PROPOSED TENTATIVE

On June 4, 2025, plaintiff Edwardo Batalla (plaintiff) filed a first amended complaint (FAC) against defendant General Motors, LLC (defendant), raising five causes of action, as follows: 1) a violation of Civil Code[1] section 1793.2, subdivision (d); 2) a violation of section 1792.2, subdivision (b); 3) a violation of section 1793.2, subdivision (a)(3); 4) breach of the implied warranty of merchantability (§§ 1791.1, 1794, and 1795.5); and 5) fraudulent inducement. The first three causes of action are based on violations of the Song Beverly Consumer Warranty Act (Song-Beverly Act). Briefly, on February 1, 2021, "plaintiff entered into a warranty contract with" defendant regarding a "certified pre-owned 2019 GMC Sierra 1500, and the vehicle "was purchased at a Certified Pre-Owned Dealer in Bakersfield" – one of defendant's "authorized dealers." According to plaintiff, defects "and nonconformities ,. . . manifested themselves within the applicable express warranty period, including but not limited to transmission defects, engine defects, electrical defects, amount other defects and nonconformities." (¶ 11 of FAC.) Plaintiff claims the statute of limitations is tolled because of the "discovery rule," the "repair doctrine," equitable estoppel, and the "class action" tolling rule. (¶22 – see also ¶ 23 - 32 [detailing the discovery rule and the repair doctrine].)

There are two motions on calendar. The court will examine each motion separately. It will summarize its conclusions at the end of this tentative.

A) Demurrer

1) Allegations in the FAC

Defendant demurs to the fifth cause of action for fraudulent concealment only. Plaintiff alleges as to this cause of action that defendant "committed fraud by allowing the Vehicle to be sold to Plaintiff without disclosing that the Vehicle and its 10-speed Transmission were defective and susceptible to sudden and premature failure. . . ." (§53.) Defendant was "well aware and knew" about this defect prior to and at the time of sale and thereafter; specifically, defendant knew the 10-speed transmission had defects that could result in hesitation or delayed acceleration, harsh or hard shifting, jerking, shuddering, surging or inability to control the vehicle's speed, and other problems, all of which present a safety hazard and are unreasonably dangerous to consumers. Plaintiff claims that defendant acquired this knowledge through "pre-production and post-production testing data"; early consumer complaints about the transmission defect made directly to defendant and its network of dealers; aggregate warranty data; testing conducted by defendant in response to these complaints; and "warranty repair and part replacements data received by defendant from defendant's network of dealers." (¶ 56; see also ¶60a [plaintiff repeats these allegations].) Plaintiff considered defendant's advertisements and other marketing materials prior to purchasing the vehicle. "Had plaintiff known that the Vehicle suffered from the Transmission Defect, Plaintiff would not have purchased the Vehicle. In other words, Defendant GM's concealment of this safety defect was material and Plaintiff relied on Defendant GM's advertising materials which did not disclose the defect . . . ." (¶58.)

2) Arguments Advanced by the Parties

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[1] All further statutory references are to the Civil Code unless otherwise expressly indicated.

Defendant makes the following claims: 1) the three-year statute of limitations for fraudulent inducement bars the cause of action based on the facial allegations of the FAC; 2) plaintiffs fails to allege sufficient facts to establish a duty to disclose, as plaintiff has failed to allege the requisite transactional relationship to support a duty to disclose; 3) plaintiff fails to allege facts sufficient to show justifiable and actual reliance; and 4) the cause of action is barred by the economic loss rule.

Plaintiff has filed opposition, claiming 1) the FAC does not affirmatively show a statute of limitations defense; 2) the FAC "contains all essential elements of" a fraudulent inducement cause of action; 3) the cause of action is not foreclosed by the economic loss rule. Defendant filed a reply on September 9, 2025. All briefing has been read.

3) Legal Background

The California Supreme Court has recently explored the contours of a fraudulent concealment cause of action related to the performance of contract, and has concluded a plaintiff may assert such a claim "if the elements of the claim can be established independently of the parties' contractual rights and obligations, and the tortious conduct exposes the plaintiff to risks of harm beyond the reasonable contemplation of the parties when they entered into the contract." (*Rattagan v. Uber Technologies* (2024) 17 Cal.5th 1, 13.) Our high court made it clear (for particular relevance to this case) that California applies the same standards for both affirmative misrepresentations and fraudulent concealment at the pleading state (*id*. at p. 39), meaning there is no "logical reason to distinguish among various species of actional fraud committed while otherwise performing a contract, assuming the tort elements can be established independently of the contractual rights and obligations that each party voluntarily assumed at the outset of the relationship." (*Id.* at p. 40.)

With this background, 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, supra*, at p. 40.) "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 quality 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). (*Ibid.*) "Circumstances (3) [fiduciary of some other confidential relationship], (4) [partial concealment], (5) [active concealment], ***presuppose 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 [Citation.] All of those relationships created by transactions between parties from which a duty to disclose facts material to the transaction arises under certain circumstances." (*Ibid*.)

Rattagan made it clear that California requires that fraud must be pleaded with factual specificity. "When affirmative misrepresentation fraud is alleged," this particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered. "California courts apply the same specificity standards to evaluate the factual underpinnings of a fraudulent concealment claim at the pleading stage, even though the focus of the inquiry shifts to the unique elements of the claims. [Citation.] For instance, in a case such as this, the court must determine whether the plaintiff has alleged sufficient factual basis for establishing a duty of disclosure on the part of the defendant independent of the parties' contract. If the duty allegedly arose by virtue of the parties' relationship and defendant's exclusive knowledge or access to certain facts, as *Rattagan* has alleged here, the complaint must also include specific allegations establishing all the required elements, including (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 of could have been revealed, and (5) justified and actual reliance, either through action of forbearance, based on the defendant's omissions. "Mere conclusory allegations that the omission were intentional and for the purpose of defrauding plaintiff [] . . . are insufficient for the foregoing purposes.' [Citation]." (*Id.* at p. 43.)

At least one published California Court of Appeal decision has explored the contours of a fraudulent concealment cause of action involving the sale of the vehicle. (*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].) *Rattagan* made the point of distinguishing it from the situation in *Dhital,* with the following observations: "Rattagan's tort claims are, of course, based on alleged conduct committed *during* the contractual relationship but purportedly outside the parties' chosen rights and obligations. This court has granted review in two other cases [one of which was *Dhital*] – both of which involve claims of fraudulent inducement by concealment claims as well as the potential interplay with remedies available under the Song-Beverly Consumer Warranty Act . . . . *We do not address these issue here*." (*Rattagan, supra,* 17 Cal.5th at p. 41, fn. 12, italics added.) Although *Dhital* has a somewhat tortuous procedural history -- the California Supreme Court granted review, held for *Rattigan,* and then remanded, leaving the case fully published, the case remains 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 [by expressly calling out the distinction between *Rattagan'*s facts and the fraudulent inducement cases and then dismissing the appeal of *Dhital* without vacating, reversing, or otherwise altering the court of appeal's opinion, the California Supreme Court indicated that the reasoning of *Dhital* should guide claims of fraudulent inducement by omissions].) Put another way, with the

benefit of dismissal, which leaves *Dhital*'s reasoning and conclusion intact, *Dhital* controls fraudulent concealment inducing ***the formation*** of the contractual relationship. (*Ramos v. Ford Motor Company* (C.D. Cal., Apr. 16, 2025, No. 2:24-CV-04066-AH-(JPRX)) 2025 WL 1606917, at *5.)

In *Dhital*, plaintiffs advanced, inter alia, a fraudulent concealment cause of action against Nissan North America Inc. alleging a transmission defect in the 2013 Nissan Sentra they purchased. The appellate court rejected defendant's claim, as relevant for our purposes, that plaintiff had failed to adequately plead a claim for fraudulent concealment, and reversed the trial court's decision sustaining the demurrer. (*Id.* at p. 832.) In the second amended complaint (SAC), plaintiffs alleged that they had purchased the vehicle from a Nissan dealership, who was Nissan's agent for this purpose; that they took the car back to an authorized Nissan repair facility on three occasion to repair the defective transmission, without success; that Nissan knew or should have known about the safety hazard posed by the defective transmissions before the sale from premarket testing, consumer complaints to the National Highway Traffic Safety Administration, consumer complaints made directly to Nissan and its dealers, and other sources which prompted Nissan to issue "Technical Service Bulletins" acknowledging the transmission's defects. Plaintiff also alleged that Nissan should not have sold the vehicle without a full and complete disclosure of the transmission defect, and should have voluntarily recalled the vehicles long ago. (*Id.* at pp. 833-834.)

The *Dhital* court concluded that plaintiffs had adequately alleged all elements of a fraudulent concealment cause of action based on an omission. "As we have discussed, plaintiffs alleged the CVT transmissions installed in numerous Nissan vehicles (including the one plaintiff purchased) were defective; Nissan knew of the defects and the hazards posed; Nissan had exclusive knowledge of the defects but intentionally concealed and failed to disclose that information; Nissan intended to deceive plaintiffs by concealing known transmission problems; plaintiff would not have purchased the car if they had known of the defects; and plaintiffs suffered damages in the form of money paid to purchase the car." (*Id.* at p. 844.)

As for defendant's argument 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 same 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." (*Ibid.*)

The *Dhital* court also rejected defendant's claim that plaintiff failed to provide specifics about what Nissan should have disclosed, while at the same time acknowledging that fraudulent

concealment must be pleaded with factual specificity. (*Id*. at pp. 843-844.) "[] [P]laintiffs alleged the CVT transmissions were defective in that they caused such problems as hesitation, shaking, jerking, and failure to function. The SAC also alleged Nissan was aware of the defects as a result of premarket testing and consumer complaints that were made both to the National Highway Traffic Safety Administration and to Nissan and its dealers. It is not clear what additional information Nissan believes should have been included." The *Dhital* court did conclude, in an accompanying footnote, that plaintiff was not required to plead that defendant was aware of defect and "that it was unwilling or unable to fix." (*Id.* at p. 844, fn. 7. Italics omitted.) "We decline to hold . . . that plaintiffs were required to include in SAC more detailed allegations about the alleged defects in the CVT transmissions. We conclude plaintiff's fraud claim was adequately pleaded." (*Ibid*.)

Finally, the parties here agree that the fraudulent inducement/concealment cause of action is governed by the three)year statute of limitations per Code of Civil Procedure section 338, subdivision (d). This means that an action based on fraudulent inducement/concealment must be commenced within three (3) years after the cause of action accrues. Plaintiffs bought the vehicle on February 1, 2021, and filed the initial complaint on February 21, 2025.

For purposes of the discovery rule, a cause of action for fraud (and thus fraudulent concealment) does not accrue "until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." That is, under the discovery rule, "the statute of limitations commences on the date a complaining party learns, or at least is put on notice that a representation was false." (*Britton v. Girardi* (2015) 235 Cal.App.4th 721, 733.) A plaintiff who becomes " 'aware of facts [that] would make a reasonably prudent person suspicious . . . [has] a duty to investigate further, and . . . [is] charged with knowledge of matters [that] would have been revealed by such an investigation.' " (*Id.* at p. 737, quoting *Miller v. Bechtel Corp.* (1983) 33 Cal.3d 868, 875.) "[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." (*Fox v. Ethicon Endo-Surgery, Inc*. (2005) 35 Cal.4th 797, 808–809.) However, "a plaintiff's ignorance of wrongdoing involving a product's defect will usually delay accrual because such wrongdoing is essential to that cause of action." (*Id.* at p. 813.) To rely on the discovery rule, however, plaintiff must plead ***specific facts*** showing (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence (*Id*. at pp. 807–808.) The same rule of factual specificity applies to equitable tolling. (*Long v. Forty Niners Football Co.* (2019) 33 Cal.App.5th 550, 550 [where a claim is time-barred on its face, the plaintiff must specifically plead facts that would supporting equitable tolling]; *Transport Ins. Co. v. TIG Ins. Co.* (2012) 202 Cal.App.4th 984, 1013 [equitable estoppel as an exception to the statute of limitations bar must be specifically pleaded in the complaint with sufficient accuracy to disclose the facts relied upon].) Further, even assuming without deciding

that the repair doctrine applies to toll the statute of limitations for a fraud cause of action, 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 has to be pleaded to support the repair doctrine.

4) Merits

Initially, the court agrees that from the face of the complaint the fraudulent concealment cause of action is barred by the three-year statute of limitations provision. This defect, however, can be remedied under the cases that require plaintiff to plead with factual specificity any exception claimed. Plaintiff clearly has not pleaded any facts with regard to equitable estoppel doctrine, as it is mentioned cursorily in paragraph 22.

The same is true for plaintiff's cursory reference to "the class action tolling" (described as the "*America Pipe* tolling rule"). The gist of the "*American Pipe* tolling rule" (a eponymous name which derives from *American Pipe & Construction Co. v. Utah* (1974) 414 U.S. 538), as described by our own high court, is that if "class certification is denied, the statute of 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 wo 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].) Plaintiffs have failed to allege any prior class action certification proceedings that would have placed defendant on notice of plaintiffs' 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.) 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. If it does apply, plaintiff must plead it with factual specificity.

The same problems exist as to the discovery rule and the repair doctrine. Although plaintiff describes the discovery rule tolling in more detail in paragraphs 24 to 29, and claims that it did not become suspicious "until shortly before the filing of the complaint" (§26), this is not supported *with specific facts*. The same is true for the repair doctrine, explained in paragraphs 30 to 32. Plaintiff must describe this tolling doctrine with specific facts, detailing attempts to repair the vehicle, rather than using conclusory language, such as presently offered by plaintiff to the effect that "defendant undertook to perform" various repairs. (§ 32.) More specificity must be pleaded. Leave to amend is granted.

Second. this case seems governed by *Dhital*, to the extent plaintiffs advance their fraudulent concealment cause of action not based on conduct *during* the contractual relationship, but based on claims of defendant's fraudulent concealment at the time of the inception of the purchase agreement. (*Rattagan, supra,* 17 Cal.5th at p. 43, fn. 12; see *also Ladanowsky v. FCA US LLC,* No. 24-cv-07197, 2024 WL 5250357, at *4–5 (N.D. Cal. Dec. 30, 2024) [discussing the distinction between *Rattagan* and *Dhital* and applying *Dhital* where the plaintiff alleged fraudulent inducement to enter a contract].)[2] And in light of *Dhital,* the court finds that plaintiffs have failed to allege with factual specificity a sufficient *transactional relationship* between them and defendants from which a duty to disclose would arise. Plaintiffs in their complaint allege simply that on February 1, 2021, "Plaintiffs entered into a warranty contract with Defendant GM regarding a 2024 Certified Pre-Owned 2019 Sierra 1500 . . ., which was manufactured and or distributed by Defendant GM." Plaintiff does allege that the subject vehicle "was purchased at a Certified Pre-Owned Dealer in Bakersfield, CA (GM/s authorized dealer)." This is not as complete as the allegations in *Dhital,* in which plaintiffs alleged that they purchased the vehicle from dealer, ***and that the dealers were the agents of Nissan for all vehicle purchases***. (*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"[].) A transactional relationship must be sufficiently pleaded before plaintiff can establish a duty to disclose based on defendant's exclusive knowledge of the defects. It follows that plaintiff has failed to recount the substance of any conversation plaintiff had with the person from whom the vehicle was purchased. Leave to amend is granted.

The court otherwise rejects defendant's challenges to the operative pleading. Defendant's claim that plaintiff has failed to allege sufficient facts, such as the content of the omitted facts of any disclosure, is without merit. Plaintiff's allegations in this regard are similar to the plaintiff's allegations made in *Dhital,* who alleged specific facts about defendant's knowledge of the alleged defects. As noted above, plaintiff in *Dhital* alleged Nissan knew of the defective transmissions before the sale of the vehicle "from premarket testing, consumer complaints to the National Highway Traffic Safety Administration . . ., consumer complaints made directly to Nissan and its dealers . . .." (*Dhital, supra,* at p. 834.) This information permitted the *Dhital*

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[2] The court acknowledges a few ambiguities in the complaint on this point. At times plaintiff suggests defendant concealed the engine defects ***during*** the course of the contractual relationship between the parties, thereby implicating the rules in *Rattagan* rather than *Dhital.* Nevertheless, the gravamen (or at least the primary thrust) of the fraudulent concealment cause of action rests on defendant's fraudulent failure to disclose material facts at the time of the purchase of the vehicle, which was done on February 1, 2021, bringing the matter within *Dhital*'s ambit. For these reasons, the court rejects defendant's claim that *Rattagan*, and not *Dhital,* governs the analysis and thus the outcome here.

court to reject defendant's argument that plaintiff's "did not provide specifics about what Nissan should have disclosed. But plaintiff alleged the CVT transmissions were defective in that they caused such problems as hesitation, shaking, jerking, and failure to function. The SAC also alleged Nissan was aware of the defects as a result of premarket testing and consumer complaint that were made both to the National Highway Traffic Safety Administration and to Nissan and its dealers. It is not clear what additional information Nissan believes should have been included . . . ."

Here, the complaint similarly describes the defects in the transmission, such as "hesitation or delayed acceleration," harsh or hard shifting, jerking, shuddering, surging or other inability to control the vehicle's speed, reprogramming of the transmission control module, as well as other problems, presenting a safety hazard and danger to consumers. Further, much like the allegations in *Dhital*, plaintiff here alleges that defendant knew of these defects through pre- and post-production testing data, early consumer complaints made directly to defendant and its network of dealers, aggregate warranty data, testing, and warranty and repair part replacement data. *Dhital* did not require that plaintiff plead the results of any specific testing data, plead the identify of any particular consumer who complained, or plead the nature of any specific warranty data that revealed the specific engine defect as predicate for a fraudulent concealment cause of action. The allegations here are similar to the allegations advanced in *Dhital;* the same result is warranted.

The court also rejects defendant's claims that plaintiffs have failed to allege any specific facts about advertising materials or untruthful representations made in such advertising materials on which they actually relied, and that such reliance was unreasonable. First, nothing in *Rattagan* or progeny supports the need to plead this requirement; in fact, defendant offers no authority for the proposition. Further, the standard alluded to by defendant seems to emanate from older pre-*Rattagan* federal district court cases, under the guise of a motion to dismiss per Federal Rules of Civil Procedure Rule 9(b). (*In re Ford Motor Co. DPS6 Powershift Transmission Products Liability Lit.* (C.D. Cal., May 22, 2019, No. CV1706656ABFFMX) 2019 WL 3000646, at *7 ["To plead the existence of an omission sufficient to support a fraudulent concealment claim, a plaintiff 'must describe the content of the omission and where the omitted information should or could have been revealed.[,]" citing *Tapia v. Davol, Inc.*,(S.D. Cal. 2015) 116 F. Supp. 3d 1149, 1163)].) The earliest case in which these requirements were articulated is *Marolda v. Symantec Corp*. (N.D. Cal. 2009) 672 F.Supp.2d 992, 1002, although *Marolda* cites no California case to support these pleading obligations. The court can find no published or unpublished appellate California cases that have cited to *Marolda* or progeny on this point.

Most tellingly, recent federal district court cases have called into question these specific pleading requirements spawned by the *Marolda* court, observing that they may not be appropriate for all cases alleging fraudulent omission. (*In re Carrier IQ, Inc*.(N.D. Cal. 2015) 78 F.Supp.3d 1051, 1113; *Oddo v. Arcoaire Air Conditioning and Heating* (C.D. Cal., Jan. 24, 2017, No. 815CV01985CASEX) 2017 WL 372975, at *18 ["Courts disagree as to what exactly a

plaintiff alleging a fraudulent omission must plead in order to satisfy Rule 9(b)"].) These same federal district courts have concluded that a plaintiff's allegation of a "wholesale nondisclosure of a material defect" is sufficient to withstand a challenge unless the defendant demonstrates that there was "a document or communication that [the plaintiff] should have reviewed before purchase[,]" which would rebut the presumption of reliance. (*Herremans v. BMW of N. Am., LLC*, No. 14-cv-02363-MMM-PJW, 2014 WL 5017843, at *19 (C.D. Cal. Oct. 3, 2014); *Doyle v. Chrysler Grp. LLC*, No. 13-cv-00620-JVS, 2014 WL 3361770, at *6 (C.D. Cal. July 3, 2014) [concluding it would be "nonsensical" to "require Plaintiffs to prove they reviewed every [relevant] communication" including "press releases, continually updated web pages, countless mailings, and advertisements in a variety of media"]; *Oddo v. Arcoaire Air Conditioning and Heating* (C.D. Cal., Jan. 24, 2017, No. 815CV01985CASEX) 2017 WL 372975, at *18.) Specifically, post-*Marolda* federal courts have distinguished *Marolda*, observing that in *Marolda* the dispute concerned an alleged omission within a particular advertisement, which plaintiffs in *Marolda* had failed to produce or adequately describe. (*MacDonald v. Ford Motor Company* (N.D. Cal 2014) 37 F. Supp. 3d 1087, 1096; *see also Philips v. Ford Motor Co.*, 2015 WL 4111448, at *12 (N.D. Cal. July 7, 2015) [finding *Marolda* inapplicable to fraudulent concealment claims].) In other words, *Marolda* does not apply to fraudulent omission claims unless a plaintiff alleges reliance on a *specific* advertisement or representation. "This is because a plaintiff alleging an omission-based fraud will 'not be able to specify the time, place, and specific content of an omission as would a plaintiff in a false representation claim.'" (*MacDonald, supra, at p.* 1096 (quoting *Baggett v. Hewlett-Packard Co.*(C.D. Cal. 2007) 582 F. Supp. 2d 1261, 1267 and collecting cases declining to apply *Marolda.*)

The court finds this latter authority persuasive, and determines that *Marolda* and progeny are distinguishable from the case at hand. Plaintiffs here do not allege misrepresentations in any particular document. Instead, plaintiffs essentially have alleged a "wholesale nondisclosure of material information," and the more recent authority noted above concludes that reliance on such a wholesale nondisclosure can support reliance when plaintiffs plead the omissions were material, which has been done. Absent a showing by defendant that there was a document or communication that plaintiffs should have reviewed before purchase, which contained information about the allegedly defective engine, the court cannot find plaintiffs' claim implausible at the pleading stage. Defendant does claim on page 14 of its motion that it "disclosed as a matter of law that the product might have some sort of defect . . ." Defendant will be afforded an opportunity, say on summary adjudication, to show that there was a disclosure that can rebut the presumption of actual reliance; plaintiff, however, is not required to anticipate such proof and disprove what essentially amounts to a defense at the pleading stage. (*Herremans v. BMW of North America, LLC, supra, at* *19.)

Defendant also claims that the cause of action is barred by the economic loss rule. The predicate of defendant's claim is that *Rattagan* applies (because plaintiff is attempting to establish a fraudulent concealment cause of action based on the performance of the contract (i.e., the warranty)), and cannot show a duty outside the warranty contract, meaning the economic loss

rule bars recovery (because tort recovery cannot rest on violations of the terms of contract). (*Rattagan, supra,* 17 Cal.5th at p. 37.) As already noted, however, plaintiff, for purposes of the fraudulent concealment cause of action, is not relying on the terms of the warranty as the basis for any claimed tort recovery, but on defendant's pre-purchase (pre-warranty) conduct. This means the conclusion reached in *Dhital* is dispositive of defendant's claim, as follows: ". . . [W]e conclude that, under California law, the economic loss rule does not bar plaintiffs' claim here for fraudulent inducement by concealment. Fraudulent inducement claims fall within the exception to the economic loss rule recognized by our Supreme Court [], and plaintiffs allege fraudulent concealment that is independent of Nissan's alleged warranty breaches." (*Id.* at p. 843, fn. 6 omitted.)

The court sustains defendant's demurrer as to the statute of limitations bar, as well as defendant's claim that plaintiff has failed to allege a sufficient factual basis for a transactional relationship as basis for any duty to disclose. The court rejects all other claims advanced by defendant. Leave to amend is granted.

B) Motion to Compel Pursuant to Code of Civil Procedure section 871.26, subdivisions (f) and (g)

1) Arguments by Parties

The second motion was also filed by defendant, asking the court to direct plaintiff to comply with Code of Civil Procedure section 871.26, subdivisions (f)(1) to (7) and (g)(1) to (11), effective January 1, 2025, and thus provide mandated disclosure documentation. These provisions require plaintiff (in the Song-Beverly Act context) to "provide [certainly enumerated information] to all other parties pursuant to the timelines set for in subdivision (b) . . . " without a request. Plaintiff has filed opposition, claiming the provision is inapplicable because defendant invoked the opt-in procedures on April 2, 2025, after the plaintiff filed the present lawsuit. Alternatively, plaintiff contends that motion is now moot, for on August 6, 2025 plaintiff produced the initial disclosures and all documents he had in possession at that time "even though not obligated to do so." A reply was filed on September 15, 2025. All briefing has been reviewed.

2) Legal Background

We start with the statutory scheme. Code of Civil Procedure section 871.20, subdivision (a) provides that the chapter "applies to an action seeking restitution or replacement of a motor vehicle pursuant" to Song Beverly Act. Code of Civil Procedure section 871.26, subdivisions (b), (f) and (g) provide, respectively, that a) within 60 days after the filing of the answer or other responsive pleading, all parties must comply with (as relevant for our purposes) with subdivisions (f) and (g)); (b) plaintiff must provide the following documents to all other parties without request: (1) a sales or lease agreement; (2) a copy of the current registration; (3) any finance information account information, including payment history and estimated payoff amount, and any loan modification agreements; (4) any repair orders; (5) documents detailing all underlying incidental damages; (6) information pertaining to the market value of the motor vehicle that is currently in the consumer's possession; and (7) any written, pre-suit communications with the

manufacturer, including but not limited to, any restitution or replacement request; and c) plaintiff must provide to all parties without a request (1) mileage of the motor vehicle as of the date of the disclosure described in subdivision (b); (2) who is the primary driver or drivers of the motor vehicle; (3) whether he motor vehicle is primarily used for a business purpose, and whether more than five vehicles are registered to the business; (4) whether the plaintiff is still in possession of the motor vehicle; (5) the address where the motor vehicle is located; 6) whether the plaintiff is an active or prior member of the Armed Force; (7) whether the motor vehicle has been involved in a collision or accident reported to insurance prior to the nonconformity, and if so, the approximate date of the collision, the name of the insurance company, and any applicable claim number; (8)whether the motor vehicle has any aftermarket modifications done after purchase of the motor vehicle, and if so, a list of each modification; (9) dates and mileage for presentations that are not included in the provided repair orders or the location of where the information may be found; (10) whether plaintiff has had any pre-suit communications with the manufacturer, including, but not limited to, any restitution or replacement request; and (11) any need for an interpreter for purposes of a deposition.) Code of Civil Procedure section 871.26, subdivision (l) provides that the "section only applies to a civil action filed on or after January 1, 2025."

Also relevant is Code of Civil Procedure section 871.30, subdivisions (a), (b), and (c), with emphasis added, which became operative on April 2, 2025. Subdivision (a) provides: "Within 30 days of the effective date of the act adding this section, ***a manufacturer may elect to be governed by this chapter for all actions described in subdivision (a) of Section 871.20 with respect to all of its motor vehicles sold in the year 2025 and in all prior years by providing written notice of that election to the Arbitration Certification Program within the Department of Consumer Affairs.***"

Subdivision (b) provides: "Within 60 days of the effective date of the act adding this section, the Arbitration Certification Program within the Department of Consumer Affairs shall publish to its website the list of all manufacturers that have elected under subdivision (a) to proceed under this chapter for actions related to motor vehicles sold in the year 2025 and in all prior years."

And subdivision (c) provides: "***Unless a manufacturer has made the election described in subdivision (a), Sections 871.20 to 871.28, inclusive, shall not apply to an action described in subdivision (a) of Section 871.20, including actions already filed between January 1, 2025 and the effective date of the act adding this section, with respect to all of its vehicles sold new in the year 2025 and in all prior years***."

Sanctions are contemplated by Code of Civil Procedure section 871,26 subdivision (j)(1), which provides that unless a party failing to comply with this section shows good cause, a $1,500 against the plaintiff's attorney must be imposed, to be paid within 15 business days, for failure to comply with the document production requirements as prescribed in subdivision (b).

The court cannot find any California case law interpretating these provisions.

3) Merits

The court will take judicial notice of the Arbitration Certification Program within the Department of Consumer Affairs website, which indicates that General Motors opted-in to program referenced in Code of Civil Procedure section 871.30, subdivision (a) on April 23, 2025. This was within the 30 days authorized for any opt-in provisions to apply to "all of its motor vehicles sold in the year 2025 . . ." as contemplated by Code of Civil Procedure section 871.30, subdivision (a). Further, Code of Civil Procedure section 830.30, subdivision (c) makes it clear that if a manufacturer does timely opt-in within this initial 30-day period, the opt-in discovery provisions (inter alia) apply to actions filed between January 1, 2025 and the effective date of the act adding this section, which was April 2, 2025, a timeframe during which this lawsuit was filed.[3]

Defendant has the better argument when it claims Code of Civil Procedure section 871.26, subdivisions (f) and (g) apply to plaintiff, under the advent of Code of Civil Procedure section 830.30, subdivision (c).[4] Retroactive application is clearly authorized by legislative dint – expressly. (Civ. Code, § 3; *Myers v. Phillip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 840-847; see *Wiley v. Kern High School Dist.* (2024) 107 Cal.App.5th 765, 778 [we presume that statutes are prospective unless the Legislature expressly indicates an intent for retroactive application].) Retroactivity is governed by Code of Civil Procedure section 871.30, subdivision (c). Accordingly, contrary to plaintiff's claim, Code of Civil Procedure section 871.26 subdivisions (f) and (g) apply to actions filed between January 1, 2025 and April 3, 2025, which includes plaintiff's action. Plaintiff was placed on sufficient notice following the adoption of Code of Civil Procedure section 871.30, subdivision (a), (b), and (c) of these requirements.

This determination requires the court to address plaintiff's second argument – that defendant's motion is moot because plaintiff produced initial disclosures and documents pursuant to Code of Civil Procedure section 871.26, subdivision (f) and (g). Attached to attorney George Hill's declaration is plaintiff's response under Code of Civil Procedure section 871.26, subdivision (f) and (g) (7 categories under subdivision (f) and 11 categories under subdivision (g).) According to plaintiff, these responses were made on August 6, 2025. As to the responses for subdivision (f), plaintiff indicated it was not in possession of five of the seven categories, and was continuing to look for responsive documents with regard to category 3. As to category 4, plaintiff indicated that the responsive documents are in defendant's possession, namely Stowasser Buick GMC. As to the 11 categories of documents per subdivision (g), plaintiff responded to categories 1, 2, 4, 5, and 11. Plaintiff indicated that he was still searching for documents as to categories 7 and 8. Plaintiff indicated that categories 3, 6 and 10 were inapplicable. Plaintiff finally indicated that defendant has possession of documents in category 9. It appears plaintiff produced a sales or lease agreement, attached as Exhibit B, in supplemental response on September 10, 2023.

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[3] More specifically, the language in the statutory provides that "unless the manufacturer has made an election" to opt- in pursuant to subdivision (a), the discovery provisions (inter alia) will not apply – meaning that if the manufacturer does opt in, the discovery provisions apply. This is the only logical meaning of the statutory language.

[4] Plaintiff does not address the language of Code of Civil Procedure section 871.30, subdivision (c) in its opposition.

Defendant claims that a court order and sanctions are required because plaintiff has produced only one document, and the disclosures that were have been made were untimely. If defendant is asking for sanctions based on the August 6, 2025 initial disclosure and the supplement request, the court reminds defendant that pursuant to Code of Civil Procedure section 871.26, subdivision (b), plaintiff has until 60 days after the answer or other responsive pleading has been filed to comply. The "initial response" was a demurrer, filed on July 15, 2025. The initial response was made on August 6, 2025, and the supplemental response was made on September 10, 2025, within 60 days of the demurrer There was no untimeliness. The court finds "good cause" not to impose sanctions on this ground.

To the extent defendant's motion is intended to be a motion to compel ***further*** responses, it fails, because there is nothing in the scheme that requires plaintiff to disclose information that is either not in its possession and/or is otherwise equally available to defendant when it is not in plaintiff's possession. Plaintiff has made it clear that many (if not most) of the documents are not in his possession, although if they do exist, defendant has just as much ability to get them as defendant, pointing out in two responses that documents are in the possession of Stowasser Buick GMC in Santa Maria, defendant's agent.[5] Defendant does not claim that plaintiff's statements are untruthful. The court finds "good cause" not to impose sanctions for this reason as well.

Here is where we stand. The court disagrees with plaintiff's argument that he does not have to comply with the initial disclosure requirements of Code of Civil Procedure section 871.26, subdivision (f) and (g). But the court also disagrees with defendant's argument that plaintiff has failed to comply with these requirements in light of his August 6, 2025 and September 10, 2025, disclosures, and that sanctions are appropriate. Plaintiff claims he does not possess many of the documents, and has indicated that at least some of the documents may be in possession of a nonparty agent of defendant. Plaintiff also indicates that he is continuing to look for other documents, acknowledging at least implicitly that there is a continuing obligation to disclose. A general order to comply is therefore unnecessary, as defendant fails to show that any response is actually lacking. Accordingly, no sanctions are appropriate. The court denies the motion without prejudice. If defendant in the future can demonstrate that plaintiff's responses and disclosures are inappropriate, defendant can file a motion to compel further responses, and thereafter ask for an evidentiary sanction of some sort. The court reminds the parties that these provisions are intended to be self-executory. It is a manifest disservice to the spirit of the

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[5] It not clear whether defendant is arguing that plaintiff has an obligation to go out and retrieve the documents even though they are not in his possession (and even when they are in the possession of a third-party agent of defendant). If that is the thrust of defendant's argument, the court is not persuaded that Code of Civil Procedure section 871.26 subdivisions (f) and (g) create a duty beyond that contemplated by the Civil Discovery Act generally, such as that discussed in Code of Civil Procedure sections 2031.230 [representation of inability to comply can be based on claim that the document is no longer in possession, custody or control of the responding party], or Code of Civil Procedure sections 2023.220, subdivision (c) and 220.230 [responding party need not respond to interrogatory if burden or expense the same for the propounding party or where the information is equally available to propounding party]. The court agrees that plaintiff has a continuing obligation to disclose such information if it is within plaintiff's control. The court disagrees that there is greater burden or duty to respond beyond that generally contemplated in the Civil Discovery Act -- other than the initial burden to produce these documents without a request).

statutory scheme to think these provisions should become part of the lemon law adversarial lexicon. ***They should not.***

C) Summary

- The court sustains defendant's demurrer to the fifth cause of action for fraudulent concealment, based on allegations from the face of the complaint indicating that the fraudulent concealment cause of action is barred by the three-year statute of limitations, and the fact plaintiff has failed to allege any exception thereto with factual specificity. The court also sustains defendant's demurrer based on plaintiff's failure to allege a sufficient transactional relationship with defendant in order to establish a duty of disclosure, as allowed by Dhital. The court rejects all other challenges to the cause of action advanced by defendant. Plaintiff has 30 days from today's hearing to file an amended pleading.
- The court agrees with defendant that plaintiff must comply (and has a continuing duty to comply) with the initial disclosure requirements outlined in Code of Civil Procedures section 830.26, subdivision (f) and (g). The Legislature has expressly applied these provision retroactively to the timeframe in which this lawsuit was filed, per Code of Civil Procedure section 871.30, subdivisions (a), (b), and (c). The court also finds, however, that plaintiff timely complied with these discovery obligations in responses made on August 6, 2025, and in a production on September 10, 2025. Defendant does not challenge plaintiff's representations that he does not possess many of the documents, and/or that some of the documents are within the possession of defendant's agent. If defendant intended this to be a compel further responses, it therefore fails. There is no point in issuing an order that says plaintiff should comply with the law under the circumstances. As a result, no sanctions are appropriate. The court nevertheless denies the motion without prejudice, allowing defendant in the future to file a motion to compel ***further*** responses if it turns out that plaintiff's responses/presentations are actually lacking or otherwise inappropriate, a showing that has not made on the present record.