only references Juanita McFerrin, and the proof of service indicates only that notice was given to Ms. McFerrin. The motion to withdraw is GRANTED as to Juanita McFerrin. Counsel will remain attorney of record for Louise Knox. The court will sign the proposed order provided by counsel.
LINE 15	23CV419695	*Santa Clara Valley Transportation Authority v. Indo Organic Farms, LLC, et. al.*	Santa Clara Valley Transportation Authority (VTA) brings this motion for prejudgment possession of a portion of the subject property for the US 101/State Route 25 Interchange Improvement Project, Phase I. Specifically, VTA seeks to acquire abutter's rights within a portion of the property. VTA has deposited the amount of probable compensation with the State Treasurer. VTA determined the amount of probable compensation by retaining a licensed real estate appraiser. VTA filed the instant motion on August 17, 2023. Defendant had thirty (30) days from that time to file an opposition to the motion. No opposition was filed. The court finds that VTA is entitled to take the property by eminent domain, and that VTA has deposited the probable compensation. (Cal. Code of Civil Procedure, section 1255.410(d).) Pursuant to Code of Civil Procedure section 1255.410, VTA is entitled to possession of the property to be acquired. The motion for possession is GRANTED. VTA is ordered to prepare the order for court signature.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 16	23CV419851	*Alexie Almazan, et. al. v. Emelinda Viola*	Plaintiff moves for an order directing service on Defendant Emilinda Viola pursuant to Code of Civil Procedure section 413.30, or in the alternative by publication. Counsel has filed a declaration detailing efforts made to serve Defendant at various addresses believed to be associated with her. None of those efforts have been successful. Plaintiff is in possession of an email address that is currently in use by Defendant. The motion for alternative service is GRANTED. Plaintiff is ordered to serve the complaint and associated documents via email AND through publiciation in The Mercury News. The court will sign the order provided.

Calendar Line 2-3
Case Name: *Gilberto Torres, et. al., v. General Motors, LLC*
Case No.: 23CV412792

ORDER ON (1) GENERAL MOTORS LLC'S DEMURRER TO PLAINTIFFS' FIRST AMENDED COMPLAINT; AND (2) GENERAL MOTORS LLC'S MOTION TO STRIKE PUNITIVE DAMAGES FROM PLAINTIFFS' FIRST AMENDED COMPLAINT

I. Statement of Facts.

According to the allegations of the first amended complaint ("FAC"), plaintiffs Gilberto Torres and Maria Torres (collectively, "Plaintiffs"), on or about 14 April 2021, entered into a warranty contract with defendant General Motors, LLC ("GM") regarding a 2021 Chevrolet Bolt EV ("Subject Vehicle"), manufactured and/or distributed by defendant GM. (FAC, ¶¶1, 4, 6, 7, and Exh. A.) Plaintiffs purchased the Subject Vehicle at defendant GM's authorized dealer, Del Grande Dealer Group ("DGDG"), in San Jose. (FAC, ¶6.)

Prior to purchasing the Subject Vehicle, Plaintiffs interacted with defendant GM's authorized sales representatives at DGDG who discussed the Chevrolet Bolt's key features, components, reliability, and driving range. (FAC, ¶8.) These sales representatives failed to disclose to Plaintiffs prior to purchase that the Subject Vehicle had a Battery Defect. (*Id.*) Had Plaintiff known of the Battery Defect prior to purchase, she would not have purchased the Subject Vehicle. (*Id.*)

Defendant GM knew since 2016 that the model year 2017 or newer Chevrolet Bolt EV vehicles, including the Subject Vehicle, ("Chevrolet Vehicles") contained one or more design and/or manufacturing defects in the battery ("Battery Defect") that causes the high voltage battery to overheat when charged to full capacity or near full capacity, loss of propulsion power while driving, catastrophic fire, no crank, reduced range, thermal runaway, and/or spontaneous combustion. (FAC, ¶22.)

Prior to Plaintiffs' acquisition of the Subject Vehicle, defendant GM was well aware and knew the lithium-ion battery installed on the Subject Vehicle was defective but failed to disclose this fact to Plaintiffs prior to the time of sale and thereafter. (FAC, ¶25.) Defendant GM and its dealerships failed to disclose the existence of the Battery Defect to Plaintiffs during successive repair visit as the problems associated with the Battery Defect arose and persisted. (*Id.*) Defendant GM knew or should have known that Chevrolet Vehicles had the Battery Defect. (FAC, ¶26.)

Defendant GM acquired knowledge of the Battery Defect in 2016 through sources unavailable to consumers such as Plaintiffs including, but not limited to, pre-production and post-production testing data; early consumer complaints about the Battery Defect made directly to defendant GM and its network of dealers; aggregate warranty data compiled from defendant GM's network of dealers; testing conducted by defendant GM in response to these complaints; as well as warranty repair and part replacements data received by defendant GM from defendant GM's network of dealers, among other sources. (FAC, ¶29.) Defendant GM had superior and exclusive knowledge of the Battery Defect and knew or should have known the defect was not known or reasonably discoverable by Plaintiffs before they purchased or leased the Subject Vehicle. (FAC, ¶31.) While it has been fully aware of the Battery Defect, defendant GM actively concealed the existence and nature of the alleged defect from Plaintiffs at the time

of purchase, repair, and thereafter. (FAC, ¶32.) Defendant GM was inundated with complaints regarding the Battery Defect, defendant GM dealers either informed consumers their vehicles were functioning properly or conducted repairs that merely mask the defect. (FAC, ¶33.) Defendant GM omitted mention of the Battery Defect in its sales materials, advertisements, publications, online marketing, television, radio, and other marketing campaigns for Chevrolet Vehicles. (FAC, ¶34.)

Plaintiffs discovered defendant GM's wrongful conduct shortly before the filing of this complaint, following numerous unsuccessful attempts to repair the Subject Vehicle as the symptoms, issues, or problems associated with the Battery Defect persisted. (FAC, ¶40.) Throughout this period, defendant GM continued to conceal from Plaintiffs the existence, nature, and scope of the Battery Defect. (*Id.*)

On 16 March 2023[1], Plaintiffs filed a complaint against defendant GM for violation of statutory obligations.

On 30 May 2023, defendant GM filed a demurrer and motion to strike portions of Plaintiffs' complaint.

On 18 August 2023, Plaintiffs filed the operative FAC which asserts causes of action for:

(1) Violation of Subdivision (D) of Civil Code Section 1793.2
(2) Violation of Subdivision (B) of Civil Code Section 1793.2
(3) Violation of Subdivision (A)(3) of Civil Code Section 1793.2
(4) Breach of the Implied Warranty of Merchantability
(5) Fraudulent Inducement-Concealment

On 15 September 2023, defendant GM filed the two motions now before the court: (1) a demurrer to the fifth cause of action of Plaintiffs' FAC; and (2) a motion to strike punitive damages from Plaintiffs' FAC.

II. Analysis.

A. Defendant GM's demurrer to the fifth cause of action [Fraudulent Inducement-Concealment] of Plaintiffs' FAC is OVERRULED.

Defendant GM's demurrer is limited to Plaintiffs' fifth cause of action for fraudulent inducement-concealment. Defendant GM argues Plaintiffs have failed to plead this claim with the requisite particularity. The essential elements of a fraud cause of action based on concealment or nondisclosure are: (1) the defendant had a duty to disclose the concealed or suppressed fact to the plaintiff; (2) the defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, and (3) the plaintiff was damaged as a result. (*Jones v. ConocoPhillips* (2011) 198 Cal.App.4th 1187, 1198.)

1. Specificity.

[1] This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (Government Code, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil Rules of Court, Rule 3.714(b)(1)(C) and (b)(2)(C).)

As a general rule, each element in a fraud cause of action must be pleaded with specificity. (*Lazar v. Super. Ct.* (1996) 12 Cal.4th 631, 645; *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.) The court in *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645 stated that "this particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.' A plaintiff's burden in asserting a claim against a corporate employer is even greater. In such a case, the plaintiff must 'allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." Defendant GM contends that since it is a corporate employer, Plaintiffs must allege, among other things, names/ identities of individuals at GM who purportedly concealed material facts and their authority to speak and act on behalf of GM.

Though the particularity requirement generally mandates that a plaintiff plead facts establishing the aforementioned items, it is much more difficult to apply this rule in a case of non-disclosure because, as one court explained, "[h]ow does one show 'how' and 'by what means' something didn't happen, or 'when' it never happened, or 'where' it never happened?" (*Alfaro v. Community Housing Imp. System & Planning Ass'n., Inc.* (2009) 171 Cal.App.4th 1356, 1384.) One of the purposes of the specificity requirement is to provide "notice to the defendant, to furnish the defendant with certain definite charged which can be intelligently met." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216, internal quotations omitted.) However, when "it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy, even under strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party …." (*Id.*, at p. 217.) Such is the circumstance here, where defendant GM is alleged to possess exclusive and superior knowledge regarding the Battery Defect in the Subject Vehicle and those like it. In this vein, the court agrees with Plaintiffs that they have alleged the elements of this claim for concealment with the requisite specificity.

2. Duty to disclose.

Defendant GM contends further that it did not owe Plaintiff a duty to disclose. "The general rule for liability for nondisclosure is that even if material facts are known to one party and not the other, failure to disclose those facts is not actionable fraud unless there is some fiduciary or confidential relationship giving rise to a duty to disclose." (*La Jolla Village Homeowners' Assn. v. Superior Court* (1989) 212 Cal.App.3d 1131, 1151.) To maintain a cause of action for fraud through nondisclosure or concealment of facts, a plaintiff must demonstrate that the defendant was under a legal duty to disclose those facts. (*OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 845.) "Where … there is no fiduciary relationship, the duty to disclose generally presupposes a relationship grounded in some sort of transaction between the parties. Thus, a duty to disclose may arise from the relationship between seller and buyer … or parties entering into any kind of contractual agreement." (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 337, internal citations omitted.) In transactions which do not involve fiduciary or confidential relations, a cause of action for non-disclosure of material facts may arise in at least three instances: "(1) the defendant makes representations but does not disclose facts which materially qualify the facts disclosed, or which render his disclosure likely to mislead; (2) the facts are known or accessible only to defendant, and defendant knows they are not known to or reasonably discoverable by the plaintiff; [or] (3) the defendant actively conceals discovery from the plaintiff." (*Warner Constr. Corp. v. City of Los Angeles* (1970) 2 Cal.3d 285, 294.)

In *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 311-312 (*Bigler*) the court wrote:

> Our Supreme Court has described the necessary relationship giving rise to a duty to disclose as a "transaction" between the plaintiff and the defendant: "In *transactions* which do not involve fiduciary or confidential relations, a cause of action for non-disclosure of material facts may arise in at least three instances: (1) the defendant makes representations but does not disclose facts which materially qualify the facts disclosed, or which render his disclosure likely to mislead; (2) the facts are known or accessible only to defendant, and defendant knows they are not known to or reasonably discoverable by the plaintiff; (3) the defendant actively conceals discovery from the plaintiff." (*Warner Constr. Corp. v. City of Los Angeles* (1970) 2 Cal.3d 285, 294 [85 Cal. Rptr. 444, 466 P.2d 996], italics added, fns. omitted.) Other cases have described the requisite relationship with the same term. (See, e.g., *Hoffman v. 162 North Wolfe LLC* (2014) 228 Cal.App.4t 1178, 1187 [175 Cal. Rptr. 3d 820] (*Hoffman*); *LiMandri*, *supra*, 52 Cal.App.4th at p. 337 ["As a matter of common sense, such a relationship can only come into being as a result of some sort of transaction between the parties."].) ***Such a transaction must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large.***

(Emphasis added.)

Defendant GM contends there is no direct relationship alleged between defendant GM and Plaintiffs because Plaintiffs did not purchase the subject Vehicle directly from GM. However, earlier in *Bigler*, the court cites with approval the following: " 'A duty to disclose facts arises only when the parties are in a relationship that gives rise to the duty, such as "'seller and buyer, employer and prospective employee, doctor and patient, ***or parties entering into any kind of contractual arrangement.***"" [Citation.]" (*Bigler*, *supra*, 7 Cal.App.5th at p. 311; emphasis added.) Here, although Plaintiffs do not allege they directly purchased the subject Vehicle from defendant GM, Plaintiffs have alleged the existence of a contractual agreement (express written warranty) with defendant GM and thus, a basis upon which a duty to disclose arises. (See FAC, ¶6 and Exh. A.)

Accordingly, defendant GM's demurrer to the fifth cause of action in Plaintiffs' FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for fraudulent concealment is OVERRULED.

B. Defendant GM's motion to strike punitive damages from Plaintiff's FAC is DENIED.

Defendant GM moves to strike the portion of Plaintiffs' prayer for relief that seeks punitive damages on the basis, among others, that Plaintiff has not (and cannot) state a claim for fraudulent concealment. However, in light of the court's ruling above, defendant GM's motion to strike punitive damages from Plaintiff's FAC is DENIED.

III. Order.

Defendant GM's demurrer to the fifth cause of action in Plaintiffs' FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for fraudulent concealment is OVERRULED.

Defendant GM's motion to strike punitive damages from Plaintiff's FAC is DENIED.

Calendar Line: 4-5
Case Name: *Michael Carpenter v. General Motors, LLC*
Case No.: 23CV416446

ORDER ON (1) GENERAL MOTORS LLC'S DEMURRER TO PLAINTIFF'S COMPLAINT; AND (2) GENERAL MOTORS LLC'S MOTION TO STRIKE PUNITIVE DAMAGES FROM PLAINTIFF'S COMPLAINT

I. Statement of Facts.

On 5 November 2019, plaintiff Michael Carpenter ("Plaintiff") leased a 2019 Chevrolet Silverado ("Subject Vehicle") for personal, family, and/or household purposes agreeing to pay $31,184.35 over the term of the lease. (Complaint, ¶5 and Exh. 1.)

Defendant General Motors, LLC ("GM") provided and Plaintiff received written warranties and other express and implied warranties with the lease of the Subject Vehicle. (Complaint, ¶¶7 – 8.)

Plaintiff has delivered the Subject Vehicle to defendant GM's authorized service and repair facilities, agents, and/or dealers on numerous occasions resulting in the Subject Vehicle being out of service by reason of repair and nonconformities. (Complaint, ¶¶10, 36, 37, 38.) Each time, Plaintiff notified defendant GM of the defects, malfunctions, misadjustments, and/or nonconformities with the Subject Vehicle and demanded that defendant GM or its representatives repair, adjust, and/or replace any necessary parts to conform to the applicable warranties. (Complaint, ¶11.) Each time, defendant GM or its representatives represented they could, would, and did conform the Subject Vehicle to the applicable warranties and make all necessary repairs, but defendant GM or its representatives failed to do so because the defects, malfunctions, misadjustments, and/or nonconformities continue to exist even after a reasonable number of attempts to repair were given. (Complaint, ¶¶12 and 39.)

Despite longstanding knowledge of a material defect, defendant GM failed to disclose to consumers, including Plaintiff, that certain 2019 Chevrolet Silverado vehicles, including the Subject Vehicle, are predisposed to defects in the automatic transmission that result in dangerous functional failures and impairment of use including, but not limited to, slipping, bucking, surging, jerking, harshly engaging and shifting, abnormal and premature internal wear, sudden lurching/ acceleration, delays in downshifting, delays in acceleration, and difficulty stopping ("Transmission Defect"). (Complaint, ¶15.) The Transmission Defect poses a safety hazard. (Complaint, ¶16.)

Defendant GM was aware of the Transmission Defect since at least early 2014 but have refused to disclose the Transmission Defect's existence, instead choosing to ignore the defect and only providing repairs to further mask the Transmission Defect. (Complaint, ¶18.) Defendants have not recalled vehicles affected by the Transmission Defect and have not provided an adequate repair. (Complaint ¶¶19 – 20.) Had Plaintiff known about the Transmission Defect prior to or at the time of [leasing], Plaintiff would not have [leased] the Subject Vehicle or would have paid substantially less for it. (Complaint, ¶23.)

Prior to [leasing] the Subject Vehicle, Plaintiff reviewed marketing materials and viewed television commercials touting the quality, durability and performance of Chevrolet vehicles and, in particular, the Silverado. (Complaint, ¶33.) The salesperson reiterated many of the same attributes and benefits of the Subject Vehicle. (*Id.*) At no time was Plaintiff told or

made aware, publicly or privately, that the Subject Vehicle was equipped with a Transmission Defect or problems associated therewith. (Complaint, ¶34.)

On 19 May 2023[2], Plaintiff filed a complaint against defendant GM asserting causes of action for:

(6) Breach of the Implied Warranty of Merchantability Under the Song-Beverly Act
(7) Breach of Express Warranty Under the Song-Beverly Act
(8) Fraudulent Concealment
(9) Violation of Civil Code Section 1750 et seq., the Consumer Legal Remedies Act ("CLRA")

On 28 July 2023, defendant GM filed the two motions now before the court: (1) a demurrer to the third and fourth causes of action of Plaintiff's FAC; and (2) a motion to strike punitive damages from Plaintiff's FAC.

II. Analysis.

C. Defendant GM's demurrer to Plaintiff's FAC.

3. Defendant GM's demurrer to the third and fourth causes of action on the ground that they are barred by the applicable statute of limitations is OVERRULED.

Defendant GM demurs to the third [fraudulent concealment] and fourth [violation of CLRA] causes of action on the ground that they are barred by the applicable statute of limitations. A court may sustain a demurrer on the ground of failure to state sufficient facts if "the complaint shows on its face the statute [of limitations] bars the action." (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315.) A demurrer is not sustainable on statute of limitations grounds if there is only a possibility that the cause of action is time-barred; the defense must be clearly and affirmatively apparent from the allegations of the pleading [and matters of which the court may properly take judicial notice]. (*Id.*, at pp. 1315-1316.)[3] When evaluating whether a claim is time-barred, the court must determine: (1) which statute of limitations applies, and (2) when the claim accrued. (*Id.*, at p. 1316.)

The limitations period for a claim predicated on fraud is three years from the date of "the discovery, by the aggrieved party, of the facts constituting the fraud." (Code Civ. Proc., § 338, subd. (d); see *Britton v. Girardi* (2015) 235 Cal.App.4th 721, 734.) "Any action brought under the specific provisions of Section 1770 [the CLRA] shall be commenced not more than

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[2] This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (Government Code, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil Rules of Court, Rule 3.714(b)(1)(C) and (b)(2)(C).)

[3] See also *Heshejin v. Rostami* (2020) 54 Cal.App.5th 984, 992-993: "'[A] demurrer based on an affirmative defense will be sustained only where the face of the complaint discloses that the action is necessarily barred by the defense.'" (*Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 191 [213 Cal. Rptr. 3d 850]; accord, *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191 [151 Cal. Rptr. 3d 827, 292 P.3d 871] [application on demurrer of affirmative defense of statute of limitations based on facts alleged in a complaint is a legal question subject to de novo review]; *Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189, 224 [115 Cal. Rptr. 3d 274] ["'It must appear clearly and affirmatively that, upon the face of the complaint [and matters of which the court may properly take judicial notice], the right of action is necessarily barred.'"].)

three years from the date of the commission of such method, act, or practice." (Civ. Code, §1783.)

Defendant GM apparently argues that the claims accrued on the date Plaintiff purchased the Subject Vehicle, 5 November 2019, and that the statute of limitations expired on 5 November 2022 and since Plaintiff did no commence his complaint until 19 May 2023, Plaintiff's claims are barred. However, this completely ignores the express language in the statute of limitations for fraud states that the cause of action accrues on the date of discovery of the facts constituting the fraud. Defendant GM contends Plaintiff is bound by his allegations that the Subject Vehicle contained or developed defects during the warranty period. Even so, the accrual does not commence upon the development of the defects. Rather, the cause of action accrues upon Plaintiff's discovery of the factual basis for fraud.

In fact, Plaintiff specifically pleads he could not have reasonably discovered the true, latent defective nature of the Transmission Defect until shortly before this litigation was commenced. (Complaint, ¶85.) Plaintiff also pleads how defendant GM actively concealed the Transmission Defect. (See Complaint, *passim*.) "When a plaintiff reasonably should have discovered facts for purposes of the accrual of a case of action or application of the delayed discovery rule is generally a question of fact, properly decided as a matter of law only if the evidence (or, in in this case, the allegations in the complaint and facts properly subject to judicial notice) can support only one reasonably conclusion." (*Broberg v. The Guardian Life Ins. Co. of America* (2009) 171 Cal.App.4th 912, 921.) Again, there are no allegations in the complaint which establish, as a matter of law, that Plaintiff discovered or should have discovered defendant GM's alleged fraudulent acts more than three years before he filed the instant action. Consequently, as Plaintiff maintains, the viability of the statute of limitations defense is not clearly and affirmatively apparent from the allegations of the complaint and, therefore, defendant GM's demurrer to the third and fourth causes of action on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] i.e., they are barred by the applicable statute of limitations, is OVERRULED.

4. Defendant GM's demurrer to the third cause of action [Fraudulent Concealment] of Plaintiff's complaint is OVERRULED.

Defendant GM argues Plaintiff has failed to plead the third cause of action for fraudulent concealment with the requisite particularity. The essential elements of a fraud cause of action based on concealment or nondisclosure are: (1) the defendant had a duty to disclose the concealed or suppressed fact to the plaintiff; (2) the defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, and (3) the plaintiff was damaged as a result. (*Jones v. ConocoPhillips* (2011) 198 Cal.App.4th 1187, 1198.)

As a general rule, each element in a fraud cause of action must be pleaded with specificity. (*Lazar v. Super. Ct.* (1996) 12 Cal.4th 631, 645; *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.) The court in *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645 stated that "this particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.' A plaintiff's burden in asserting a claim against a corporate employer is even greater. In such a case, the plaintiff must 'allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." Defendant GM contends that since it is a corporate employer,

Plaintiff must allege, among other things, names/ identities of individuals at GM who purportedly concealed material facts and their authority to speak and act on behalf of GM.

Though the particularity requirement generally mandates that a plaintiff plead facts establishing the aforementioned items, it is much more difficult to apply this rule in a case of non-disclosure because, as one court explained, "[h]ow does one show 'how' and 'by what means' something didn't happen, or 'when' it never happened, or 'where' it never happened?" (*Alfaro v. Community Housing Imp. System & Planning Ass'n., Inc.* (2009) 171 Cal.App.4th 1356, 1384.) One of the purposes of the specificity requirement is to provide "notice to the defendant, to furnish the defendant with certain definite charged which can be intelligently met." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216, internal quotations omitted.) However, when "it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy, even under strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party …." (*Id.*, at p. 217.) Such is the circumstance here, where defendant GM is alleged to possess exclusive and superior knowledge regarding the Transmission Defect in the Subject Vehicle and those like it. In this vein, the court agrees with Plaintiff that he has alleged the elements of this claim for concealment with the requisite specificity.

Defendant GM contends further that it did not owe Plaintiff a duty to disclose. "The general rule for liability for nondisclosure is that even if material facts are known to one party and not the other, failure to disclose those facts is not actionable fraud unless there is some fiduciary or confidential relationship giving rise to a duty to disclose." (*La Jolla Village Homeowners' Assn. v. Superior Court* (1989) 212 Cal.App.3d 1131, 1151.) To maintain a cause of action for fraud through nondisclosure or concealment of facts, a plaintiff must demonstrate that the defendant was under a legal duty to disclose those facts. (*OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 845.) "Where … there is no fiduciary relationship, the duty to disclose generally presupposes a relationship grounded in some sort of transaction between the parties. Thus, a duty to disclose may arise from the relationship between seller and buyer … or parties entering into any kind of contractual agreement." (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 337, internal citations omitted.) In transactions which do not involve fiduciary or confidential relations, a cause of action for non-disclosure of material facts may arise in at least three instances: "(1) the defendant makes representations but does not disclose facts which materially qualify the facts disclosed, or which render his disclosure likely to mislead; (2) the facts are known or accessible only to defendant, and defendant knows they are not known to or reasonably discoverable by the plaintiff; [or] (3) the defendant actively conceals discovery from the plaintiff." (*Warner Constr. Corp. v. City of Los Angeles* (1970) 2 Cal.3d 285, 294.)

In *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 311-312 (*Bigler*) the court wrote:

> Our Supreme Court has described the necessary relationship giving rise to a duty to disclose as a "transaction" between the plaintiff and the defendant: "In *transactions* which do not involve fiduciary or confidential relations, a cause of action for non-disclosure of material facts may arise in at least three instances: (1) the defendant makes representations but does not disclose facts which materially qualify the facts disclosed, or which render his disclosure likely to mislead; (2) the facts are known or accessible only to defendant, and defendant knows they are not known to or reasonably discoverable by the plaintiff; (3) the

> defendant actively conceals discovery from the plaintiff." (*Warner Constr. Corp. v. City of Los Angeles* (1970) 2 Cal.3d 285, 294 [85 Cal. Rptr. 444, 466 P.2d 996], italics added, fns. omitted.) Other cases have described the requisite relationship with the same term. (See, e.g., *Hoffman v. 162 North Wolfe LLC* (2014) 228 Cal.App.4t 1178, 1187 [175 Cal. Rptr. 3d 820] (*Hoffman*); *LiMandri*, *supra*, 52 Cal.App.4th at p. 337 ["As a matter of common sense, such a relationship can only come into being as a result of some sort of transaction between the parties."].) ***Such a transaction must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large.***

(Emphasis added.)

Defendant GM contends there is no direct relationship alleged between defendant GM and Plaintiff because Plaintiff did not purchase the subject Vehicle directly from GM. However, earlier in *Bigler*, the court cites with approval the following: " 'A duty to disclose facts arises only when the parties are in a relationship that gives rise to the duty, such as "'seller and buyer, employer and prospective employee, doctor and patient, ***or parties entering into any kind of contractual arrangement.***"'" [Citation.]" (*Bigler*, *supra*, 7 Cal.App.5th at p. 311; emphasis added.) Here, although Plaintiff does not allege he directly purchased/ leased the Subject Vehicle from defendant GM, Plaintiff has alleged the existence of a contractual agreement (express written warranty) with defendant GM and thus, a basis upon which a duty to disclose arises. (See Complaint, ¶¶7 – 8.)

Accordingly, defendant GM's demurrer to the third cause of action on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for fraudulent concealment is OVERRULED.

5. Defendant GM's demurrer to the fourth cause of action [violation of Civil Code section 1750 et seq.] of Plaintiff's complaint is SUSTAINED.

The Consumer Legal Remedies Act ("CLRA") targets a class of "unfair methods of competition and unfair or deceptive acts or practices" enumerated in Civil Code section 1770. (Civ. Code, § 1770, subd. (a).) "Any consumer who suffers any damage as a result of the use or employment by any person of" this unlawful conduct may bring an action for damages, restitution of property, and/or injunctive relief. (Civ. Code, § 1780, subd. (a).)

Because the CLRA is a statutory cause of action, we apply "the general rule that statutory causes of action must be pleaded with particularity." (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.) "[Where] recovery is based on a statutory cause of action, the plaintiff must set forth facts in his [or her] complaint sufficiently detailed and specific to support an inference that each of the statutory elements of liability is satisfied. General allegations are regarded as inadequate. [Citations.]" (*Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 5.)

"The CLRA has a unique prefiling notice requirement, set forth in CC § 1782, designed to promote early settlement of consumer suits." (Stern, BUS. & PROF. C. §17200 PRACTICE (The Rutter Group 2018) ¶10:55.) "CC § 1782 provides that "thirty days or more" prior to filing a CLRA action "for damages" the consumer "shall" notify the potential defendant "of the particular alleged violations of Section 1770" and demand that he or she "correct, repair, replace or otherwise rectify the goods or services alleged to be in violation of Section 1770." (*Id.* at ¶10:56.)

> The purpose of the notice requirement of section 1782 is to give the manufacturer or vendor sufficient notice of alleged defects to permit appropriate corrections or replacements. [Footnote.] The notice requirement commences the running of certain time constraints upon the manufacturer or vendor within which to comply with the corrective provisions. The clear intent of the act is to provide and facilitate pre-complaint settlements of consumer actions wherever possible and to establish a limited period during which such settlement may be accomplished. This clear purpose may only be accomplished by a literal application of the notice provisions.

(*Outboard Marine Corp. v. Superior Court* (1975) 52 Cal.App.3d 30, 40–41 (*Outboard*).)

"The 30-day letter is required as a condition precedent to maintaining an action for 'damages' under the CLRA. However, it may be waived by the defendant." (Stern, BUS. & PROF. C. §17200 PRACTICE (The Rutter Group 2018) ¶10:59 citing *Outboard*, *supra*, 52 Cal.App.3d at p. 41.) Defendant GM demurs to Plaintiff's fourth cause of action by arguing that Plaintiff has not alleged any facts demonstrating compliance with the prefiling notice requirement.

In opposition, Plaintiff directs the court to an exception to the prefiling notice requirement found at Civil Code section 1782, subdivision (d), which states:

> An ***action for injunctive relief*** brought under the specific provisions of Section 1770 may be commenced without compliance with subdivision (a). Not less than 30 days after the commencement of an action for injunctive relief, and after compliance with subdivision (a), the consumer may amend his or her complaint without leave of court to include a request for damages. The appropriate provisions of subdivision (b) or (c) shall be applicable if the complaint for injunctive relief is amended to request damages.

(Emphasis added.)

Plaintiff maintains his complaint only seeks injunctive relief (but admits he intends to amend as allowed by Civil Code section 1782, subdivision (d), to include a request for damages and that he has already sent the prefiling notice) and so he need not yet allege his actual compliance with the prefiling notice requirement. The court does not view an allegation of anticipated compliance to be sufficient.

In reviewing the complaint, although the fourth cause of action seeks injunctive relief, there is an allegation at paragraph 136 which states, "Plaintiff has suffered harm and damages due to or as a result of Defendants' acts or omissions, including but not limited to transaction costs and opportunity costs." From this allegation, the court reasonably views Plaintiff's fourth cause of action to seek damages. As such, Plaintiff was required to allege actual compliance with the prefiling notice requirement. Since he has not done so, defendant GM's demurrer to the fourth cause of action in Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for violation of Civil Code section 1750 et seq. is SUSTAINED with 10 days' leave to amend.

To the extent defendant GM demurs to the fourth cause of action on the ground that Plaintiff has not sufficiently alleged fraudulent concealment, the court adopts its earlier analysis above from the third cause of action.

D. Defendant GM's motion to strike punitive damages from Plaintiff's complaint is DENIED.

Defendant GM moves to strike the portion of Plaintiff's prayer for relief that seeks punitive damages on the basis, among others, that Plaintiff has not (and cannot) state a claim for fraudulent concealment. However, in light of the court's ruling above, defendant GM's motion to strike punitive damages from Plaintiff's complaint is DENIED.

III. Order.

Defendant GM's demurrer to the third and fourth causes of action on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] i.e., they are barred by the applicable statute of limitations, is OVERRULED.

Defendant GM's demurrer to the third cause of action on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for fraudulent concealment is OVERRULED.

Defendant GM's demurrer to the fourth cause of action in Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for violation of Civil Code section 1750 et seq., i.e., Plaintiff has not alleged compliance with the prefiling notice requirement, is SUSTAINED with 10 days' leave to amend.

Defendant GM's motion to strike punitive damages from Plaintiff's complaint is DENIED.

Calendar Line 9
Case Name: *Jeffery Leng v. FCA US LLC*
Case No.: 23CV417047

Plaintiff brings this motion to compel further responses by Defendant to Plaintiff's Request for Production of Documents (RFP), Set One, and for sanctions. Specifically, Plaintiff seeks further responses to RFP numbers one, five, seventeen, eighteen, nineteen, twenty-nine and thirty-three.

Defendant responds that they have supplemented their responses and have provided code-compliant responses to all RFP's, save two: numbers one and twenty-nine, which Defendant claims are "overly broad and unduly burdensome" and "seek production not relevant to the claims or defenses in this case."

Defendant further objects to a motion to compel being brought at this time because they claim that Plaintiff failed to meet and confer in good faith, as required by Code of Civil Procedure section 2031.310. Defendant claims, plaintiff served one formal, meet and confer letter to which the defendant responded in detail. Defendant wish to discuss further objections to initial responses. Rather than providing defending an opportunity to further discuss these issues, plaintiff filed the instant motion.

It appears based on the information of the court has reviewed that defendant is making reasonable effort to comply with the request for production. Defendant has provided supplemental responses to request for productions number 5, 17, 18, 19 and 33. Those responses appear to be code compliant. The remaining dispute centers around request for productions numbers 1 and 29. Defendant claims those requests are overbroad and not relevant, and has requested the opportunity to further meet and confer with Plaintiff to discuss these issues.

The court is not satisfied that the parties have sufficiently met and conferred to determine whether or not any compromise can be reached as to these requests. The motion to compel and for sanctions is DENIED without prejudice. The parties are ordered to meet and confer <u>in person</u> to discuss whether further responses can be provided to request for production numbers 1 and 29. If plaintiff has any objection to the supplemental responses that have been provided up to this point they can discuss these matters at the meet and confer. If the parties are unable to reach an agreement after the meet and confer process, this motion can be renewed by Plaintiff.