PROPOSED TENTATIVE

The original complaint was filed on December 11, 2024. On March 18, 2025, plaintiffs Ileana Alcaraz and Ana Alcaraz (plaintiffs) filed a first amended complaint (FAC) against defendant General Motors, LLC (defendant), alleging violations of Civil Code section 1793.2, subdivisions (a), (b) and (d) (first, second and third and second causes of action), breach of the implied warranty of merchantability (fourth cause of action), and fraudulent inducement/concealment (fifth cause of action). As to the fifth cause of action, which is the only cause of action at issue for our purposes, plaintiffs allege that on June 29, 2018, they entered into a "warranty contract with Defendant GM regarding a 2019 Chevrolet Silverado,1500," with VIN IGCNCREC8JZ347609. Plaintiffs claim that prior to the transaction, "GM was aware and knew that the 6-speed Transmission installed on the Vehicle was defective but failed to disclose this fact to Plaintiffs' prior to at the time of the sale and thereafter." (¶ 52.) Specifically, defendant knew about the problems (hesitation or delayed acceleration, harsh or hard shifting, jerking, shuddering, surging, lack of control, among others) and acquired this knowledge through sources not available to consumers, including pre-production and post-production testing date, consumer complaints made to defendant and its dealers, aggregate warranty data, testing conducted by defendant in response to complaints, and warranty and repair and part replacements data. (¶¶ 54, 58(a).) According to plaintiffs, defendant was in a superior position to know the true facts, plaintiffs could not have reasonable known, and in failing to disclose the defects, defendant knowingly and intentionally concealed material facts and breached its duty not to do so. The concealed facts are material, for if they would have been disclosed, plaintiffs would not have purchased the vehicle. (¶¶ 60 to 62.)

Defendant demurs to the fifth cause of action in the FAC, advancing three grounds. First, defendant claims the cause of action is barred by the applicable three-(3-)year statute of limitations provision. Second, defendant contends the court should sustain the demurrer because plaintiffs have failed to plead the necessary transactional relationship between defendant and plaintiffs that would support a duty to disclose. Finally, defendant contends that plaintiffs have failed to state with factual specificity the remaining elements of plaintiffs' fraudulent inducement/concealment cause of action. Defendant has also filed a motion to strike all requests for punitive damages (contained in the prayer for relief). Plaintiffs have not filed opposition to either motion, which as of this writing would be untimely in any event (as it was not filed 9 court days before the hearing).

Each motion will be discussed in seriatim.

A) Demurrer

As noted, defendant advances three arguments in support of its demurrer. Each argument will be addressed separately.

1) Statute of Limitations

Defendant initially argues that the fraudulent inducement/concealment cause of action is governed by the three-(3-)year statute of limitations per Code of Civil Procedure section 338, subdivision (d). Defendant is correct that this provision applies. This means that an action based on fraudulent inducement/concealment must be commenced within three (3) years after the cause of action accrues. From the face of the pleading, plaintiffs bought the vehicle on June 29, 2018. The lawsuit was filed on December 11, 2024, clearly outside the three-year statute of limitations. Plaintiffs must therefore plead a statutory exception to the statute of limitations bar. Plaintiffs identify four bases for tolling in the FAC – the discovery rule, equitable estoppel, the repair doctrine, and the class-action tolling rule.

For purposes of the discovery rule, a cause of action for fraud (and thus fraudulent inducement/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,[1] 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.

Plaintiffs have not pleaded these exceptions to the statute of limitations bar with ***any*** specificity. Plaintiffs' reference to the discovery rule, estoppel, and repair doctrine are expressed exclusively in perfunctory, conclusory language. While they explain in the FAC that on May 27, 2020, November 15, 2021, March 28, 2022, and April 10, 2023, plaintiffs took the vehicle into a dealer for service, they make no effort to tie this to the tolling provisions. That is insufficient. The fact plaintiffs have failed to file opposition reinforces the point.

Plaintiffs' cursory reference to "the class action tolling" (described as the "*America Pipe* tolling rule") is equally ineffectual. 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.) Plaintiffs 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, plaintiffs must plead it with factual specificity. Leave to amend is granted.

2) Duty to Disclose

Defendant also argues that the court should sustain the demurrer because fraudulent inducement/concealment does not arise in a nonfiduciary setting unless there is a direct

[1] 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.

transactional relationship between the plaintiffs and defendant. According to defendant, because the complaint does not allege that plaintiffs purchased the vehicle directly from defendant or otherwise entered into a direct transaction with defendant, there is no duty to disclose, and thus plaintiffs "have not stated a claim against [defendant] for fraudulent concealment."

"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 s and defendant in which a duty to disclose can arise." (*Id.* 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, 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.) 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 p. 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].)

That being said, at least one published California Court of Appeal decision has determined that plaintiff establishes a sufficient basis for a duty to disclose for purposes of a fraudulent inducement/concealment cause of action when plaintiff alleges that he or she bought a vehicle from a manufacturer's authorized dealership, the manufacturer issued an express warranty with the car, and the manufacturer's authorized dealerships were the manufacturer's agents for purposes of sale. (*Dhital v. Nissan North America, Inc*. (2022) 84 Cal.App.5th 828, 845.) Although *Dhital* has a somewhat tortured procedural history -- the California Supreme Court granted review, held for *Rattigan,* and then remanded -- the case remains 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. *Uber Technologies, Inc.* (2024) 17 Cal.5th 1 expressly decided not to reverse or alter the California Court of Appeal's decision in *Dhital v. Nissan North America, Inc.*, *supra,* courts continue to treat *Dhital* as good law].)

In light of *Dhital*, the court finds that plaintiffs have failed to allege a sufficient transactional relationship from which a duty to disclose would arise. Plaintiffs in the FAC allege

simply that on June 29, 2018, "Plaintiffs entered into a warranty contract with Defendant GM regarding a 2018 Chevrolet Silverado 1500. . .. " Nothing else is offered. This is insufficient, even under *Dhital,* to establish a duty to disclose in the present context. (*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"[].) The court sustains the demurrer with leave to amend on this ground.

3) Failure to Plead Fraudulent Inducement/Concealment with Factual Specificity

Finally, defendant argues that plaintiffs have failed to allege the remaining elements of a fraudulent inducement/concealment cause of action with factual specificity. (*Rattagan, supra,* 17 Cal.5th at p.43 [fraud, including fraudulent inducement or concealment, must be alleged with specificity].) California applies the same standards for both affirmative misrepresentations and fraudulent inducement/concealment at the pleading state, although the focus of the inquiry shifts to the elements of the offense. For fraudulent inducement/concealment, the court must determine whether the plaintiff has alleged a 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, 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 or could have been revealed, and (5) justifiable and actual reliance, either through action or forbearance, based on the defendant's omission. "[M]ere conclusionary allegations that the omissions were intentional and for the purpose of defrauding and deceiving plaintiff[ ] . . . are insufficient for the foregoing purposes." (*Id*. at pp. 43–44.)

The court will set aside the deficiency associated with plaintiffs' failure to plead a basis for a duty to disclose, as it has already determined that those allegations are insufficient, based on the discussion above. For efficiency, the court will address whether plaintiffs have alleged with sufficient factual specificity *all other components of the cause of action.*

The complaint contains sufficient facts about the nature of what should have been disclosed, such as the hesitation or delayed acceleration of the transmission; the harsh or hard shifting, jerking, shuddering, surging or inability to control the vehicle's speed, as well as other reflections of the defect at issue. (¶53.) Additionally, plaintiffs have adequately alleged the nature of defendant's awareness of the problems before the sale, and her inability to learn of the defect based on sources not available to plaintiffs, such as testing, early consumer complaints made directly to defendant about the defect, aggregate warranty data received by dealership, and testing by defendant in response to these complaints (all before the sale). (¶¶ 54 to 58) Plaintiffs

also describe the general point at which these material facts should have been disclosed – at the time the car was sold on June 29 2018. Finally, plaintiffs plead that the omissions were material, for if they had been disclosed, plaintiffs would not have purchased the vehicle. (¶¶ 60-62.)

Defendant claims these allegations are insufficient, arguing that plaintiffs have failed to plead "what advertisements, brochures, or other materials where [defendant] could have disclosed the allegedly omitted 'facts' that Plaintiffs reviewed and relied upon in purchasing the Subject Vehicle; how long prior to the purchasing the vehicle she viewed them; and whether those materials, if any, were prepared by [defendant] or some else (such as a dealership). Plaintiffs have also failed to plead with specificity, as required, facts supporting any allegation that [defendant] intended to defraud her by either making affirmative statements of failing to disclose material facts," citing *Rattagan v. Uber Technology, Inc.* (2024) 17 Cal.5th 1 and *Tenzer v. Superscope, Inc*. (1985) 39 Cal.3d 18, 30.

Nothing in *Rattagan* or progeny supports defendant's arguments; in fact, defendant offers no authority for the proposition that plaintiff is required to allege where the omitted information should or could have been revealed by defendant and to identify the requisite representative samples of advertisements, offers, or other representations by defendant that plaintiff relied upon to make their purchase. This standard in fact 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, more 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 plaintiff's allegations themselves rely 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 have 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.[2] 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 transmission, the court cannot find plaintiffs' claim implausible at the pleading stage. Defendant may be able to make such a showing at some future point in the litigation and rebut the presumption of actual reliance, but plaintiffs are 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.) The comments made in *Alfaro v. Community Housing Improvement & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384 thus are particularly apt in the present context. "How does one show 'how' and 'by what means' something didn't happen, or 'when' it never happened or 'where' it never happened?" Under California law, even if the court acknowledges that plaintiff for fraud (even when based on omissions) must plead how, when, where, to whom, and by what means the lack of representations were channeled (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645), that has been done here: the "who" is defendant, the "what" is its detailed knowledge of the defect; the

[2] To be specific, plaintiffs allege in paragraph 56 of the FAC that they relied on defendant's "advertising materials which did not disclose the defect." Plaintiffs do not identify any misstatement or falsity in any specific document. As was true in *Herremans* and *Doyle*, cited in the body of this order, plaintiffs have essentially alleged a "wholesale nondisclosure" of a material defect, and given plaintiffs' allegation that their omission was material, a presumption of reliability exists for pleading purposes. *(Herremans, supra,* at p. 19.) The court finds *Herremans* persuasive on these points.

"how" describes how it came into that knowledge, the "when" is time prior to and including the sale of the vehicle; and "where" involves the various channels of communication defendant sold the vehicle. Again, if there is a specific communication that plaintiffs should have read, this can be raised in the litigation at a later time.

Finally, the court is not convinced by defendant's argument that there are insufficient facts to show defendant intended to defraud by either making affirmative statements or "by failing to disclose material facts." *Rattagan* certainly warns that mere "conclusionary allegations that the omissions were intentional and for the purpose of defrauding and deceiving plaintiff[ ]. . . are insufficient for the foregoing purposes." (*Rattagan, supra*, 17 Cal.5th at pp. 43–44.) But reasonable inferences of defendant's intent to defraud can exist when there is sufficient evidence offered in support, and that is the case here.

The court also finds defendant's reliance on *Tenzer, supra*, 39 Cal.3d 18, is misplaced. The *Tenzer* court in fact recognized that "fraudulent intent most often can be established by circumstantial evidence." *Tenzer* went on to conclude that if plaintiff relies on nothing more than nonperformance of a promise to perform, plaintiff's claim will fail. (*Id*. at pp. 30-31.) But plaintiff has done more than rely on nonperformance of a promise as the basis to show defendant's intent to defraud. Plaintiff claims that defendant knew about the transmission's defects long before the sale, and purposefully and continually concealed those facts both at the time of purchase and thereafter. This is more than "nonperformance" as contemplated by *Tenzer* and is otherwise sufficient to support an inference of defendant's intent to defraud for pleading purposes. (See, e.g., *Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1239 [because there is "rarely" direct evidence of a defendant's fraudulent intent, a plaintiff may rely on a defendant's subsequent conduct as circumstantial evidence "to show that a defendant made the promise without the intent to keep the obligation"].)

The court overrules defendant's demurrer based on its claim that plaintiffs have failed to allege fraudulent inducement/concealment with reasonably factual specificity (other than the factual basis necessary to establish a duty to disclose, as addressed separately above).

B) Motion to Strike

Plaintiffs ask for punitive damages in item (g) in the prayer for relief, as follows: "Plaintiffs pray for judgment against defendants as follow: ". . . (g) For punitive damages." There is no other place in the operative pleading where punitive damages are requested.

Although the motion is technically moot following resolution of the demurrer, the court for efficiency grants defendant's motion to strike all references to punitive damages in the FAC, for the following reasons.

First, plaintiffs do not inform defendant which causes of action support punitive damages, and which ones do not. We assume it is in conjunction with the fifth cause of action, but in the end, defendant is left to guess based on the solitary and singular reference in the prayer

for relief. This is inadequate notice and must be corrected. Plaintiffs must indicate which causes of action support punitive damages.

Second, plaintiffs have failed to allege the elements of a punitive damages claim pursuant to Civil Code section 3294(a) and (b). (*Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1103.) The statute expressly defines the terms – malice, oppression, and fraud – for purposes of determining the viability of the claim for punitive damages. Plaintiffs make no mention of any of these terms. Nor do plaintiffs reference the actions of any director or managing agent, a condition precedent for establishing a basis for punitive damages involving a corporate employer, such as defendant. (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 576–577.)

Finally, the FAC must include specific factual allegations showing that defendants' conduct was malicious, oppressive, or fraudulent. (*Ibid.*) That has not been done; plaintiff has pleaded nothing more than what is required to allege a cause of action, and that is insufficient. (See, e.g., *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166 [the mere allegation an intentional tort was committed is not sufficient to warrant an award of punitive damages].)

The court grants the motion to strike with leave to amend.

In Summary:

- The court sustains the demurrer to the fraudulent inducement/concealment cause of action because the action is barred by the three-(3)-year statute of limitations based on allegations from the face of the complaint, and plaintiffs have failed to allege a specific factual basis for any enumerated bases for tolling, such as the discovery rule, equitable tolling, and/or the repair doctrine. Plaintiffs should explain at the hearing whether tolling is appropriate under the "*American Pipe* tolling rule" for class actions, and if it is inapplicable, the theory should be removed from any future pleading (and if it does apply, it should be adequately pleaded with factual specificity). Leave to amend is granted.
- The court sustains the demurrer to the fraudulent inducement/concealment cause of action because plaintiffs have failed to state either a fiduciary basis or an agency/transactional basis between plaintiffs and defendant that would establish any duty to disclose. Leave to amend is granted.
- Other than issue of duty, discussed immediately above, the court overrules defendant's demurrer to the fraudulent inducement/concealment cause of action. The court is aware that no opposition has been filed; the court nevertheless rejects defendant's claim that plaintiffs have failed to allege a sufficient factual basis for

all other elements of the fraudulent inducement/concealment cause of action (other than duty to disclose).

- While technically moot in light of the demurrer, the court grants defendant's motion to strike all references to punitive damages in the operative pleading. Leave to amend is granted.
- Plaintiffs have 30 days from today's hearing to file an amended pleading.
- The parties are directed to appear at the hearing in person or by Zoom. A CMC is also scheduled for today.