
PARTIES/ATTORNEYS

Plaintiff	Guadalupe Bautista and Vidal Valdovinos	Strategic Legal Practices, APC Tionna Grace Carvalho James L. Carroll
Defendant	General Motors LLC	Erskine Law Group, PC Mary Arens McBride, Esq. Xylon Quezada, Esq.

TENTATIVE RULING

For all the reasons discussed below, the demurrer to the first amended complaint is overruled. The motion to strike is denied.

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 FAC, plaintiffs Guadalupe Bautista and Vidal Valdovinos entered into a warranty contract with defendant General Motors for a 2018 Chevrolet Silverado 1500. Between March 16, 2021 and May 4, 2023, plaintiffs presented the vehicle for repairs to the transmission on at least three separate occasions. They continue to experience symptoms of a vehicle transmission defect, including 1) the vehicle jerking when accelerating, 2) the vehicle making a popping sound when reversing and having the steering wheel full lock at either direction, 3) the vehicle feeling as if it were going over rumble strips while driving, 4) the vehicle shifting hard between first and second gear and jerking at times, 5) the Vehicle vibrating aggressively when starting to jerk, and 6) the Vehicle hesitating upon acceleration when hitting the gas pedal frequently. Plaintiffs also experienced electronic failures.

On August 9, 2024, plaintiffs filed their first amended complaint 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 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.

GM filed a demurrer on April 2, 2024 to the fifth cause of action for fraudulent inducement-concealment on the basis that it is barred by the applicable statute of limitations, it fails to state sufficient facts to support the claim, and it fails to allege a transactional relationship giving rise to a duty to disclose. Opposition was filed on June 26, 2024. Reply was filed on July 3, 2024. On July 10, 2024, the court expressly overruled the demurrer based on the statute of limitations and based on the failure to sufficiently allege facts to support the claim. However, the court sustained the demurrer with leave to amend on the basis that plaintiffs had not alleged a transactional relationship giving rise to a duty to disclose. (See 7/10/24 Minute Order.)

Plaintiffs filed their second amended complaint on August 9, 2024. GM filed its demurrer to the second amended complaint on September 9, 2024, renewing the same arguments it made in support of its demurrer to the first amended complaint. The court rejects the demurrer based on statute of limitations for the same reason it rejected it when it was asserted as to the first amended complaint. The court likewise rejects the demurrer based on the failure to sufficiently allege facts to support the fraud cause of action.

The only remaining argument is thus whether plaintiffs have satisfactorily alleged a transactional relationship giving rise to a duty to disclose, which is an element of the fraudulent concealment claim. (*Kaldenbach v. Mutual of Omaha Life Ins. Co.* (2009) 178 Cal.App.4th 830, 850; *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 868; see also Civ. Code § 1710.)

“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 plaintiff and defendant in which a duty to disclose can arise.” (*Bigler-Engler v. Breg, Inc., supra*, 7 Cal.App.5th at 311 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 [cleaned up].)

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 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].)

GM argues that plaintiff has failed to allege a transactional relationship. The court in *Dhital v. Nissan N. Am., Inc.* (2022) 84 Cal.App.5th 828, 843-44 (review granted) concluded that the allegations that plaintiffs bought the car from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's authorized dealerships were the manufacturer's agents for the purpose of sale were sufficient to support the existence of a buyer-seller relationship between the parties. (*Dhital v. Nissan North America, Inc., supra*, 84 Cal.App.5th at 845.)¹ In light of those allegations, the court “decline[d] to hold that plaintiffs' claim was barred on the ground there was no relationship requiring Nissan to disclose known defects.” (*Id.*) The second amended complaint alleges the vehicle was purchased at Home Motors Chevrolet, which is a “a GM authorized dealer,” and that the vehicle was backed by an express warranty. (SAC, ¶ 6.) A sufficient relationship has been alleged under this authority.

The demurrer to the second cause of for fraudulent inducement-concealment is overruled.

Motion to Strike

A plaintiff seeking punitive damages must provide proof of oppression, fraud, or malice on the part of the defendant by clear and convincing evidence. (Civ. Code, 3294, subd. (a).) For pleading purposes, in order to support a prayer for punitive damages, the complaint must allege ultimate facts of the defendant's oppression, fraud or malice. (*Cyrus v. Haveson* (1976) 65 Cal.App.3d 306, 316-317.) Simply pleading the statutory terms oppression, fraud or malice is insufficient to adequately allege punitive damages; rather, specific factual allegations demonstrating oppression, fraud or malice required. (*Blegen v. Superior*

¹ GM does not address this argument in its demurrer despite it having been raised in opposition to the demurrer to the first amended complaint.

Court (1986) 176 Cal.App.3d 503, 510-511; *Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.)

GM renews the arguments made in its demurrer in support of its motion to strike the punitive damages claim. As the court has concluded that plaintiffs have adequately alleged fraud, the motion to strike is denied.