
TENTATIVE RULING

For all the reasons discussed below, the demurrer is sustained. The accrual date for purposes of the statute of limitations is insufficiently alleged. Plaintiff has insufficiently alleged the actual defects the vehicle suffered from that impaired plaintiff's use and whether they are of the same nature as those identified as being associated with the Transmission Defect. The demurrer is otherwise overruled.

The motion to strike is moot.

Plaintiff has 30 days from today's date to file an amended pleading. In addition, the court directs plaintiff to include a "redlined" version, identifying all additions and deletions of material, as an appendix to the amended complaint.

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 first amended complaint, on December 17, 2020, plaintiff Erika Carbajal entered into a warranty contract with defendant General Motors regarding a 2021 Chevrolet Tahoe. The vehicle was purchased at Sunset Auto Center, a GM authorized dealer. The vehicle allegedly suffers from "Transmission Defects." The complaint alleges statutory violations of the Song Beverly Act, as well as a cause of action for fraudulent inducement-concealment.

Defendant demurs to the fifth cause of action for fraudulent inducement-concealment, asserting that it is barred by the statute of limitations and that it insufficiently pled. Opposition and reply have been filed. All briefing has been reviewed.

Statute of Limitations

Plaintiff alleges that GM, by intentionally concealing facts about the defective transmission, fraudulently induced her 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].”

GM first argues that because plaintiff purchased or leased the vehicle on December 17, 2020, she had to file her claim no later than December 17, 2023. Since the complaint was filed on October 1, 2024, GM argues, it is barred. The court rejects this theory. As GM knows, section 338 subdivision (d) states: “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.

“[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 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.) 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, plaintiff argues “GM’s fraudulent inducement-concealment occurred, not only at the time of sale, but **every time** that Plaintiff presented Subject Vehicle to GM’s dealership(s) with concerns related to the Transmission Defect and up through the time that Plaintiff filed his Complaint.” (Opposition, p. 3, ll. 20-24.) She points to the allegations in paragraph 24 of the FAC to support this argument. However, that paragraph contains little information of use. It states: “Plaintiff continues to experience symptoms of the Vehicle’s Transmission Defect. Plaintiff experienced: 1) infotainment screen going black, 2) unable to use reverse feature, 3) radio glitching. Subject Vehicle’s defects are a safety hazard.” This allegation reveals no information on the dates the vehicle was presented to GM’s authorized facilities, or whether any representations were made regarding whether the defect was repaired at that time. In other words, that allegation fails to allege both the time and manner of discovery and the inability to have made earlier discovery despite reasonable diligence.¹

Plaintiff also pleads that the repair doctrine applies to toll the statute of limitations for a fraud cause of action.² The tolling during a period of repair rests upon the same basis as estoppel, including reliance based on words or actions of the defendant that repairs will be made. (*A & B Painting & Drywall, Inc. v. Superior Court* (1994) 25 Cal.App.4th 349, 355.) It follows that a specific factual predicate must be pleaded to support the repair doctrine. As plaintiff has not pleaded her repair history with any factual specificity, this theory fails to toll the statute.

Plaintiff’s cursory reference to “the class action tolling” (described as the “*American Pipe* tolling rule”) is equally ineffectual. The gist of the “*American Pipe* tolling rule” (which derives from *American Pipe & Construction Co. v. Utah* (1974) 414 U.S. 538) is that if “class certification is denied, the statute of

¹ Plaintiff alleges in paragraph 29: “Plaintiff discovered Defendant’s wrongful conduct alleged herein shortly before the filing of the complaint, as the Vehicle continued to exhibit symptoms of defects following GM’s unsuccessful attempts to repair them.” However, without any factual allegations of the vehicle’s repair history, this allegation is too conclusory.

² Civil Code section 1795.6(b) is the source of the repair doctrine tolling doctrine, and its language focuses on expiration of the warranty period. “As the plain language of the provision makes clear, Section 1795.6 addresses extending the ‘warranty period,’ not tolling the statute of limitations during the time of repair.” (*Vanella v. Ford Motor Company* (N.D. Cal., Feb. 24, 2020, No. 3:19-CV-07956-WHO) 2020 WL 887975, at *5, citations omitted [assuming arguendo that the repair doctrine does more than extend the warranty but extends the statute of limitations].) The court will assume without deciding for our immediate purposes that the repair doctrine at least in theory applies to toll the statute of limitations for fraud.

limitations is tolled from the time of the commencement of the suit to the time of denial of certification for all purported members of the class who either merely make timely motions to intervene in the surviving individual actions or who timely filed their individual actions.” (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1119.) *Jolly* concluded that the *American Pipe* tolling rule is inapplicable when the earlier class action complaint did not sufficiently put any of the defendants on notice of the substance and nature of an individual’s claims. (*Id.* at p. 1125-1126 [*American Pipe* tolling rule does not apply if class action and individual claims were not duplicative].) Plaintiff has failed to allege any prior class action certification proceedings that would have placed defendant on notice of plaintiff’s individuals claims in order to receive the benefit of the class action tolling rule established by *American Pipe*. (See, e.g., *Hildebrandt v. Staples the Officer Superstore, LLC* (2020) 58 Cal.App.5th 128, 136.) Nor does she defend this allegation in opposition. Plaintiff should address at the hearing whether *American Pipe* actually applies here. If it does not, the theory should be removed from any future pleading.

The demurrer to the fifth cause of action based on statute of limitations is sustained with leave to amend.

Insufficient Pleading

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 concealed or suppressed fact was known; and (5) plaintiff sustained damage as a result of the concealment or suppression of the material fact. (*Rattagan v. Uber Technologies* (2024) 17 Cal.5th 1, 40.)

1. Specificity

Defendant argues that plaintiff failed to adequately allege fraudulent concealment with sufficient specificity because she has not alleged (i) the identity of the individuals at GM who purportedly concealed facts or made untrue representations about plaintiff’s vehicle, (ii) GM’s knowledge about alleged defects in plaintiff’s vehicle at the time of lease or purchase, (iii) GM’s intent to defraud and induce reliance by plaintiff to buy the specific vehicle at issue, or (iv) that she suffered any damages due to the alleged concealment.

As for whether plaintiff must identify the individual who concealed the facts about the vehicle, presumably defendant relies on the general rule for pleading fraud against a corporation, which requires a plaintiff to allege the identity of the speaker, their authority, to whom they spoke, what they said, and when it was said. (See, e.g., *Tarmann v. State Farm Mut. Auto Ins. Co.* (1991) 2 Cal.App.4th 153, 157.)

However, the Supreme Court's recent decision in *Rattagan* clarifies in fraudulent concealment claims, “the focus of inquiry shifts to the unique elements of the claim. [Citations.]” (*Rattagan, supra*, 17 Cal.5th at p. 43.) Thus, in a concealment claim based on a defendant's duty to disclose arising from the defendant's exclusive knowledge, the complaint must specifically allege “(1) the content of the omitted facts, (2) defendant's awareness of the materiality of those facts, (3) the inaccessibility of the facts to plaintiff, (4) the general point at which the omitted facts should or could have been revealed, and (5) justifiable and actual reliance, either through action or forbearance, based on the defendant's omission.” (*Id.* at p. 43-44.) Here, the court is satisfied that plaintiff has adequately alleged each element required to plead a fraudulent concealment claim, with the sole exception of the actual defects suffered by plaintiff's vehicle that gave rise to her complaint.

In support of the fifth cause of action, plaintiff alleges the following: on or about March 16, 2022, plaintiff entered a warranty contract with defendant regarding the vehicle, which was manufactured and distributed by defendant. (FAC ¶ 6.) The warranty contract contained various warranties, including but not limited to, the bumper-to-bumper, powertrain, and emissions warranties. (*Id.* at ¶ 7.) Defects and nonconformities to warranty manifested themselves within the applicable express warranty period, including but not limited to, engine defects, transmission defects, and electrical defects. (*Id.* at ¶ 11.) Defendant failed to either promptly replace the vehicle or to promptly make restitution in accordance with the Song-Beverly Act. (*Id.* at ¶ 15.) Defendant concealed a known defect from plaintiff. (*Id.* at ¶ 54.) The 10-speed Transmission had one or more defects that can result in (1) hesitation or delayed acceleration, (2) harsh or hard shifting, (3) jerking, (4) shuddering, or juddering; (5) surging and/or inability to control the vehicle's speed, acceleration, or deceleration, (6) symptoms requiring reprogramming of the transmission control module (“TCM”) and/or powertrain control module (“PCM”), (7) failure or replacement of the transmission (“Transmission Defect”). (*Id.* at ¶ 55.) The Transmission Defects causes unsafe conditions, including but not limited to, the inability to control the speed and acceleration/deceleration of the vehicle. (*Id.* at ¶ 55.)

Plaintiff further alleges that prior to the sale of the vehicle, defendant knew, or should have known, about the Transmission Defect through its exclusive knowledge of non-public internal data about the Transmission Defect through means including, but not limited to, pre-production and post-production testing data; early consumer complaints about the Transmission 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, amongst other sources of internal information. (FAC, ¶ 56.) Plaintiff alleges that defendant and its agents actively concealed the Transmission Defect and failed to disclose the defect to plaintiff at the time of purchase of the vehicle or thereafter. (FAC, ¶ 58.) Plaintiff alleges that defendant knew about, and concealed, the Transmission Defect in the vehicle from plaintiff, along with its attendant dangerous safety and drivability problems, at the time of sale, repair, and thereafter. (*Id.* at ¶ 59.)

Plaintiff further alleges that if she knew about these defects at the time of sale, she would not have purchased the vehicle. (FAC, ¶ 58.) Plaintiff relied on defendant and its agent's omissions and/or concealment of the Transmission Defect. (*Id.* at ¶ 58.) As such, plaintiff alleges that she was harmed and suffered actual damage in that the vehicle's transmission was not suitable for its intended use and would fail prematurely (FAC, ¶ 59) and exposes her to the risk of liability, accident and injury. (*Id.* at ¶ 64.) Defendant had superior and exclusive knowledge of the Transmission Defect. (*Id.* at ¶ 60.)

What is missing from Plaintiff's allegations, however, is any specificity as to the actual defects the vehicle suffered from that impaired plaintiff's use. Here, plaintiff alleges "Plaintiff continues to experience symptoms of the Vehicle's Transmission Defect. Plaintiff experienced: 1) infotainment screen going black, 2) unable to use reverse feature, 3) radio glitching. Subject Vehicle's defects are a safety hazard." (FAC, ¶ 24.) These defects are not the same as those alleged to cause a drivability problem, such as the inability to control the speed and acceleration/deceleration of the vehicle as alleged in paragraph 55. Nor do these defects suggest that plaintiff has experienced the other symptoms that are typical of the Transmission Defect. Categorization of defendant's alleged knowledge of defects that may not have affected plaintiff is insufficient; the content and materiality of the allegedly concealed facts - and any justifiable reliance thereon - depend upon the relation of any omission to defects experienced by the complaining party.

Plaintiff has the ability to plead the defects plaguing the vehicle that gave rise to her complaint, such as why she brought the vehicle in for repair in the first instance, and any symptoms of the defects that actually impaired plaintiff's use of the vehicle. Having failed to plead her vehicle suffered from the identified defects, defendant's demurrer to plaintiff's fifth cause of action for fraud based on lack of specificity is sustained with leave to amend.

2. Duty to Disclose

Defendant also argues there was no duty disclose any defect in the vehicle because there was no special or transactional relationship with plaintiff. "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 (i.e., active concealment). (*Rattagan, supra*, 17 Cal.5th at 40-41.) In transactions that are not imposed by statute or do not involve a fiduciary, there must be a **a preexisting relationship between the parties**, such as between a seller and buyer, employer and prospective employee, doctor patient, or parties entering into any kind of contractual agreement. All of those relationships created by transactions between parties from which a duty to disclose facts material to the transaction arises under certain circumstances. (*Id.*)

At least one published California Court of Appeal decision has explored this question. (*Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828; see also *Gilead Tenofvir Cases* (2024) 98 Cal.App.5th 911, 949 [citing *Dhital* favorably].) In *Dhital*, plaintiffs advanced a fraudulent concealment cause of action against Nissan North America Inc. alleging a transmission defect in the 2013 Nissan Sentra they purchased. Defendant argued that plaintiff failed to plead a duty to disclose, and specifically a buyer-seller relationship between the parties because plaintiff bought the car from a Nissan dealership (not from Nissan itself), the court observed as follows: "At the pleading stage (and in the absence of a more developed argument by Nissan on this point), we conclude plaintiff's allegations are sufficient. Plaintiffs alleged that they bought the vehicle from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers. In light of these allegations, we decline to hold plaintiffs' claim is barred on the ground there was no relationship requiring Nissan to disclose known defects." (*Dhital, supra*, 84 Cal.App.5th at 844.)

As in *Dhital*, here plaintiff has alleged a sufficient transactional relationship from which a duty to disclose would arise. Plaintiff alleges the vehicle was purchased from a GM dealership (FAC, ¶ 6), was backed with an express warranty (FAC, ¶ 7) and that the dealership was an authorized dealer. (FAC, ¶ 6.) This sufficiently mirrors the allegations in *Dhital*. The demurrer on the basis that the duty to disclose was insufficiently pled is overruled.