PARTIES/ATTORNEYS

Plaintiff	Luis Rivera	Strategic Legal Practices, APC Tionna Grace Carvalho James L. Carroll
Defendant	General Motors LLC	Erskine Law Group, PC Mary Arens McBride, Esq. Xylon Quezada, Esq.

RECOMMENDATION

For all the reasons discussed below, the demurrer to the first amended complaint is sustained with leave to amend. Plaintiffs have failed to sufficiently allege a transactional relationship with defendant, or that the seller had special "reason to expect" that the fraud will be passed onto subsequent purchasers. As such, plaintiffs have not alleged a duty to disclose, a necessary element in a fraudulent concealment cause of action. The motion to strike is granted with leave to amend commensurate with the demurrer.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)

According to the FAC, on September 12, 2020, plaintiff Luis Rivera entered into a warranty contract with defendant General Motors for a Certified Pre-Owned 2017 GMC Sierra. On or about January 5, 2023, plaintiff presented the Subject Vehicle to Defendant's authorized repair facility with various concerns, including transmission (jerking) concerns. Plaintiff has experienced symptoms of the Vehicle's defects. Plaintiff has experienced: 1) the Vehicle shuddering and jerking between 50 – 60 MPH, 2) the grill shutter malfunctioning, 3) the radio screen going black and losing all functionality. On April 3, 2024, plaintiff filed his first amended complaint for: (1) failure to replace the vehicle or make restitution (Civ. Code, § 1793.2, subd. (d)); (2) failure to conform vehicle within 30 days (Civ. Code, § 1793.2, subd. (b)); (3) failure to make available to its authorized service facility sufficient literature and

parts to effect repairs during the express warranty period (Civ. Code, §1793.2, subd. (a)(3)); (4) breach of the implied warranty of merchantability; and (5) fraudulent inducement-concealment.

GM filed a demurrer on May 15, 2024 to the fifth cause of action for fraudulent inducement-concealment on the basis that it is barred by the applicable statute of limitations, it fails to state sufficient facts to support the claim, and it fails to allege a transactional relationship giving rise to a duty to disclose. Opposition was filed on July 2, 2024. Reply was filed on July 8, 2024. All documents have been reviewed.

1. Statute of Limitations

The fifth cause of action is for "fraudulent inducement-concealment." Plaintiffs allege that GM, by intentionally concealing facts about the defective transmission, fraudulently induced them to purchase the vehicle. GM argues this cause of action is barred by the statute of limitations for fraud under Code of Civil Procedure section 338 subdivision (d), which states that "[a]n action for relief on the ground of fraud or mistake [must be brought within three years]. The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." This latter provision is colloquially referred to as the delayed discovery rule.

GM first argues that because plaintiffs purchased or leased the vehicle on December 12, 2020, they had to file their claim no later than December 11, 2023. This argument got very little briefing and for good reason. It is simply not dispositive,[1] which GM must have known.

GM's argument that the delayed discovery rule does not apply fares no better. GM argues that plaintiffs "concede that he discovered the alleged "defects" during the "warranty period" (id.); therefore, they cannot sustain their burden of demonstrating that they did not discover the actions giving rise to their claim within the applicable limitations period." This argument misconstrues the nature of the delayed discovery rule.

"[S]tatutes of limitation do not begin to run until a cause of action accrues. [¶] Generally speaking, a cause of action accrues at the time when the cause of action is complete with all of its elements. An important exception to the general rule of accrual is the discovery rule, which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action. [¶] A plaintiff has reason to discover a cause of action when he or she has reason at least to suspect a factual basis for its elements. Under the discovery rule, suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining

[1] GM's counsel is experienced in this subject matter.

elements, will generally trigger the statute of limitations period." (*Fox v. Ethicon Endo–Surgery, Inc. (*2005) 35 Cal.4th 797, 806–807 (*Fox*) [cleaned up].)

"A plaintiff need not be aware of the specific 'facts' necessary to establish the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, [he or] she must decide whether to file suit or sit on [his or] her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; [the plaintiff] cannot wait for the facts to find [him or] her." (*Jolly v. Eli Lilly & Co*. (1988) 44 Cal.3d 1103, 1111 (*Jolly*),.) Thus, "[t]he discovery rule only delays accrual until the plaintiff has, or should have, inquiry notice of the cause of action." (*Fox, supra*, 35 Cal.4th at p. 807.) "[I]n order to employ the discovery rule to delay accrual of a cause of action, a potential plaintiff who suspects that an injury has been wrongfully caused must conduct a reasonable investigation of all potential causes of that injury. If such an investigation would have disclosed a factual basis for a cause of action, the statute of limitations begins to run on that cause of action when the investigation would have brought such information to light. In order to adequately allege facts supporting a theory of delayed discovery, the plaintiff must plead that, despite diligent investigation of the circumstances of the injury, he or she could not have reasonably discovered facts supporting the cause of action within the applicable statute of limitations period." (*Fox, supra*, 35 Cal.4th at pp. 808–809.)

To rely on the discovery rule for delayed accrual of a cause of action, "[a] plaintiff whose complaint shows on face that the claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence. … In assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to show diligence; conclusory allegations will not withstand demurrer." (*Doe v. Roman Catholic Bishop of Sacramento* (2010) 189 Cal.App.4th 1423, 1430.)

Here, plaintiffs have adequately alleged delayed discovery and reasonable diligence—at least for pleading purposes. Plaintiffs allege they presented the vehicle to GM's authorized repair facilities on January 5, 2023 with complaints relating to the vehicle's transmission. (FAC ¶¶ 23-24.) The repair facilities performed performed warranty repairs. (*Id.*) Notably, the repair facility *represented that the vehicle had been repaired*. (*Id.* ¶23.) This representation fundamentally concealed the continuing defect. This attempt was made on January 5, 2023, just about 18 months before the complaint was filed on May 15, 2024. Plaintiffs discovered Defendant's wrongful conduct alleged herein *shortly before the filing of the complaint*. (*Id.* ¶ 32.) The allegations of delayed discovery are sufficient to withstand demurrer.

The demurrer based on statute of limitations is overruled.

2. Failure to Plead Fraud with Requisite Specificity

Fraud in the inducement occurs when "the promisor knows what he is signing but his consent is induced by fraud, mutual assent is present and a contract is formed, which, by reason of the fraud, is voidable." (*Rosenthal v. Great Western Fin. Securities Corp*. (1996) 14 Cal.4th 394, 402.) For a fraud in the inducement claim, which is a subcategory of a general fraud cause of action, Plaintiffs must allege the following: (a) fraudulent representation; (b) to induce contract or forbearance; and (c) that is not a part of the contract. (*A.A. Baxter Corp. v. Colt Industries* (1970) 10 Cal.App.3d 144, 153-54; see also *Small v. Fritz Companies, Inc*. (2003) 30 Cal.4th 167, 174.) A fraudulent concealment claim requires a plaintiff to plead the following: (a) defendant concealed or suppressed a material fact; (b) defendant was under a duty to disclose the fact to the plaintiff; (c) defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff; (d) plaintiff was unaware of the fact and would not have acted in the same manner knowing of the concealed fact; (e) causation; and (f) damages. (*Kaldenbach v. Mutual of Omaha Life Ins. Co*. (2009) 178 Cal.App.4th 830, 850; *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 868; see also Civ. Code § 1710.)

The particularity requirement for a fraud-based claim necessitates pleading facts that show how, when, where, to whom, and by what means the representations were tendered. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) As with other fraud-based claims, the plaintiff must state particular allegations with regards to corporate defendants, such as "the names of the persons who made the misrepresentations, their authority to speak for the corporation, to whom they spoke, what they said or wrote, and when it was said or written." (*Id.*; *Perlas v. GMAC Mortgage, LLC* (2010) 187 Cal.App.4th 429, 434.) One purpose of the specificity requirement is to 'furnish the defendant with certain definite charges which can be intelligently met.' " (*Committee on Children's Television, Inc. v. General Foods Corp.* (1985) 35 Cal.3d 197, 216.)

a. Generally

GM argues plaintiffs failed to allege (i) the identity of the individuals at GM who purportedly concealed material facts or made untrue representations about his Sierra, (ii) their authority to speak and act on behalf of GM, (iii) GM's knowledge about alleged defects in Plaintiff's Sierra at the time of purchase, (iv) any interactions with GM before or during the purchase of the Sierra, or (v) GM's intent to induce reliance by Plaintiffs to purchase the specific Sierra at issue.[2]

[2] The court will not entertain any new arguments introduced in reply, such as whether plaintiff GM knew about the alleged defect in the Subject Vehicle that Plaintiff says GM should have disclosed and whether plaintiffs adequately pled damages. As the moving party, GM had the opportunity to frame the issues in this motion. A point raised for

The specificity requirement is relaxed "when it appears from the nature of the allegations that the defendant must necessarily possess full information," or "when the facts lie more in the knowledge of the opposing parties." (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384-85, internal quotations omitted; *Tarmann v. State Farm Mutual Auto-Mobile Ins. Co.* (1992) 2 Cal.App.4th 153, 158.)

Here, the details as to the identity of the individuals at GM who purportedly concealed material facts and their authority to speak on behalf of GM is uniquely within GM's knowledge and plaintiffs specifically allege that superior knowledge. (FAC, ¶¶ 65, 73a-73b.) Plaintiffs also allege (generally) what sources of information it considered in making its decision to purchase the vehicle, including contact with sales representatives, advertisements, and marketing materials. (FAC, ¶¶ 8-9, 66.) The details are properly the subject of discovery. (*Alfaro* at 1385.) GM's knowledge about the defect is alleged at paragraphs 64 (e.g., the transmission defect), along with the source of the knowledge at paragraph 65 (testing data, early consumer complaints, warranty data, testing conducted in response to the complaints, other internal information).

The demurrer on this basis is overruled.

b. Duty to Disclose

"There are 'four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiffs; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiffs; (3) when the defendant actively conceals a material fact from the plaintiffs; and (4) when the defendant makes partial representations but also suppresses some material facts.'" (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336 [citation omitted]; *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 310–311].)

Where, as here, a fiduciary relationship does not exist between the parties, only the latter three circumstances may apply. These three circumstances, however, "presuppose[ ] the existence of some other relationship between the plaintiff and defendant in which a duty to disclose can arise." (*Bigler-Engler v. Breg, Inc., supra*, 7 Cal.App.5th at 311 at pp. 336–337.) "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,

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the first time in a reply brief will not be considered unless good reason is shown for the failure to present it in the opening brief. (*Bains v. Moores* (2009) 172 Cal.App.4th 445, 459, fn. 18.)

employer and prospective employee, doctor and patient, or parties entering into any kind of contractual arrangement." (*Shin v. Kong* (2000) 80 Cal.App.4th 498, 509 [cleaned up].)

A duty to disclose may arise as a result of a transaction between the parties. However, the 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* at 312 [manufacturing defendant sold medical devices to the doctor defendant several years before the plaintiff rented one of the manufacture's devices from the doctor's office; manufacturing defendant had no contact with the plaintiff, did not know plaintiff was a potential user of their products or used the device, and did not derive any direct monetary benefit from the plaintiff's rental of the device].)

GM argues that plaintiff has failed to allege a transactional relationship. The court in *Dhital v. Nissan N. Am., Inc.* (2022) 84 Cal.App.5th 828, 843-44 (review granted) concluded that the allegations that plaintiffs bought the car from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's authorized dealerships were the manufacturer's agents for the purpose of sale were sufficient to support the existence of a buyer-seller relationship between the parties. (*Dhital v. Nissan North America, Inc., supra*, 84 Cal.App.5th at 845.) In light of those allegations, the court "decline[d] to hold that plaintiffs' claim was barred on the ground there was no relationship requiring Nissan to disclose known defects." (*Id.*) Plaintiffs' allegations allege no such relationship, although they could easily do so in an amendment. A sufficient relationship has not been alleged under this authority.

Plaintiff argues that transactional privity is not required: ""Under California law, a vendor has a duty to disclose material facts not only to immediate purchasers, but also to *subsequent purchasers* when the vendor has reason to expect that the item will be resold." (*OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 851 [emphasis in original].) However, the seller's duty to disclose to subsequent purchasers is limited: the plaintiff must show that the seller had special "reason to expect" that the fraud will be passed onto subsequent purchasers. (*Geernaert v. Mitchell* (2007) 31 Cal. App. 4th 601, 607-08.) Mere foreseeability is insufficient. (*Id.* at 607.) In determining whether the seller had "reason to expect" that the fraud will be passed onto subsequent purchasers, courts generally consider two factors: "(1) the extent of the seller's knowledge of resale to a particular person or class of persons and (2) the likelihood that the particular misrepresentation (or concealment) would be passed on to them." (*Id.* at 608.) "A seller's liability under this standard becomes more problematic and difficult to establish with each intervening resale and with each passing year between the occurrence of the original fraud and the lawsuit." (*Id.*)

Here, the FAC contains no allegations suggesting that GMC had reason to expect that any fraud it failed to disclose would be passed onto subsequent purchasers. This case is unlike *Guzzetta v. Ford Motor Company* (C.D. Cal.) 2023 WL 5207429, at *11, in which the court indicated there were satisfactory allegations, as follows: : "Plaintiffs are further informed, believe, and thereon allege that Defendant distributes (and at all relevant times herein distributed) the motor vehicles it manufactures for sale to certain dealerships. Said dealerships, including the dealership which Plaintiff purchased the Vehicle from, have purchased a license from Defendant to utilize, display, and profit from Defendant's branding and trademarks. By distributing Defendant's vehicles to such dealerships, including the Vehicle, and thus placing Defendant's vehicles into the stream of commerce for purchase and/or lease by consumers like Plaintiff, Defendant had a duty to disclose the existence, nature, and scope of the latent, material engine safety defect to Plaintiff as herein described." The allegations in *Guzzetta* are not present here. Plaintiff's argument is therefore not persuasive.

For these reasons, the demurrer to the second cause of for fraudulent inducement-concealment must be sustained with leave to amend.