PARTIES/ATTORNEYS

Plaintiff	Inez Ortiz	Strategic Legal Practices Tionna Carvalho Jacob Lister
Defendant	American Honda Motor Co.	Bowman and Brooke LLP Carissa A. Casolari Jeffrey M. Tsair

TENTATIVE RULING

For all the reasons discussed below, the demurrer to the complaint is sustained with leave to amend.

Plaintiff is further directed to file a "redlined" version of the amended complaint identifying all additions and deletions of material as an appendix to the amended complaint.

The motion to strike is moot.

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

According to the complaint, on August 22, 2020, plaintiff entered into a warranty contract with defendant American Honda Motor Company, Inc. for a 2020 Honda Accord. Plaintiff alleges Honda's computerized driver-assisting safety system, referred to as Honda Sensing[1] was defective, causing it to malfunction dangerously while the vehicles are driven. Plaintiff alleges causes of action for: (1) failure to replace the vehicle or make restitution (Civ. Code, § 1793.2, subd. (d)); (2) failure to conform vehicle within 30 days (Civ. Code, § 1793.2, subd. (b)); (3) failure

[1] This system includes adaptive cruise control (which operates automatically to maintain a set distance from a vehicle ahead), lane departure warnings and steering inputs, and autonomous braking (meant to avoid front-end collisions by detecting vehicle speed and the speed of other vehicles and objects on the road and can automatically deploy the brakes to avoid a front-end collision). Honda calls this computerized driver-assisting safety system, "HONDA Sensing." Honda Sensing relies on a radar sensor (near the lower front bumper), an interior camera (near the rearview mirror), along with computers and other technology. The autonomous braking system within Honda Sensing is called Collision Mitigation Braking System (or CMBS).

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

Demurrer

Honda demurs to the fifth cause of action for fraudulent inducement-concealment on the basis that it is preempted by federal law and in any event, inadequately pled. Honda opposes the demurrer. Reply has been filed. All documents have been reviewed.

1. Preemption

"The supremacy clause of the United States Constitution establishes a constitutional choice-of-law rule, makes federal law paramount, and vests Congress with the power to preempt state law. [Citations]." (*Viva! Intern. Voice For Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935.) A federal statute or regulation may preempt state law in three situations, commonly referred to as (1) express preemption, (2) field preemption, and (3) conflict preemption. Express preemption occurs where Congress explicitly defines the extent to which its enactments preempt state law. In the absence of explicit statutory language, field preemption may occur where state law regulates conduct in a field that Congress intended the federal government to occupy exclusively. Finally, state law is pre-empted to the extent that it actually conflicts with federal law. (*Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 814 [internal citation omitted].) "A state law actually conflicts with federal law "where it is impossible for a private party to comply with both state and federal requirements [citation], or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" (*Id.* at p. 815.) "'Courts are reluctant to infer preemption, and it is the burden of the party claiming Congress intended to preempt state law to prove it."' (*McKermey v. Purepac Pharmaceutical Co.* (2008) 167 Cal.App.4th 72, 80; see also *Black v. Financial Freedom Senior Funding Corp.* (2001) 92 Cal.App.4th 917, 926.) Thus, there is a presumption against preemption which Honda must overcome.

Because a preemption claim is dependent on existing federal law, it is paramount that the federal statute or regulation be adequately identified. Here, defendant argues that the fraudulent concealment cause of action is preempted because it conflicts with the duties delegated to the National Highway Traffic Safety Administration by the Department of Transportation. As is relevant here, defendant asserts that:

> "NHTSA has developed a series of rules relating to these topics, including specifically, Early Warning Reporting. Early Warning Reporting, Foreign

> Defect Reporting, and Motor Vehicle and Equipment Recall Regulations: Energy Conservation Program: Test Procedures for Residential Clothes Dryers, 78 FR 152, 161, 51382, 78 FR 152-01, 161, 51382. The Early Warning Reporting rule, establishes categories of vehicle manufacturers by size, proscribes the reporting frequency, information contained within the reports, organization of data, scope of comparison data (past nine model years), and vehicle component categories subject to reporting requirements. (*Id*. at 51383 – 51384). "These data are referred to as aggregate data." (*Id*. at 51384)."

The first citation, 78 FR 152, is to a notice of proposed rulemaking related to test procedures for residential clothes dryers. As it is unclear how this citation would relate to this action, the court will assume that the citation defendant intended is 78 FR 51382, which is to a final rule in the rulemaking process in which NHTSA adopted amendments to certain provisions of its early warning reporting (EWR) requirements intended to identify vehicle defects.[2]

For context, in 2000, Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. (49 USC 30101 [PL 106-414].) It has been incorporated into the existing National Traffic and Motor Vehicle Safety Act of 1966, codified at 49 U.S.C. §§ 30101–30170. Up until the TREAD Act's enactment, NHTSA relied primarily on analyses of complaints from consumers and technical service bulletins (TSBs) from manufacturers to identify safety defects in motor vehicles and equipment. Congress concluded that NHTSA did not have access to data that may provide an earlier warning of safety defects. Accordingly, the TREAD Act directed the NHTSA to prescribe rules requiring motor vehicle and equipment manufacturers to submit to NHTSA communications relating to defective equipment, information about foreign safety recalls and establishing early warning reporting requirements. (See 49 USC 30111.) Responding to the TREAD Act requirements, NHTSA issued rules in 2002 requiring that motor vehicle and equipment manufacturers provide communications regarding defective equipment, information on foreign safety recalls and data denominated as early warning data. (49 CFR part 579; see 67 FR 45822; 67 FR 63295.) As noted by defendant, those rules were amended in 2013. (78 FR 51382.)

The Early Warning Division of the Office of Defects Investigation (ODI) reviews and analyzes a huge volume of manufacturer early warning data and documents. Using its traditional sources of information, such as complaints from vehicle owner questionnaires and manufacturers' own communications, and the additional information provided by EWR submissions, ODI investigates potential safety defects. These investigations often result in recalls. In 2008, for example, manufacturers recalled more than 8 million vehicles for defective conditions. The

[2] As this citation is repeated several times throughout the demurrer, the court will apply this presumption to each. Counsel should revisit this citation before using it in any other documents filed with the court.

majority of the vehicles recalled were from recalls prompted by ODI investigations. (Federal Register :: Early Warning Reporting Regulations, last accessed 9/29/25.)

Defendant argues that the fraudulent concealment cause of action asserted by plaintiff is preempted by these regulations, asserting "[t]he information Plaintiff's Complaint alleges that AHM was obligated to disclose is, more or less, the aggregate data which AHM is mandated by federal law to provide to NHTSA." (Demurrer, p. 14, ll. 10-13.) Defendant has cited ***no*** case in support of this argument. In fact, California trial court and federal district court cases have universally rejected it. (*Harmon v. American Honda Motor Co.* (2025) 2025 WL 1018452, at *2 [overruling argument that fraudulent concealment preempted by NHTSA] *Santillan v. Am. Honda Motor Co.* (CD. Cal. June 22, 2023) 2023 WL 6369784, at *5 [same]; *Quezada v. American Honda Motor Co., Inc.* (2025) 2025 WL 1213279, at *2, fn. 3 ["The court is not persuaded by this argument. While regulating disclosures by car manufacturers is governed by both federal and state regulations, there is no indication that the NHTSA regulates the disclosure of defects to consumers. As such, there is no preemption."]; *Rabago v. American Honda Motor Co., Inc.* (2022) 2022 WL 22694288, at *3 ["While the Court appreciates the creativity of Defendant's argument, the argument is entirely without merit. A cause of action for fraud is unrelated to any NHTSA regulations that have been cited in the MJOP."]

While none of these cases are binding, the court is nevertheless persuaded that the preemption argument should be rejected. The National Traffic Motor Vehicle Safety Act ("Safety Act") does not *expressly* preempt state common law liability. (See *Geier v. Am. Honda Motor Co.* (2000) 529 U.S. 861, 867; see also 49 USC § 30103 "(e) Common law liability. Compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.") Nor is there any evidence that Congress intended the federal government to occupy this field exclusively. Thus, the only basis on which defendant's argument can rest is whether conflict preemption applies.

Conflict preemption applies where state law prevents or frustrates the accomplishment of a federal objective or makes it "impossible" for private parties to comply with both state and federal law. (*Geier v. American Honda Motor Co., Inc.* (2000) 529 U.S. 861, 874—finding the Federal Motor Vehicle Safety Standard requiring auto manufacturers to equip some but not all of their 1987 vehicles with passive restraints preempts negligence cause of action in which plaintiff claims defendant auto manufacturer, who was in compliance with the standard, should nonetheless have equipped a 1987 automobile with airbags, because such a position would stand as an obstacle to accomplishment of the DOT's objective.)

Thus, the question is whether the fraudulent concealment cause of action, which is based on plaintiff's assertion that defendant had a duty to disclose to her

that the vehicle contained a defective sensing system, stands as an obstacle to the accomplishment of the purposes of the disclosures under the Early Warning Reports submission. The court concludes that it does not, as the processes address different goals. Under the federal system, if the Administrator decides that a failure to comply or a safety-related defect exists, he orders the manufacturer to furnish the notification specified in 49 U.S.C. 30118 and 30119 and to remedy the defect. (49 USC 30118-30119; 49 CFR 554.11.) The fraud cause of action, in contrast, is principally premised on the defect's presence and defendants' fraudulent conduct *at the time of the subject vehicle's sale*. It does not stand as an obstacle to the NHTSA's authority to subsequently order notification of a defective component when and if a defect is substantiated or of the manufacturer's obligation to remedy the defect. Simply put, conditions and conduct associated with the sale of the vehicle are not in conflict with the department's finding that a defect exists and must be remedied. The argument might work if substantial compliance with the regulation meant there could be no fraudulent concealment cause of action. That has not been shown. Thus, defendant's concern that a jury verdict in plaintiff's favor would result in ad hoc rulemaking that would directly conflict with the rules developed by NHTSA is unfounded.

The court overrules the demurrer to the extent it is based on preemption.

2. Sufficiency of Allegations

The required elements for fraudulent concealment are (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would have acted differently if concealed or suppressed fact was known; and (5) plaintiff sustained damage as a result of the concealment or suppression of the material fact. (*Rattagan v. Uber Technologies* (2024) 17 Cal.5th 1, 40.) Fraud must be pleaded with factual specificity. "California courts apply the same specificity standards to evaluate the factual underpinnings of a fraudulent concealment claim at the pleading stage as they do when affirmative misrepresentation is alleged, even though the focus of the inquiry shifts to the unique elements of the claims. 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, [] 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 could have been revealed, and (5) justified and actual reliance, either through action or forbearance, based on the defendant's omissions. Mere conclusory allegations that the omissions were

intentional and for the purpose of defrauding plaintiff [] . . . are insufficient for the foregoing purposes." (*Id.* at p. 43 [cleaned up].)

3. Transactional Relationship

As noted, plaintiff must allege that defendant has a duty to disclose. As a preliminary matter, defendant challenges whether plaintiff adequately alleged a transactional relationship to support a duty to disclose. In *Rattagan*, the California Supreme Court stated that a plaintiff must allege a sufficient factual basis for establishing a duty of disclosure independent of the parties' contract. *(Rattagan*, *supra*, 17 Cal.5th at 43.) A duty to disclose a material fact can arise if:

- 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);
- 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
- defendant actively conceals discovery of material fact from plaintiff (i.e., active concealment)."

(*Rattagan*, *supra*, 17 Cal.5th at 40.)[3]

These circumstances 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. 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. (*Id.*; see also *Dhital v. Nissan North America, Inc*. (2022) 84 Cal.App.5th 828, 843—"Suppression of a material fact is actionable when there is a duty of disclosure, which may arise from a relationship between the parties, such as a buyer-seller relationship.") "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." (*Rattagan*, *supra*, 17 Cal.5th at 41 [citing *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 312].) Therefore, to successfully state a duty to disclose, plaintiff must include specific allegations regarding the existence and nature of the transactional relationship between plaintiff and defendant. (See *Bigler-Engler, supra*, 7 Cal.App.5th at p. 312 [manufacturing defendant had no transactional relationship with plaintiff when it sold medical device to doctor defendant several years before plaintiff rented it from the doctor's office; manufacturing defendant had no contact with 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].)

[3] A duty to disclose may also arise if it is imposed by statute or the defendant is acting as plaintiff's fiduciary. (*Rattagan.*) No such allegations or arguments in favor of these bases are offered.

In *Dhital,*[4] plaintiffs advanced, among claims that defendant violated the Song Beverly Act, a fraudulent concealment cause of action against Nissan North America Inc. alleging a transmission defect in the 2013 Nissan Sentra they purchased. The court addressed whether plaintiff's allegations supporting a transactional relationship were adequate, specifically whether a buyer-seller relationship existed between the parties because plaintiff bought the car from a dealership, not from the manufacturer, and observed: "At the pleading stage (and in the absence of a more developed argument by Nissan on this point), we conclude plaintiff's allegations are sufficient. Plaintiffs alleged that they bought the vehicle from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers. In light of these allegations, we decline to hold plaintiffs' claim is barred on the ground there was no relationship requiring Nissan to disclose known defects." (*Ibid.*)

Here, plaintiff has not alleged where she bought the vehicle, or whether it was purchased from an authorized agent. Defendant thus argues that plaintiff has failed to allege a transactional relationship between it and plaintiff. Plaintiff asserts that her allegation the vehicle was backed by an express warranty is sufficient. (Complaint, ¶ 7 et seq.) She argues that the warranty relationship between herself and defendant is by itself a sufficient contractual relationship on which to impose a duty to disclose. She cites no cases demonstrating application of this proposition to similar facts and the court has no responsibility to independently comb the law for such support. (*Quantum Cooking Concepts, Inc. v. LV Assocs., Inc*. (2011) 197 Cal. App. 4th 927, 934—"Rule 3.1113 rests on a policy-based allocation of resources, preventing the trial court from being cast as a tacit advocate for the moving party's theories by freeing it from any obligation to comb the record and the law for factual and legal support that a party has failed to identify or provide.") And although the *Dhital* court may have left room for a more in-depth analysis of the issue (noting the absence of a more developed argument), plaintiff provides none here. The *Dhital* court noted a confluence of allegations in reaching its conclusion and the existence of the warranty relationship was just one of them. More is needed.

As *Dhital* provides the roadmap for sufficient allegations in this context, the court finds the fraudulent concealment claim fails as a matter of law. The court sustains the demurrer with leave to amend.

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[4]*Dhital* controls fraudulent concealment inducing ***the formation*** of the contractual relationship. *Rattagan* itself observed this distinction: "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* ,at 41, fn. 12, italics added; see also *Ramos v. Ford Motor Company* (CD Cal. 2025) 2025 WL 1606917, at *5.)

4. Sufficiency of Remaining Allegations

For edification, the court reviews the remaining arguments. In *Rattagan*, the California Supreme Court emphasized that "California courts apply the same specificity standard 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 claim." (*Rattagan, supra*, 17 Cal.5th at p. 43.) The *Rattagan* court stated that a fraudulent concealment claim must include "specific allegations", 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." (*Id*., pp. 43-44.) "[M]ere conclusionary allegations that the omissions were intentional and for the purpose of defrauding and deceiving plaintiff[ ] … are insufficient for the foregoing purposes." (*Ibid*.)

The court turns again to *Dhital*. In the second amended complaint (SAC), plaintiffs alleged that they had purchased the vehicle from a Nissan dealership; 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 appellate court reversed the trial court's decision sustaining the demurrer. (*Id.* at p. 832.)

The *Dhital* court concluded that plaintiffs adequately alleged all elements of a fraudulent concealment cause of action. "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.)

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*.)[5]

Here, the defect is identified as a Sensing Defect, which can result in vehicles braking abruptly even though there is nothing around that risks a collision, warning lights displaying without explanation, brakes deploying seemingly randomly, and adaptive cruise control changing speed abruptly. (Complaint, ¶¶ 48.) Honda is alleged to have known about the Sensing Defect "based on pre-production and post-production testing, numerous customer complaints, warranty claims data compiled from HONDA's network of dealers, testing conducted by HONDA in response to these complaints, as well as warranty repair and part replacements data received by HONDA from HONDA's network of dealers, amongst other sources of internal information." (Complaint, ¶ 51.) Honda was alleged to be in a superior position "from various internal sources" to know of (or should have known of) the defect. (Complaint, ¶ 63b.)[6] Plaintiff could not reasonably have been expected to learn or discover of the Vehicle's Sensing Defect and its potential consequences until well after Plaintiff purchased the Vehicle. (Complaint, ¶ 63c.) Moreover, if plaintiff alleges that if he had known about the defect, she would not have purchased the vehicle. (Complaint, ¶ 65.) These allegations are marginally sufficient to support the pleading of a material defect for purposes of demurrer.

The court rejects defendant's argument that plaintiff cannot plausibly claim to be unaware of the concealed defect since she alleged in her complaint there were publicly available reports through publicly available sources. The allegations are not inconsistent. The court also rejects defendant's this cause of action is defective because the only damages alleged are economic. Its argument is based entirely on the law applicable to damages available under the Song-Beverly Act. As a fraud cause of action is a tort action, monetary damages may be sought.

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[5] The *Dhital* decision has been criticized by federal district courts especially the *Dhital* court's acknowledgment that the issue of a transactional relationship was not fully briefed. (See e.g., *Antonov v. General Motors LLC* (C.D. Cal. 2024) 2024 WL 217825, at *11.) However, it is binding precedent on the California trial courts and absent a competing decision from another court of appeal or a well-constructed argument from the parties to distinguish it, we must follow it.

[6] The fact that plaintiff has also alleged defendant's knowledge of the defects from public complaints posted on the NHTSA website in ¶ 57 does not undermine the allegation. Both can be true.

5. Economic Loss Rule

The economic loss rule "requires a purchaser to recover in contract [rather than tort] for purely economic loss due to disappointed expectations, unless [s]he can demonstrate harm above and beyond a broken contractual promise." (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 988.) In *Robinson*, the tort of fraudulent misrepresentation, though typically related to the formation of a contract, was exempted from the economic loss rule because defendants' tortious conduct (defendant's misrepresentation that clutch conformed to FAA requirements) was separate from the contract breach itself, which involved defendant's provision of the nonconformant clutches. (*Robinson Helicopter Co., Inc. v. Dana Corp., supra,*34 Cal.4th at 991.) The court emphasized, however, that its "holding [] is narrow in scope and limited to a defendant's affirmative misrepresentations on which a plaintiff relies and which expose a plaintiff to liability for personal damages independent of the plaintiff's economic loss." (*Id*. at 993.)

However, the *Dhital* court has affirmatively addressed this and is therefore dispositive, 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." (*Dhital,* at p. 843.) *Dhital* observed, "the duty that gives rise to tort liability [for fraudulent inducement-concealment] is either completely independent of the contract or arises from conduct which is both intentional and intended to harm." (*Dhital, supra,* 84 Cal.App.5th at 841 [cleaned up].) *Dhital* adds, "independence is present in the case of fraudulent inducement (whether it is achieved by intentional concealment or by intentional affirmative misrepresentations), because a defendant's conduct in fraudulently inducing someone to enter a contract is separate from the defendant's later breach of the contract or warranty provisions that were agreed to." (*Id.*)

Thus, the allegations here, once sufficiently alleged, will fall "outside the coverage of the economic loss rule." (*Dhital, supra,* at 841.)