PARTIES/ATTORNEYS

Plaintiff	Carol Ann Kelley-Elwell	Tionna Carvalho
Defendant	General Motors, Inc.	Natalie Keshishian

PROPOSED TENTATIVE

The court detailed the history (and the parties) in an earlier order (associated with the demurrer and motion to strike to the first amended complaint (FAC)). Suffice it to say that the court sustained the demurrer to the fifth cause of action, with leave to amend, and (although technically moot) granted the motion to strike all references to punitive damages, also with leave to amend. The parties are directed to the court's previous order for relevant background – the order's substance will be referenced here but not recounted jot-for-jot here. On August 15, 2025, plaintiff filed a second amended complaint (SAC).

Defendant demurs to the fifth cause of action for fraudulent concealment, advancing three grounds: 1) it is barred by the appropriate statute of limitations; 2) plaintiff has failed to allege a transactional relationship giving rise to a duty to disclose; and 3) plaintiff has failed to state sufficient facts to establish all other elements of a fraudulent inducement/concealment cause of action. As for the motion to strike, defendant contends 1) plaintiff may not seek punitive damages for the causes of action alleged under Song-Beverly Consumer Warranty Act (Song Beverly Act); and 2) plaintiff has in any event failed to allege sufficient facts to support punitive damages. Plaintiff opposes both motions. Plaintiff argues she has alleged specific facts to show why the cause of action is timely; contends that a transactional relationship is not required under California law for the manufacturer to have a duty to disclose; and observes that the court previously rejected the claim that cause of action is not pleaded with sufficient factual specificity. As for the motion to strike, plaintiff argues that 1) punitive damages are available under the Song Beverly Act; 2) defendant's motion to strike is "meritless," for it misstates the gravamen of plaintiff's claims; and 3) that plaintiff has alleged sufficient acts of fraud, oppression or malice to support punitive damages. Defendant filed a reply on November 10, 2025. All briefing has been reviewed.

Each motion will be discussed in seriatim.

A) Demurrer

The court will address each argument advanced by defendants.

1) Statute of Limitations

The court made it clear in its earlier order (the demurrer to the FAC) that the fraudulent inducement/concealment cause of action is governed by the 3-year statute of limitations per Code of Civil Procedure section 338, subdivision (d). It also made it clear from the face of the FAC that the fraudulent inducement/concealment cause of action was barred because plaintiff bought the vehicle on June 22, 2019, and the lawsuit was filed on December 23, 2024, clearly outside the 3-year statute of limitations. In the FAC plaintiff perfunctorily cited to the discovery rule, the equitable estoppel doctrine, the repair doctrine, and the class-action tolling rule as the bases to toll the 3-year statute of limitations bar, without specific facts to support any doctrine, as required under existing law. It was for that reason the court sustained the demurrer to the FAC.

The court has compared the SAC with the FAC to see if plaintiff has remedied these deficiencies. It is not impressed with plaintiff's reliance on *American Pipe* tolling doctrine, the repair doctrine, or the equitable estoppel doctrine, for the following reasons: 1) plaintiff has failed to allege any federal class action lawsuit that would have tolled the present claims; and 2) plaintiff again cursorily advances the repair doctrine and the equitable tolling doctrine based on conclusory statements and perfunctory allegations, without substantive facts. If the SAC survives demurrer, it is because plaintiff has alleged specific facts to support application of the discovery 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, 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.)

Plaintiff alleges in the SAC that she purchased the vehicle on June 22, 2019. (¶ 4.) Plaintiff then indicates that she presented the vehicle to defendant's authorized dealer on March 11, 2024, with approximately 120,997 miles on the odometer, raising "various concerns," including brake system problems. (¶ 21.) The dealer performed "warranty repairs," and indicated the vehicle "had been repaired." Plaintiff then describes that she experienced "symptoms" of the vehicle's defects, such as transmission failure, check engine light coming on, infotainment screen going blank, failure to connect smart devices, disabled navigation, system features, steering wheel issues, brake issues, front and rear brake replacement, alignment, computer module for engine programming, and electrical system issues. (¶ 23.) Plaintiff ultimately lists in serial fashion when the subject vehicle was serviced : November 18, 2019, January 13, 2020, February 11, 2020, March 9, 2020, September 17, 2020, April 5, 2021, May 3, 2021, November 12, 2021, January 7, 2022, July 22, 2022, September 12, 2022, December 20, 2022, February 22, 2023, and December 1, 2023 (all prior to March 11, 2024.) (¶ 25.)

While the SAC is better than the FAC, it is still deficient. It is not enough for plaintiff to allege a vehicle's defect, defendants' fraudulent concealment of that defect, and then list in serial fashion the dates of the vehicle's services. 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 p. 808.) As observed by our high court, the discovery rule only delays accrual until the plaintiff has, or should have, inquiry notice of the cause of action. The discovery rule does not encourage dilatory tactics because plaintiffs are charged with presumptive knowledge of the injury if they have information of circumstances to put them on inquiry or they have the opportunity to obtain knowledge from sources open to their investigation. In other words, plaintiffs are required to conduct a reasonable investigation after becoming aware of the injury and are charged with knowledge of the information that would have been revealed by such investigation. (*Fox, supra*, at pp. 807-808.) Here, plaintiff does not indicate the time and manner of the discovery of the defects, and more notably, her inability to have made earlier discovery despite reasonable diligence. For example, plaintiff simply lists in serial fashion all service dates but fails to explain whether the defect or defects at issue in this lawsuit were present, say, on February 11, 2020, and whether she was unable to discover the defects at issue earlier than she did with reasonable diligence. When the court sustained the demurrer to the FAC, the court required plaintiff to plead why she could not have discovered the defects at issue during the relevant 3-year period after purchase with due diligence. Plaintiff has manifestly failed to offer any facts to explain these requirements. More must be alleged.

The court therefore sustains the demurrer to the SAC on this ground.

2) Duty to Disclose

The court also sustained the demurrer to the FAC in part because plaintiff had failed to articulate a basis to establish a duty to disclose within the meaning of *Dhital v. Nissan North America, Inc*. (2023) 84 Cal.App.5th 828, 845. *Dhital* concluded that plaintiff had established a sufficient basis for a duty to disclose for purposes of a fraudulent inducement/concealment cause of action when plaintiff alleged that he or she bought a vehicle from a manufacturer's authorized dealership, alleged the manufacturer issued an express warranty with the car, ***and alleged*** the manufacturer's authorized dealerships were the manufacturer's agents for purposes of sale. (*Id.* at p. 845.) The court's previous order observed that while *Dhital* had a somewhat tortured procedural history -- the California Supreme Court granted review, held for a then pending case, 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].) Nothing has changed since the court's last order.

Plaintiff has not added anything to remedy the deficiency identified in the previous order. Plaintiff contends that she purchased the vehicle on or about June 22, 2019, which was manufactured and/or distributed by Defendant GM, " and the vehicle was "purchased at Rio Vista Chevrolet in Buellton, CA (GM's authorized dealer)." This is insufficient 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"[].)

Plaintiff claims that California does not require a "transactional relationship" for the manufacturer to have a duty to disclose. Not so, at least based on the allegations in the operative pleading. We need look no further than *Rattagan, v. Uber Technologies, Inc., supra,* 17 Cal.5th 1 to see why. *Rattagan* observed initially that "California case law similarly has viewed fraud by concealment on equal footing with fraud by affirmative misrepresentation." (*Id.* at p. 39). It then noted that the "required elements for fraudulent concealment are (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would have acted differently if the concealed or suppressed fact was known; and (5) plaintiff sustained damage as a result of the concealment or suppression of the material fact.[Citations.] A duty to disclose a material fact can arise if (1) it is imposed by statute; (2) the defendant is acting as plaintiff's fiduciary or is in some other confidential relationship with plaintiff that imposes a disclosure duty under the circumstances; (3) the material facts are known or accessible only to defendant, and defendant knows those facts are not known or reasonably discoverable by plaintiff (i.e., exclusive knowledge); (4) the defendant makes representations but fails to disclose other facts that materially qualify the facts disclosed or render the disclosure misleading (i.e., partial concealment); or (5) defendant actively conceals discovery of material fact from plaintiff (i.e., active concealment)[Citations]]. ***Circumstances***

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

It is clear from *Rattagan* that a transactional relationship is the sine qua non of a duty to disclose for purposes of fraudulent inducement/concealment, at least when plaintiff claims defendant knows material facts which are only accessible to defendant; and/or defendant makes representations but fails to disclose other facts that materially qualify the facts disclosed or render the disclosure misleading (i.e., partial concealment). Plaintiff does not allege that defendant had a statutory obligation to disclose or a fiduciary obligation. Further, *Rattagan* expressly gave life to *Dhital,* which is factually apposite to the situation here (i.e., the plaintiff purchased the vehicle form defendant's dealer, who was the authorized agent of the manufacturer with regard to the sale of the vehicle, creating an agency relationship.). It follows that in order for plaintiff's complaint to survive demurrer, plaintiff must bring the allegations within the ambit of *Dhital,* which she has not done, meaning a sufficient transactional relationship establishing the manufacturer's duty to disclose must be more fully developed. The court sustains defendant's demurrer on the ground that she has failed to allege a transactional action sufficient to establish defendant's duty to disclose.

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

Defendant claims that plaintiff has 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].) The court expressly rejected this claim when it addressed defendants' demurrer to the FAC and does so again here. Earlier, the court found, distilled to its granular essence, that the allegations offered by plaintiff were similar to the allegations offered in *Dhital,* which survived demurrer. It concludes the same here. The court overrules defendant's demurrer on this ground.

B) Motion to Strike

Plaintiff again asks 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." Nothing else is added. That is, plaintiff does not add anything of substance to either the chain pleading portion of the complaint, or in the body of any cause of action.

Although the motion is technically moot following resolution of the demurrer, the court (again) will examine the claims raised for efficiency.

Plaintiff this time seems to acknowledge that she is seeking punitive damages as to *all* causes of action, including the first four for violations of the Song Beverly Act. It is true that the Song Beverly Act provides enhanced remedies to consumers. (*Anderson v. Ford Motor Co.* (2022) 74 Cal.App.5th 946, 964.) It is also true that plaintiff can seek punitive damages for fraud, even when Song Beverly causes of action are alleged, as long as the conduct at issue is different. (*Bowser v. Ford Motor Co*. (2022) 78 Cal.App.5th 587, 624-627.) It appears settled, however, that plaintiff cannot recover punitive damages <u>*and a statutory penalty*</u> under the Song Beverly Act when both are based on the same conduct. (*Troensegaard v. Silvercrest Industries* (1985) 175 Cal.App.3d 218, 226-228 [plaintiff may not recover civil penalties for willful violations of the Song Beverly Act together with punitive damages for "substantially the same conduct].) As one federal district court has summarized: "Damages recoverable under the Song-Beverly Act include restitution, incidental and consequential damages, attorneys' fees and costs, and, if there has been a 'willful' violation of the Act, a civil penalty. [Citations.]The remedies provided by the Song-Beverly Act are 'cumulative and shall not be construed as restricting any remedy that is otherwise available . . . .' [Citation.] A consumer may state a tort claim and recover punitive damages even when the facts underlying the tort claim and the Song-Beverly claim are the same.(*Troensegaard v. Silvercrest Indus., Inc.*, 175 Cal. App. 3d 218, 226-28 (1985). When a consumer alleges both a Song-Beverly claim and a tort claim, however, she must elect to recover either a civil penalty or punitive damages to avoid "double recovery." *See id.*; *Clauson v. Superior Court* (1998) 67 Cal. App. 4th 1253, 1256; *Smith v. FCA US, LLC* (C.D. Cal., July 5, 2022, No. 221CV05347FLAGJSX) 2022 WL 2438355, at *3.)

Defendant contends that plaintiff is seeking both a civil penalty and punitive damages for purposes of the Song Beverly Act causes of action. The court does not see it this way, under the authority of *Clauson, supra,* 67 Cal.App.4th at page 1256. *Clauson* clearly indicates that plaintiff may plead remedies in the alternative, and later (at trial) make a choice as to which one is desired. That appears to be the situation at hand, at least to the extent the Song Beverly violation is based on acts different from the fraudulent inducement/concealment cause of action. The court overrules defendant's demurrer on this ground (noting that plaintiff will have to choose at trial whether it is seeking either a statutory penalty or punitive damages as to the Song Beverly cause of action to avoid double recovery).

That being said, the court nevertheless grants defendant's motion to strike all requests for punitive damages, because plaintiff has manifestly failed to allege malice, fraud, or oppression within the requirements of both Civil Code section 3294, subdivision (a) and subdivision (b). As for subdivision (a), in order to state a prima face case for punitive damages, a complaint must set forth the elements as stated in Civil Code section 3294, subdivision (a). (*Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1193.) In addition, plaintiff must include specific factual allegations showing the conduct was oppressive, fraudulent, or malicious. (*Ibid.*) Plaintiff has done neither. Plaintiff fails to mention malice, oppression or fraud as to any particular cause of action. Nor has she pleaded any facts in support. Plaintiff (once again) has pleaded nothing more than what is required to allege a cause of action, and that alone 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].)

There are also problems under Civil Code section 3294, subdivision (b). Under this provision, " [a]n employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." Plaintiff does not 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.)

While the court will give leave to amend, plaintiff cannot continue to repeat the same problems over and over again. Many of the problems identified above were identified in the court's ruling addressing demurrer to the FAC. Plaintiff is placed on notice – the court is not inclined to give plaintiff many more chances – she must correct these deficiencies in the next amended pleading.

<u>In Summary</u>:

- The court sustains the demurrer to the fraudulent inducement/concealment cause of action because plaintiff has (once again) failed to provide *specific facts* to support an exception to 3-year statute of limitations bar, most notably the discovery rule under the standards enunciated in *Fox v. Ethicon Endo-Surgery*, Inc. (2005) 35 Cal.4th 797. More must be pleaded, for the reasons discussed above.
- The court sustains the demurrer to the fraudulent inducement/concealment cause of action because plaintiff has failed to state an agency/transactional basis between plaintiff and defendant that would establish any duty to disclose. *Dhital*

v. Nissan North America, Inc. (2023*)* 84 Cal.App.5th 828, 845, is factually apposite and governs; plaintiff's allegations are insufficient to survive demurrer under *Dhital.*

- Other than issue of duty, discussed immediately above, the court (again) overrules defendant's demurrer to the fraudulent inducement/concealment cause of action on the ground that plaintiff has failed to allege sufficient facts in support. The complaint here is similar in scope and content of the complaint offered in *Dhital,* which survived demurrer on this same ground.
- While technically moot in light of the demurrer, the court makes the following determinations as to defendants' motion to strike. The court rejects defendants claim that plaintiff is impermissibly seeking both a civil penalty and punitive damages with regard to the Song Beverly causes of action. Case law indicates that plaintiff can make those requests in the alternative, and while no doubt plaintiff will have to the make choice at trial, it is permissible to make those claims in the alternatives at the pleading stage. (*Clauson v. Superior Court* (1998) 67 Cal. App. 4th 1253, 1256). With that being said, the court nevertheless grants the motion to strike all references to punitive damages in the SAC because plaintiff has failed to plead the elements of Civil Cde section 3294, subdivision (a), with any factual specificity. Additionally, plaintiff has failed to make any allegation attendant to Civil Code section 3294, subdivision (b), and notably the need for a director or managing agent as discussed in *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 567-577.)
- The court grants leave to amend, but with one important condition. Many of the deficiencies noted above were identified in the court's earlier order sustaining the demurrer to FAC; plaintiff has made no real or meaningful effort to remedy the problems previously identified. The court is not inclined to give plaintiff many more chances – it will not let this go on *ad infinitum*. Plaintiff is put on notice - correct the defects in the next round, for there may be no further chances offered. Plaintiff has 30 days from today's hearing to file an amended pleading.
- The parties are directed to appear at the hearing in person or by Zoom. A CMC is also scheduled for today.