PROPOSED TENTATIVE

On May 5, 2025, plaintiffs Juan C. Espinoza and Velma Gonzalez (plaintiffs) filed a complaint against Toyota Motor Sales U.S.A., Inc. (Toyota) and Toyota of Santa Maria (Dealer), raising six causes of action, as follows: 1) a violation of Civil Code section 1793.2, subdivision (d); 2) a violation of Civil Code section 1793.2, subdivision (b); 3) a violation of Civil Code section 1793.2, subdivision (a)(3); 4) breach of the implied warranty of merchantability (Civ. Code, §§ 1791.1, 1794, and 1705.5); 5) negligence; and 6) fraudulent inducement. Briefly, on October 28, 2024, plaintiffs allege they "entered into a warranty contract with Defendant Toyota regarding a 2024 Toyota Tacoma, vehicle identification number 3TMLB5FN8RM017095 [], which was manufactured and[/]or distributed by Toyota." "Defects and nonconformities to warranty manifested themselves within the applicable express warranty period, including, but not limited to, engine defects, transmission defects, electrical defects, among other defects and non-conformities." Plaintiff does not describe the number of attempts to repair the vehicle, indicating "the Vehicle continued to exhibit symptoms of defects following Toyota's unsuccessful attempts to repair them." Plaintiffs allege that the "value of the Vehicle is worthless and/or *de minimus.*" "Defendant Toyota has failed to either promptly replace the Subject Vehicle or to promptly make restitution" in compliance with the Song Beverly Consumer Warranty (per the first four causes of action). Dealer filed an answer on August 18, 2025.

Defendant Toyota has filed a demurrer to the sixth cause of action for fraudulent inducement, as well as motion to strike all requests for punitive damages in the prayer for relief (presumably associated with the sixth cause of action). Plaintiff has filed opposition to both motions. Defendant filed a reply to each opposition on September 10, 2025. All briefing has been reviewed.

The court will address each motion separately. The court will conclude with a summary of its conclusions.

A) Demurrer

1) Allegations in the Complaint

To support fraudulent inducement, plaintiff makes the following allegations.[1] "Plaintiffs are informed and believe, and based thereon allege, that the 2.4L engine and/or its related components, installed in the Subject Vehicle suffer from one or more defects that can result in loss of power, stalling, engine running rough, engine misfires, failure or replacement of the engine (the 'Engine Defect')"; plaintiffs explain further these defects cause "premature wear to the 2.4L engine and engine-related components, such as premature engine failure, requiring expensive repairs," and thus "present a safety hazard . . . ." Plaintiffs further allege that "prior to the sale of the Subject Vehicle Toyota knew, or should have known, about" these defects, based on "internal data about" the defects, including "pre-releasing testing data; early consumer complaints about the Engine Defect[s] to Defendant Toyota's dealers who are Toyota's agents for vehicle repairs; dealership repair orders; testing conducted in response to those complaints; and other internal sources of information possessed exclusively by Defendant Toyota and its agents. Nevertheless, Defendant Toyota and its agents have actively concealed the Engine Defect[s] and failed to disclose this defect to Plaintiffs at the time of purchase of the Subject Vehicle . . . ." (¶ 57.)[2] Plaintiffs seems to reinforce these allegation by contending that consumers have notified defendant Toyota of "Engine Defect[s]" through a "Customer Relationship Center or indirectly through Defendant Toyota's authorized repair facilities," and has "computer systems whereby it monitors warranty claims, communicates with its authorized dealers, and monitors warranty claims, communicates with its authorized dealers, and monitors the malfunctions and repair records of its vehicles." (¶ 64.) These defects are a "material fact a reasonable consumer would consider in deciding whether to purchase . . ." the vehicle in question. If plaintiffs had known about these defects at the time of sale, Plaintiffs would not have purchased the Subject Vehicle." (¶ 60.) "Despite Defendant Toyota's knowledge of Engine Defect[s], it continued to represent that Toyota vehicles equipped with the 2.4L engine were of high quality and trained its dealers throughout the county to specifically tout the supposedly superior attributes of" the engine.

Plaintiffs go on as follows: "Defendant Toyota knew about, and concealed, the Engine Defects present in the Subject Vehicle . . . from plaintiff at the time of sale, repair, and thereafter," and has "refused to acknowledge their existence, or performed superficial and ineffectual repairs that simply masked the symptoms of the Engine Defect[s]." (¶ 59, emphasis added.) Additionally, opine plaintiffs, "Defendant Toyota has never disclosed the Engine Defect[s] to Plaintiffs prior to the purchase of the Subject Vehicle or at any point during ownership of the Subject Vehicle, and Defendant Toyota has never instructed its dealerships to disclose the Engine Defect to drivers or potential purchasers . . . ." (¶ 68.) Plaintiff continues:

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[1] The complaint is not a model of clarity. Plaintiff's allegations are at times inconsistent, at other times repetitive, and at other times haphazardly made, hindering an assessment of the complaint's overall structure and cohesion.

[2] Plaintiff repeats these same allegations in paragraph 61.

"At all relevant times, Toyota was aware of its inability to repair the defects in the 2.4L engine"; and despite having this knowledge, Toyota failed to disclose it to consumers "in its marketing materials, relied upon by Plaintiffs." (¶¶ 71-74.)

2) Arguments Advanced by Parties

Defendant Toyota claims plaintiff has failed "to state a viable fraudulent concealment claim." Specifically, it claims the demurrer should be sustained because plaintiff has failed, in essence, to allege sufficient facts to establish it had a duty to disclose the nature of the alleged defects, for the cause of action rests not on affirmative misrepresentations but omissions, requiring either a fiduciary duty to disclose, a confidential relationship, or some other basis involving a transactional relationship (as there are no allegations of active concealment). Defendant also claims the demurrer should be sustained because 1) plaintiffs fail to allege that any particular testing data, any particular consumer, and any particular warranty data actually revealed the existence of the engine defects at play; 2) plaintiff has failed to allege "any specific advertising materials or untruthful representations by [defendant] on which they actually relied" (italics omitted"; and 3) plaintiff fails to identify the specific individuals responsible for the "purported strategy" of "limited repair measures" in the hope of misleading customers, as well as their specific communications.

Plaintiff in opposition contends it has pleaded all essential elements of fraudulent concealment and Toyota's duty to disclose. Plaintiff acknowledges that the basis for the fraudulent concealment cause of action is based on nondisclosure, but then insists they have adequately alleged knowledge of falsity, intent to induce reliance, justifiable reliance, and damages. They contend that the allegations here are similar to the allegations made in *Dhital v. Nissan North America* (2022) 84 Cal.App.5th 828, and for the reasons the *Dhital* court rejected defendant's demurrer, the court here should do the same. Plaintiff attempts to bolster its argument by insisting that defendant Toyota had "exclusive knowledge" of the defect, creating a duty to disclose, which was breached.

3) Legal Background

The California Supreme Court has recently explored the contours of a fraudulent concealment cause of action related to the performance of contract, and has concluded a plaintiff may assert such a claim "if the elements of the claim can be established independently of the parties' contractual rights and obligations, and the tortious conduct exposes the plaintiff to risks of harm beyond the reasonable contemplation of the parties when they entered into the contract." (*Rattagan v. Uber Technologies* (2024) 17 Cal.5th 1, 13.) Our high court made it clear (for relevance to this case) that California applies the same standards for both affirmative misrepresentations and fraudulent concealment at the pleading state (*id*. at p. 39), meaning there

is no "logical reason to distinguish among various species of actionable fraud committed while otherwise performing a contract, assuming the tort elements can be established independently of the contractual rights and obligations that each party voluntarily assumed at the outset of the relationship." (*Id.* at p. 45.)

With this background, the required elements for fraudulent concealment are (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would have acted differently if concealed or suppressed fact was known; and (5) plaintiff sustained damage as a result of the concealment or suppression of the material fact. (*Rattagan, supra*, at p. 40.) "A duty to disclose a material fact can arise if (1) it is imposed by statute; (2) the defendant is acting as plaintiff's fiduciary or is in some other confidential relationship with plaintiff that imposes a disclosure duty under the circumstances; (3) the material facts are known or accessible only to defendant, and defendant knows those facts are not known or reasonably discoverable by plaintiff (i.e., exclusive knowledge); (4) the defendant makes representations but fails to disclose other facts that materially quality the facts disclosed or render the disclosure misleading (i.e., partial concealment); or (5) defendant actively conceals discovery of material fact from plaintiff (i.e., active concealment). (*Ibid.*) "Circumstances (3) [fiduciary of some other confidential relationship], (4) [partial concealment], (5) [active concealment], ***presuppose a preexisting relationship between the parties***, such as 'between a seller and buyer, employer and prospective employee, doctor patient, or parties entering into any kind of contractual agreement [Citation.] All of those relationships created by transactions between parties from which a duty to disclose facts material to the transaction arises under certain circumstances." (*Ibid*.)

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

of defrauding plaintiff [] . . . are insufficient for the foregoing purposes.' [Citation]." (*Id.* at p. 43.)

At least one published California Court of Appeal decision has explored the contours of a fraudulent concealment cause of action involving the sale of the vehicle. (*Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828; see also *Gilead Tenofvir Cases* (2024) 98 Cal.App.5th 911, 949 [citing *Dhital* favorably].) *Rattagan* made the point of distinguishing the situation in *Dhital*, with the following observations: "Rattagan's tort claims are, of course, based on alleged conduct committed *during* the contractual relationship but purportedly outside the parties' chosen rights and obligations. This court has granted review in two other cases [one of which was *Dhital*] – both of which involve claims of fraudulent inducement by concealment claims as well as the potential interplay with remedies available under the Song-Beverly Consumer Warranty Act . . . . *We do not address this issue here*." (*Rattagan, supra*, 17 Cal.5th at p. 41, fn. 12, italics added.) Although *Dhital* has a somewhat tortuous procedural history -- the California Supreme Court granted review, held for *Rattigan,* and then remanded, leaving the case fully published, the case remains binding on this court. (See generally *Moore v. American Honda Motor Co., Inc.* (N.D. Cal., Mar. 28, 2025, No. 5:23-CV-05011-BLF) 2025 WL 948114, at p. 7 [by expressly calling out the distinction between *Rattagan'*s facts and the fraudulent inducement cases and then dismissing the appeal of *Dhital* without vacating, reversing, or otherwise altering the court of appeal's opinion, the California Supreme Court indicated that the reasoning of *Dhital* should guide claims of fraudulent inducement by omissions].) Put another way, with the benefit of dismissal, which leaves *Dhital'*s reasoning and conclusion intact, *Dhital* controls fraudulent concealment inducing ***the formation*** of the contractual relationship. (*Ramos v. Ford Motor Company* (C.D. Cal., Apr. 16, 2025, No. 2:24-CV-04066-AH-(JPRX)) 2025 WL 1606917, at *5.)

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

The *Dhital* court concluded that plaintiffs 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.)

As for defendant's argument that plaintiff failed to plead a duty to disclose, and specifically a buyer-seller relationship between the parties because plaintiff bought the car from a Nissan dealership (not from Nissan itself), the court observed as follows: "At the pleading stage (and in the absence of a more developed argument by Nissan on this point), we conclude plaintiff's allegations are sufficient. Plaintiffs alleged that they bought the vehicle from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's authorized dealerships are its agents for purposes of the 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.*)

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 the SAC more detailed allegations about the alleged defects in the CVT transmissions. We conclude plaintiff's fraud claim was adequately pleaded." (*Ibid.*)

4) Merits

This case seems governed by *Dhital*, to the extent plaintiffs advance their fraudulent inducement cause of action not based on conduct *during* the contractual relationship but based on claims of defendant's fraudulent concealment at the time of the inception of the purchase agreement. (*Rattagan, supra*, 17 Cal.5th at p. 43, fn. 12; see *also Ladanowsky v. FCA US LLC*, No. 24-cv-07197, 2024 WL 5250357, at *4–5 (N.D. Cal. Dec. 30, 2024) [discussing the distinction between *Rattagan* and *Dhital* and applying *Dhital* where the plaintiff alleged

fraudulent inducement to enter a contract].)[3] And in light of *Dhital*, the court finds that plaintiffs have failed to allege with factual specificity a sufficient *transactional relationship* between them and defendants from which a duty to disclose would arise. Plaintiffs in their complaint allege simply that on October 29, 2024, "Plaintiffs entered into a warranty contract with Defendant TOYOTA regarding a 2024 Toyota Tacoma . . . ." No other allegations are made. This stands in contrast to the allegations in *Dhital*, in which plaintiffs alleged that they purchased the vehicle from a dealer, and that the dealers were the agents of Nissan for all vehicle purchases. (*Preciado v. Nissan North America, Inc.* (C.D. Cal., Aug. 17, 2023, No. 5:22-CV-02156-SSS-KKX) 2023 WL 12022648, at *4; see *Rodriguez v. Nissan North America, Inc.* (C.D. Cal., Jan. 30, 2023, No. EDCV221672MWFKK) 2023 WL 2683162, at *6 [". . . where a plaintiff fails to allege a transactional relationship with a defendant, a fraudulent concealment claim must fail"[].) While plaintiff has sued the Dealer (i.e., the Dealer is a named defendant), there is no indication in the operative pleading that the Dealer was part of the sale transaction in any way. A transactional relationship must be sufficiently pleaded before plaintiff can rely on the any claim that defendant Toyota had exclusive knowledge of the 2.4L engine defect. Given the conclusory allegations in the complaint, it follows that plaintiff has failed to recount the substance of any conversation plaintiff had with the person from whom the vehicle was purchased. Leave to amend is granted.

The court otherwise rejects defendant's remaining challenges. Defendant's claim that unlike the plaintiffs in *Dhital,* who "alleged highly specific facts" about defendant's knowledge of the alleged defects, plaintiff here has not, for they must include details about results of specific data showing the specific defect at issue. A comparison between the complaint in *Dhital* and the complaint here reveals why defendant's challenge fails. As noted above, plaintiff in *Dhital* alleged Nissan knew of the defective transmissions before the sale of the vehicle "from premarket testing, consumer complaints to the National Highway Traffic Safety Administration . . ., consumer complaints made directly to Nissan and its dealers . . ." (*Dhital, supra*, at p. 834.) This information permitted the *Dhital* court ultimately to reject defendant's argument that plaintiffs "did not provide specifics about what Nissan should have disclosed. But plaintiff alleged the CVT transmissions were defective in that they caused such problems as hesitation,

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[3] The court acknowledges some ambiguities in the complaint on this point. At times plaintiffs suggest defendant concealed the engine defects ***during*** the course of the contractual relationship between the parties, thereby implicating the rules in *Rattagan* rather than *Dhital.* For example, in paragraph 59, plaintiffs allege defendant Toyota concealed the engine defects "at the time of sale, repair, ***and thereafter***." Nevertheless, the gravamen (or at least the primary thrust) of the fraudulent concealment cause of action rests on defendant Toyota's fraudulent failure to disclose material facts in defendant's exclusive knowledge at the time of the purchase of the vehicle, which was done on October 28, 2024, bringing the case within *Dhital*'s ambit. (¶¶ 57, 63 [defendants knew about the defects prior to the sale and plaintiff would not have purchased the vehicle if they had known about defects]; ¶ 67 [plaintiff further expected that defendant Toyota would not sell the vehicle with the known defects]; ¶ 68 [defendant Toyota never disclosed the engine defects prior to the sale]; ¶ 69 [engine defect, not known or reasonably could have been discovered by plaintiff prior to purchase]; ¶ 70 [plaintiffs were unaware of defects prior to the purchase of the vehicle].) For these reasons, the court rejects defendant's claim, made at the tail-end of its reply, that *Rattagan*, and not *Dhital* governs the analysis and thus the outcome here.

shaking, jerking, and failure to function. The SAC also alleged Nissan was aware of the defects as a result of premarket testing and consumer complaint that were made both to the National Highway Traffic Safety Administration and to Nissan and its dealers. It is not clear what additional information Nissan believes should have been included . . . ." Here, the complaint describes the engine defects with the 2.4L engine and its related parts, causing loss of power, stalling, rough engine running, misfiring, and failure of the engine, loss of control of the vehicle, all resulting in accidents; and that defendant Toyota knew about these defects or defects and safety hazards through internal data, including pre-releasing testing data, early consumer complaints about the engine defects to defendant Toyota's dealers, dealership repair orders, testing conducted in response to the consumer complaints, failure rates and replacement part sales data, and aggregate data from Toyota dealers. Contrary to defendant's claim, there was no requirement in *Dhital* that plaintiff plead the results of any specific testing data, plead the identity of any particular consumer who complained, or the nature of any specific warranty data that revealed the specific engine defect as predicate for a fraudulent concealment cause of action.[4] The allegations here are similar to the allegations advanced in *Dhital;* the same result is warranted.

The court also rejects defendant's claims that plaintiffs have failed to allege any specific facts about advertising materials or untruthful representations in such advertising materials on which they actually relied. Nothing in *Rattagan* or its progeny supports the need to plead this requirement; in fact, defendant offers no authority for the proposition. The standard alluded to by defendant 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

[4] The court disagrees with defendant when it claims the "key in *Dhital* was that the plaintiff alleged specific facts demonstrating that Nissan both knew of the affirmatively acknowledged defect by issuing technical service bulletins . . . ." While there was a technical service bulletin pleaded in *Dhital*, its presence was not the lynchpin of the court's determination. *Dhital,* in the critical portion of the opinion relevant for our purposes, found the SAC allegations sufficient based on the type of defects at issue, coupled with Nissan's awareness of the defects following premarket testing and consumer complaints (id. at p. 844) – not the fact Nissan issued a "Technical Service Bulletin." The result in *Dhital* would have been the same even if no "Technical Service Bulletin" had been issued. It would be anomalous to require as a pleading condition for a fraudulent concealment cause of action that defendant manufacturer issued a "Technical Service Bulletin" based on the information received. The bulletin is an evidentiary point (i.e., it underscores what the manufacturer knew); it is not a pleading requirement. Its absence does not preclude a fraudulent concealment cause of action if there are sufficient allegations of knowledge, which is the case here.

court can find no published or unpublished appellate California cases that have cited to *Marolda* or its 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 a plaintiff alleges reliance on a specific advertisement or representation. "This is because a plaintiff alleging an omission-based fraud will 'not be able to specify the time, place, and specific content of an omission as would a plaintiff in a false representation claim.'" (*MacDonald, supra, at p.* 1096 (quoting *Baggett v. Hewlett-Packard Co.*(C.D. Cal. 2007) 582 F. Supp. 2d 1261, 1267 and collecting cases declining to apply *Marolda.*)

The court finds this latter authority persuasive and determines that *Marolda* and progeny are distinguishable from the case at hand. Plaintiffs here do not allege misrepresentations in any particular document. Instead, plaintiffs essentially have alleged a "wholesale nondisclosure of material information," and the more recent authority noted above concludes that reliance on such a wholesale nondisclosure can support reliance when plaintiffs plead the omissions were material, which has been done. Absent a showing by defendant that there was a document or communication that plaintiffs should have reviewed before purchase, which contained information about the allegedly defective engine, the court cannot find plaintiffs' claim implausible at the pleading stage. Defendant 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.)

Defendant also contends that the complaint is defective (and thus the demurrer should be granted) because plaintiffs allege that it was defendant's strategy to mislead customers to believe the problems had been fixed, when they had not, and to let the warranty expire, and that defendant Toyota has not notified plaintiffs that the vehicle suffers from a systemic defect that causes the engine to malfunction. According to defendant, the "Complaint fails to identify the individuals purportedly responsible, or the time, place, or specific communications purportedly involved." This claim is also unpersuasive. First, the court finds that the allegations associated with defendant's challenge are not essential for the fraudulent concealment cause of action. More importantly, comments made in *Alfaro v. Community Housing Improvement & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384 seem particularly apt in countering defendant's argument. "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 plaintiffs (for purposes of fraudulent concealment) 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 "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. Nothing more is required. Defendant points to no authority that require such allegations to such a degree of specificity to survive demurrer.

Finally, in reply, defendant raises an issue that was not raised in the original demurrer or in the opposition – the cause of action is barred by the economic loss rule. The court will not address new issues raised for the first time in reply.[5] (*In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 214; see also *Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 295, fn. 11 ["[o]bvious reasons of fairness militate against consideration of an issue raised initially in the reply brief . . . ."].)

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[5] Even if the court were to examine the issue on the merits, defendant's argument fails. The predicate of defendant's claim is that *Rattagan* applies (because plaintiff is attempting to establish a fraudulent concealment cause of action based on the performance of the contract (i.e., the warranty)), and cannot show a duty outside the warranty contract, meaning the economic loss rule bars recovery (because tort recovery cannot rest on violations of the terms of contract). (*Rattagan, supra,* 17 Cal.5th at p. 37.) As noted above, however, plaintiff, for purposes of the fraudulent concealment cause of action, is not relying on the terms of the warranty as the basis for any claimed tort recovery, but on defendant's pre-purchase (pre-warranty) conduct. (See fn. 3, ante.) That means the conclusion reached in *Dhital* again is 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." (*Id.* at p. 843, fn. 6 omitted.)

The court sustains the demurrer to the extent plaintiff has not pleaded a factual basis to establish a duty to disclose. Leave to amend is granted. The court rejects defendant's remaining arguments advanced in the original motion and in its reply.

B) Motion to Strike

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

Although arguably the motion to strike is technically moot following resolution of the demurrer (at least to the extent plaintiff asks for punitive damages in association with the fraudulent concealment cause of action), the court for efficiency will address the motion and ultimately grants the motion to strike all references to punitive damages in the operative pleading, for the following reasons.

First, 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 Toyota. (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 576–577.)

Further, the operative pleading 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,[6] and that is insufficient. (See, e.g., *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166 ["the mere allegation that an intentional tort was committed is not sufficient to warrant an award of punitive damages"].) To warrant the allowance of punitive damages, the act complained of must not only be willful, in the sense of intentional, but it must be accompanied by some aggravating circumstance, amounting to malice. (*Ibid.*)

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

[6] Plaintiffs admit as much in opposition when they argue that if "punitive damages are available for the fraud cause of action, then the punitive damages claim survives."

In Summary:

- As for the demurrer:
    - 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.
    - The court overrules all other claims advanced by defendant in its demurer and in its reply.
- As for the motion to strike:
    - 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.