Kelley-Elwell v. General Motors, LLC 24CV07047
Hearing Date: April 15, 2026
Demurrer – Motion to Strike (TAC)

PROPOSED TENTATIVE

The court has previously detailed the history (and the parties) in two earlier orders addressing defendant's demurrers and motions to strike as to the first and second amended complaints. Suffice it to say that the court sustained the demurrer to the fifth cause of action in the second amended complaint, with leave to amend, and granted the motion to strike all references to punitive damages, also with leave to amend, in a detailed order issued on November 19, 2025, following an earlier detailed order issued on July 16, 2025, largely to the same effect. Plaintiff filed a third amended complaint on December 22, 2025.

Defendant again demurs to the fifth cause of action for fraudulent inducement/concealment, advancing three grounds: 1) the fifth cause of action is barred by the appropriate statute of limitations; 2) plaintiff has failed to allege a transactional relationship giving rise to a duty to disclose with regard to the fifth cause of action and 3) plaintiff has failed to state sufficient facts to establish all other elements of a fraudulent inducement/concealment cause of action. These were the same claims defendant advanced in its demurrer to the second amended complaint. As for the motion to strike, defendant asks the court to strike the request for punitive damages from the "Prayer from Relief" in subpart (g), which appears associated with the fifth cause of action (¶ 116) for fraudulent concealment/inducement (although the court cannot tell definitively). Plaintiff filed an untimely opposition to both motions on April 6, 2026 (plaintiff has nine court days to file opposition (Code Civ. Proc., § 1005, subd. (b)) – April 6 was seven (7) court days before the hearing, excluding the April 15 as the hearing date). Defendant filed a reply to each motion on April 8, 2026. All briefing has been reviewed.

The court strikes plaintiff's opposition as untimely. (*Guimei v. General Electric Co.* (2009) 172 Cal.App.4th 689, 703-704; see also Cal. Rules of Court, rule 3.1300(d) [court has discretion to refuse to consider late-filed papers in law and motion matters but must so indicate in the minutes or an order]; see also *Rancho Mirage county Club Homeowners Assn. v. Hazelbaker* (2016) 2 Cal.App.5th 252, 261-262 [trial court has broad discretion to reject or accept late-filed papers].) Plaintiff was clearly placed on notice of the earlier pleadings' deficiencies, given the court's detailed orders. Plaintiff has made no attempt to seek leave to file their opposition late, and has made no attempt to demonstrate good cause for having failed to adhere to the applicable deadline. (*Id.* at p. 262.) The court will not consider the untimely opposition under these circumstances.[1]

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[1] The court underscores this determination by referencing the admonishment it gave to plaintiff's counsel in the November 19, 2025, order (sustaining the demurrer and granting the

On the merits, the court detailed three problems with the fifth cause of action for fraudulent inducement/concealment in the second amended complaint in the November 19, 2025, order. First, the court sustained the demurrer to the fraudulent inducement/concealment cause of action because plaintiff had failed to provide specific facts to support an exception to the 3-year statute of limitations bar, most notably the discovery rule under the standards enunciated in *Fox v. Ethicon Endo-Surgery,* Inc. (2005) 35 Cal.4th 797, but also to any other exception identified in the operative pleading. Second, the court sustained the demurrer because plaintiff failed to allege as to the fifth cause of action a sufficient agency/transactional relationship between plaintiff and defendant that would establish a duty to disclose. The court found *Dhital v. Nissan North America, Inc*. (2023*)* 84 Cal.App.5th 828, 845 factually apposite and thus ultimately determinative. Plaintiff's allegations were insufficient to survive demurrer under *Dhital.* Finally, as to the motion to strike and punitive damages, the court indicated that plaintiff failed to plead the elements of Civil Code section 3294, subdivision (a), with any factual specificity, and, additionally, failed to make any allegations attendant to Civil Code section 3294, subdivision (b), and notably the need for a director or managing agent as discussed in *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 567-577.

The court has compared the third amended complaint with the second amended complaint, focusing on these identified defects. The court finds that plaintiff has (again) failed to satisfy the pleading allegation outlined in *Dhital*. *Dhital* concluded that plaintiff had established a sufficient basis for a duty to disclose for purposes of a fraudulent inducement/concealment cause of action when plaintiff alleged that he or she bought a vehicle from a manufacturer's authorized dealership, alleged the manufacturer issued an express warranty with the car, ***and alleged*** the manufacturer's authorized dealerships were the manufacturer's agents for purposes of sale. (*Id.* at p. 845.) The court's previous order made it clear that despite *Dhital* somewhat tortuous procedural history – the California Supreme Court granted review, held for a then pending case, and then remanded – the case remained published and thus binding on this court. (See generally *Moore v. American Honda Motor Co., Inc.* (N.D. Cal., Mar. 28, 2025, No. 5:23-CV-05011-BLF) 2025 WL 948114, at p. 7 [because the court in *Rattagan* v. California Court of Appeal's decision in *Dhital v. Nissan North America, Inc.*, *supra,* courts continue to treat *Dhital* as good law].)

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motion to strike the second amended complaint), as follows "The court grants leave to amend, but with one important condition. Many of the deficiencies noted above were identified in the court's earlier order sustaining the demurrer to the FAC; plaintiff has made no real or meaningful effort to remedy the problems previously identified. The court is not inclined to give plaintiff many more chances – it will not let this go on *ad infinitum*. Plaintiff is put on notice - correct the defects in the next round, for there may be no further chances offered. Plaintiff has 30 days from today's hearing to file an amended pleading." Plaintiff's late-filed opposition suggests it did not take the court's warning seriously (or with sufficient alacrity).

Here, plaintiff alleges as follows in Paragraph 6 of the third amended complaint: "On or about June 22, 2019, Plaintiff entered into a warranty contract with Defendant GM regarding a Certified Pre-Owned GMC Yukon, vehicle identification number 1GKS2AKC9GR255255 (hereafter 'Subject Vehicle' or 'Vehicle') which was manufactured and or distributed by Defendant GM." In new paragraph 7, plaintiff alleges that plaintiff "purchased the Subject Vehicle from Defendant GM's authorized retail dealership Rio Vista Chevrolet in Buellton, CA." This is substantively no different from the allegations contained in Paragraph 6 of the second amended complaint, which the court found inadequate. The old Paragraph 6 read as follows: "On or about June 22, 2019, Plaintiff entered into a warranty contract with Defendant GM regarding a Certified Pre-Owned 2016 GMC Yukon, vehicle identification number 1GKS2AKC9GR255255 (hereafter 'Subject Vehicle' or 'Vehicle'), which was manufactured and or distributed by Defendant GM. Subject Vehicle was purchased at Rio Vista Chevrolet in Buellton, CA (GM's authorized dealer)." The court found the latter insufficient under *Dhital*, in which plaintiff alleged that defendant was the authorized agent ***for the retail sale in order to establish a duty to disclose via a transactional relationship***. Plaintiff has not meaningfully changed the allegations from the second to the third amended complaint – the same defect essentially remains in the third amended complaint. Plaintiff thus (again) fails to adhere to the pleading requirements per *Dhital*.[2]

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[2] To be clear, the *Dhital* court expressly indicated the allegations in the operative pleading were sufficient to withstand demurrer (for purposes of establishing a transactional relationship, and thus a duty to disclose for fraudulent inducement/concealment), because plaintiff alleged, inter alia, that "Nissan's authorized dealerships are ***agents for purposes of the sale*** of Nissan vehicles to consumers." (*Dhital, supra*, at p. 844, emphasis added.) It is not difficult to surmise why *Dhital* required these additional allegations about the sale of vehicles, for it is that transaction (not general repair work) that establishes (through agency) the critical duty of disclosure to support a fraudulent inducement/concealment cause of action. Vague, general agency allegations (unrelated to the sale of the vehicle) are insufficient to do that. Plaintiff's allegations in the third amended pleading (as was true in the complaint, and in the first and second amended pleadings) fall short of *Dhital's* more exacting *(albeit still limited)* pleading standard.

The court hews closely to *Dhital*'s pleading standards for good reason. A number of federal district courts have cast doubt on *Dhital'*s agency analysis as a way to establish the necessary duty of disclosure for a fraudulent inducement/concealment cause of action, finding its agency determination too "cursory" or "unpersuasive, for the *Dhital* court failed to consider *Bigler-Engler v. Bret, Inc*. (2017) 7 Cal.App.5th 276, 310-311, which concluded that an agency relationship for a duty to disclose arises only "from direct dealings between the plaintiff and defendant; it cannot arise between the defendant and the public at large." For example, the court in *Antonov v. General Motors LLC* (C.D. Cal., Jan. 19, 2024, No. 823CV01593FWSMJR) 2024 WL 217825, at *11 after criticizing *Dhital* for these reasons, found "Plaintiff has not adequately alleged that the dealership where he purchased the Vehicle operated as Defendant's agent. Plaintiff alleges that he acquired the Vehicle 'from an authorized dealer and agent' of Defendant

The court in its earlier November 19, 2025, order expressly rejected plaintiff's claim that plaintiff does not have to plead a "transactional relationship" for the manufacturer to establish a duty to disclose as the predicate for a fraudulent inducement cause of action. (See, e.g., *Preciado v. Nissan North America, Inc.* (C.D. Cal., Aug. 17, 2023, No. 5:22-CV-02156-SSS-KKX) 2023 WL 12022648, at *4; see *Rodriguez v. Nissan North America, Inc.* (C.D. Cal., Jan. 30, 2023, No. EDCV221672MWFKK) 2023 WL 2683162, at *6 [". . . where a plaintiff fails to allege a transactional relationship with a defendant, a fraudulent concealment claim must fail"[].) Notably, the court cited to our high court's decision in *Rattagan, v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1 for this conclusion. *Rattagan* observed initially that "California case law similarly has viewed fraud by concealment on equal footing with fraud by affirmative misrepresentation." (*Id.* at p. 39). The *Rattagan* court then noted that the "required elements for fraudulent concealment are (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would have acted differently if the concealed or suppressed fact was known; and (5) plaintiff sustained damage as a result of the concealment or suppression of the material fact. [Citations.] A duty to disclose a material fact can arise if (1) it is imposed by statute; (2) the defendant is acting as plaintiff's fiduciary or is in some other confidential relationship with plaintiff that imposes a disclosure duty under the circumstances; (3) the material facts are known or accessible only to defendant, and defendant knows those facts are not known or reasonably discoverable by plaintiff (i.e., exclusive knowledge); (4) the defendant makes representations but fails to disclose other facts that materially qualify the facts disclosed or render the disclosure misleading (i.e., partial concealment); or (5) defendant actively conceals discovery of material fact from plaintiff

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and the dealership was 'authorized by [Defendant] to do business in the State of California on behalf of [Defendant].' [] This '[c]onclusory allegation[ ] of agency,' without additional supporting facts, is "insufficient to establish an agency relationship for pleading purposes." (*Id.* at p. 11, and cases cited therein; see also *Kaakejian v. General Motors, LLC* (E.D. Cal., July 23, 2024, No. 1:24-CV-0011 JLT CDB) 2024 WL 3508681, at *7 [courts have determined that such general agency allegations fail to show a dealership was an "agent" of General Motors, and appearing as legal conclusions cast as factual allegations"]; *Salvestrini v. General Motors*, 2023 WL 11795666, at *9 (S.D. Cal. Dec. 13, 2023) [observing that "a number of courts have held that automobile dealerships, even manufacturer "authorized" ones, are not necessarily agents of automobile manufacturers" and citing cases].) Under these authorities, plaintiff's generic allegations fail; *Dhital* for its part offered plaintiff a viable lifeline to avoid pretrial challenges (as it offers an opportunity to provide additional facts, focusing on the sale of the vehicle). The need for this additional factual requirement per *Dhital* is bolstered by our high court's recent observations that California courts generally apply the same specificity for fraud when evaluating "the factual underpinnings of a fraudulent concealment claim at the pleading stage." (*Rattagan, supra*, 17 Cal.5th at p. 43.) Despite this, plaintiff continues to stubbornly advance the same generic agency allegations, without mention of the sale of his vehicle. *Dhital,* despite its criticism as detailed above, is the pleading polestar; plaintiff continues to ignore its pleading specifics, despite numerous opportunities given by this court to correct the deficiencies.

(i.e., active concealment) [Citations]]. ***Circumstances (3), (4), and (5) presuppose a preexisting relationship between the parties, such as "between seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual agreement. [Citation.] All of these relationships are created by transactions between parties from which a duty to disclose facts material to the transaction arises under certain circumstances . . . . 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.*** (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 312 []." (*Rattagan, supra*, 17 Cal.5th at pp. 40-41.) *Rattagan* expressly distinguished *Dhital* as follows: "Rattagan's tort claims are, of course, based on alleged conduct committed during the contractual relationship but purportedly outside the parties' chosen rights and obligation. This court has granted review in two other cases – [one of which was *Dhital*] – both of which involves claims of fraudulent inducement by concealment as well as the potential interplay with remedies available under the [Song Beverly Act]. We do not address these issues here." (*Rattagan, supra,* at p. 41, fn. 12.)

It seems clear from *Rattagan* that a transactional relationship is the *sine qua non* of a duty to disclose for purposes of fraudulent inducement/concealment, at least when plaintiff claims defendant knows material facts which are only accessible to defendant; and/or defendant makes representations but fails to disclose other facts that materially qualify the facts disclosed or render the disclosure misleading (i.e., partial concealment). Plaintiff does not allege that defendant had a statutory obligation or fiduciary obligation to disclose. Further, *Rattagan* expressly supported the viability of *Dhital,* and thus its pleading requirements as to what constitutes a transactional relationship. *Dhital i*s factually similar to the facts here (i.e., the plaintiff purchased the vehicle from defendant's dealer, who was the authorized agent of the manufacturer ***with regard to the sale of the vehicle***, creating an agency relationship) and thus remains dispositive. It follows that in order for plaintiff's complaint to survive demurrer, plaintiff must bring the allegations within the ambit of *Dhital,* which he (again) has failed to do, despite numerous opportunities. *Dhital* is still cited since this court's last order. (See, e.g. *Marlene Wagman-Geller, v. Wells Fargo Bank, N.A, et al,* (S.D. Cal., Mar. 30, 2026, No. 25-CV-824-BJC-SBC) 2026 WL 899430, at *5 [citing Dhital favorably]; Alvarez, e*t al., v. FCA US, LLC* (N.D. Cal., Mar. 16, 2026, No. 24-CV-08782-PCP) 2026 WL 734527, at *4 [same]; *Avila v. Ford Motor Company* (N.D. Cal., Feb. 24, 2026, No. 22-CV-00542-PCP) 2026 WL 508364, at *3 [numerous federal and California state decisions assume that a manufacturer that sells its vehicles through independent dealers has a duty to disclose material information, citing *Dhital* favorably].)

Accordingly, the court sustains defendant's demurrer without leave to amend. Plaintiff has failed to adequately allege a transactional relationship sufficient to establish defendant's duty to disclose for purposes of the fraudulent inducement/concealment cause of action. (See, e.g., Code of Civ. Proc., 430.41, subd. (e)(1) [a pleading involving a demurrer shall not be amended more than three times, absent an offer to the trial court to show there is a reasonable possibility the defect can be cured to state a cause of action].)

The court also grants defendant's motion to strike all references to the punitive damages in the complaint, and notably from the "Prayer for Relief," subpart (g). There seems to be some uncertainty whether plaintiff is seeking punitive damages as to only the fifth cause of action or all other causes of action, so this determination removes punitive damages from the complaint *entirely*. Even if the court assumes arguendo that plaintiff has alleged malice, fraud, or oppression pursuant to Civil Code section 3294, subdivision (a), plaintiff has failed to allege specific facts to support liability under Civil Code section subdivision (b). Under this latter provision, " [a]n employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation."

Plaintiff in paragraph 116 makes the following perfunctory allegations: "All acts of corporate employees as alleged herein, were authorized or ratified by GM's officers, directors or managing agents, including approving GM's marketing material and product disclosures, which failed to disclose the Transmission Defect and which were relied upon by Plaintiffs, thereby inducing them into purchasing the Vehicle." These allegations are insufficient – they are boilerplate, without factual specificity or nuance. (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 576–577.) While there is no requirement that the specific corporate officer or managing agent be identified in the operative pleading, plaintiff must allege that the corporate officer or managing agent exercised substantial discretionary authority over significant aspects of the corporation's business, and that clearly has not been accomplished. (*White,* at pp. 576-577; see *Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1221 [quoting *White*]; *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 428 [same].) Further, when punitive damages are sought against a corporate employer, ***facts*** must be alleged to show advance knowledge, authorization or ratification. (*Grieves v. Superior Court, supra,* 157 Cal.App.3d at p. 168; see also *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29.) The allegations are steeped exclusively in conclusory descriptions that do no more than track the statutory language, which is insufficient to meet the exact pleading requirements for punitive damages for corporate employers.

The court grants the motion to strike all references to punitive damages without leave to amend. (Code Civ. Proc., § 435.5, subd. (e)(1) [a pleading involving a motion to strike shall not be amended more than three times absent an offer that additional facts exist to show a reasonable possibility the defect can be cured].)

Summary of Conclusions

- The court strikes plaintiff’s oppositions to the demurrer and motion to strike as untimely.
- The court sustains the demurrer to the fifth cause of action for fraudulent inducement, without leave to amend.
- The court grants the motion to strike ***all*** references to punitive damages from the third amended pleading, without leave to amend.
- Defendant is directed to provide a proposed order for signature. Defendant is directed to file an answer within 30 days of the hearing.