PROPOSED TENTATIVE

A) Procedural and Factual Background

On November 10, 2022, plaintiff Cal Grove Harvest, Inc. (hereafter, plaintiff) filed a complaint against defendant General Motors, LLC, (hereafter defendant), raising four causes of action: 1) breach of the implied warranty of merchantability under the Song-Beverly Consumer Warranty Act (hereafter, the Song-Beverly Act) (Civ. Code, § 1790, et seq.); 2) breach of the express warranty under the Song-Beverly Act; 3) breach of express warranty pursuant to Commercial Code section 2313; and 4) a violation of a Magnuson-Moss Warranty Act pursuant to title 15 U.S.C. section 2301(1), et seq. Briefly (according to the operative pleading), on August 27, 2019, plaintiff purchased a 2018 Chevrolet Silverado (hereafter, vehicle); plaintiff contends in paragraph 6 (as relevant for our purposes) that the vehicle was a "new motor vehicle" as contemplated under the Song-Beverly Act, and received "written warranties and other express and implied warranties" from defendant. Mechanical problems developed after the purchase (as detailed in paragraph 11), and plaintiff has taken the vehicle to an authorized repair facility on nine (9) different occasions. According to plaintiff, defendant has failed to conform the vehicle to the applicable warranties, and the defects continue to exist. The amount in controversy is $25,000 (exclusive of interests and costs), and plaintiff seeks additional damages. Defendant has answered.

The case has a protracted procedural history as to the first two causes of action (hereafter, the Song-Beverly causes of action), given the 1) significant procedural deficiencies with defendant's summary adjudication motion, as detailed in the court's final order for the August 22, 2023, hearing; and 2) the then-pending case for review before the California Supreme Court in *Rodriquez v. FCA US, LLC*, Case No. S274625, which was exploring whether a used vehicle that is still covered by the manufacturer's express warrant is a "new motor vehicle" within the meaning of the Song Beverly Act. The court has previously determined that *Rodriquez* would have significant impact on the Song Beverly Act causes of action as pleaded. It vacated the trial date, and continued the summary adjudication motion to a date uncertain. The court has continued the summary adjudication motion on numerous occasions as a result. On March 4, 2024, plaintiff filed a motion for a stay pending the decision in *Rodriquez*; in a stipulated order signed by the court on March 28, 2024, the present action was stayed pending resolution in *Rodriquez*. In the stipulated order, the parties agreed that plaintiff did not waive its right to file a "Motion for Leave to File an Amended Complaint . . ." in the future.

On October 31, 2024, the California Supreme Court filed its decision in *Rodriguez v. FCA, US, LLC* (2024) 17 Cal.5th 189, which concluded that a motor vehicle purchased with an unexpired manufacturer's new car warranty does not qualify as a "motor vehicle sold with a manufacturer's new car warranty" under the Song Beverly Act's definition of "new motor vehicle" unless the new car warranty was issued with the sale. (*Id*. at p. 195.) The remittitur was issued on December 3, 2024. As anticipated, the *Rodriquez* decision impacted plaintiff's Song Beverly Act causes of action. On December 4, 2024, defendant withdrew its summary adjudication motion. On December 18, 2024, plaintiff voluntarily dismissed the Song Beverly Act causes of action without prejudice. All of this was discussed at the hearing before the court on December 9, 2024, as reflected in the court's minute order;, and the stay was lifted at that

time. The court continued the CMC hearing to April 14, 2025. On March 11, 2025, plaintiff filed the motion on calendar today – "A Motion for Leave to File a First Amended Complaint," including a memorandum of points and authorities, a declaration from attorney Brian Kim, a copy of the first amended complaint proposed to be filed, and a redlined version of the proposed first amended complaint highlighting the changes made. On March 17, 2025, both parties filed their respective Case Management Statements.[1] Defendant's filed opposition to motion on April 9, 2025, along with a declaration from attorney Kyle Roybal. Plaintiff's filed a reply on April 15, 2025. All briefing has been reviewed.

B) Nature of First Amended Pleading/Defendant's Arguments in Opposition

The primary changes in the first amended pleading involve the addition of one new cause of action (which essentially replaces the two Song Beverly Act causes of action in the original complaint). The third and fourth causes of action from the complaint are now the first and second causes of action (i.e., violation or express warranty under Commercial Code section 213 and a violation of the Magnuson-Moss Warranty Act respectively). The body of the first and second causes of action from the first amended complaint are the same as those same causes of action advanced in the complaint. The chain pleading allegations, however, are slightly different, All references to the Song Beverly Act have been removed. As to these causes of action, the amount in controversy now exceeds "[t]hirty-five thousand dollars," rather than "Twenty-five thousand dollars" in the original complaint. The new third cause of action advances claims under the Consumer Legal Remedies Act (CLRA), based on violations of Civil Code section 1750.[2]

Defendant advances three general challenges to the three causes of action raised in the proposed first amended complaint, claiming unreasonable delay, undue prejudice, and futility in raising the causes of action. More specifically, as to the first two new causes of action (breach of express warrant under the Commercial Code and violations of the Magnuson-Moss Warranty Act), defendant argues as follows: "Given the differences between Song-Beverly and the Commercial Code, and by extension the [Magnuson-Moss Warranty Act] [fn. omitted], allowing Plaintiff leave to amend to assert ***new*** causes of action for [these alleged violations] would 'open [] up an entirely new field of inquiry' and thereby prejudice [defendant]." (Emphasis added.) As for new third cause of action (based on CLRA), plaintiff claims that plaintiff has failed to explain why it could not have advanced this cause of action earlier, despite the impact of *Rodriquez*.

C) Legal Standards

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[1] In plaintiff's Case Management Statement, it was indicated that written discovery and the deposition of the defendant's person most knowledgeable would take plaint within "90 to 120 days." In the statement, plaintiff indicates that it has "filed a Motion for Leave to File First Amended Complaint to be heard on April 22, 2025." Defendant in its Case Management Statement indicating that its discovery would be completed by October 2025. No mention was made of plaintiff's Motion for Leave to File a First Amended Complaint.

[2] The court is a little confused by defendant's arguments advanced in its opposition. Defendant argues that the plaintiff's proposed amended complaint "attempts to replace their Song Beverly claims with four new causs of action against [defendant]." (See p. 3 of Opposition). That is not true. Plaintiff advances only one new cause of action under the CLRA. This point will be developed later in the body of this order.

Generally, a plaintiff may amend his complaint "once without leave of the court at any time before the answer, demurrer, or motion to strike is filed, or after a demurrer or motion to strike is filed but before the demurrer or motion to strike is heard ...." (Code Civ. Proc., § 472, subd. (a) (all further statutory references are to this Code.) Thereafter, the trial court may allow further amendment "in its discretion, ... upon any terms as may be just." (*Id.*, § 473, subd. (a)(1).) Such amendments generally may occur " 'at any time before or after commencement of trial, in the furtherance of justice' ([*id.*,] § 576) so long as the amendments do not raise new issues against which the opposing party has had no opportunity to defend." (*North Coast Village Condominium Assn. v. Phillips* (2023) 94 Cal.App.5th 866, 881 (*North Coast Village*); see also *Doe v. Second Street Corp.* (2024) 105 Cal.App.5th 552, 577–578 [same]; see also *Ryan v. County of Los Angeles* (2025) 109 Cal.App.5th 337___ [330 Cal.Rptr.3d 392, ___].) Amendments, however, are to be liberally allowed, for case law reflects a preference for the resolution of litigation and the underlying conflicts on the merits. (*Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 342-343]; see also *Magpali v. Farmers Group, Inc*. (1996) 48 Cal.App.4th 471, 487 [courts should apply a policy of great liberality in permitting amendments to the complaint at any stage of the proceedings, up to and including trial].)

That being said, leave to amend should not be granted where, in all probability, the amendments made are futile (*Forudi v. The Aerospace Corp.* (2020) 57 Cal.App.5th 992, 1000), meaning the amendments are not viable as a matter of law based on facial allegations of the pleading (*Royalty Carpet Mills, Inc. v. City of Irvine* (2005) 125 Cal.App.4th 1110, 1125) or the pleading omits harmful allegations present in the initial pleading. (*Falcon v. Long Beach Genetics, Inc.* (2014) 224 Cal.App.4th 1263, 1289; *Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 652 [court not required to grant leave to amend where additional claims were without merit as a matter of law].) Additionally, the liberal policy does not prevail when there is inexcusable delay and probable prejudice to the adverse party. (*Magpoli, supra*, 48 Cal.App.4th at p. 487.) Case authority does indicate that the court does not abuse its discretion when denying leave to amend based on unreasonable delay ***alone*** under appropriate circumstances. (See, e.g., *Doe v. Los Angeles County Dept. of Children & Family Services* (2019) 37 Cal.App.5th 675, 689; *Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 765 [" 'even if a good amendment is proposed in proper form, unwarranted delay in presenting it may—of itself—be a valid reason for denial"].) Prejudice is shown, when the amendment opens up an entirely new field of inquiry without an adequate explanation as to why such a major change in point of attack had not been made long before trial. Other factors in the prejudice inquiry include the timing of the request (e.g., was it on the eve of trial?), the need for a delay of trial (resulting in loss of critical evidence of the added costs of preparation), the impact on adverse party in preparing for trial through adequate discovery, and whether there is a substantial change in the tenor and complexity of the lawsuit based on the amended pleading. (*Solit v. Tokai Bank* (1999) 68 Cal.App.4th 1435; 1448; *Magpoli, supra,* at pp. 487-488; see also *Thompson Pacific Construction, Inc. v. City of Sunnyvadale* (2007) 155 Cal.App.4th 525, 544-545 [when there is no prejudice to the adverse party, it may be an abuse of discretion to deny leave to amend];

Morgan v. Superior Court (1959) 172 Cal.App.2d 527, 530 [if the motion to amend is not made with unwarranted delay, and there is no prejudice, it is error to refuse permission to amend where the refusal also results in party being deprived of the right to assert a meritorious cause of action]; see *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564-565 [even if there has been a delay in seeking leave to amend, it is an abuse of discretion to deny leave if the opposing party has not been prejudiced].)

D) Merits

Preliminarily, the court rejects defendant's challenges to plaintiff's request to file a first amended pleading based on the presence of the first and second causes of action (i.e., breach of express warranty under Commercial Code section 2213, and a violation of the Magnuson-Moss Warranty Act). Defendant seems to think these causes of action are actually new – ***but they are not***. The original complaint – operative at all times during the prosecution of this action, and filed on November 10, 2022 – advanced them as the third and fourth causes of action, as noted in plaintiff's reply. The body of each of the two causes of action in the first amended complaint reads ***exactly*** the same as the body of each of these two causes of action advanced in the complaint – jot for jot, with the only changes reflecting new paragraph numbers. These causes of action are ***old,*** not new, and based on the same set of operative facts that were alleged in the original complaint. The lawsuit would be going forward with these two causes of action irrespective of whether a first amended complaint was filed or not. Defendant's challenges to these causes of action fail for this reason alone.

What is really at issue is the presence in the proposed first amended pleading of the new third cause of action, based on a CRLA violation. Defendant argues there was unreasonable delay because plaintiff could have raised a CRLA cause of action contemporaneously with the Song Beverly Act causes of action, but did not, making a strategic choice to pursue claims based on the latter; plaintiff, according to defendant, should essentially be "hoisted by his own petard."[3] According to defendant, the "new cause[] of action [has] been available to Plaintiff since he initiated the case more than two years ago. . . . Plaintiff's last ditch effort to salvage some sort of case against [defendant] ."

The court determines that plaintiff indeed delayed in failing to raise the CRLA cause of action. That being said, it is far from clear to the court whether it was an ***unreasonable*** delay under the circumstances. Plaintiff's counsel in a declaration states that it is "necessary and proper to allow Plaintiff to recover all damages that she suffered from Defendants' wrongful acts related to the subject matter of this action within a single lawsuit." In his memorandum of points and authorities, plaintiff acknowledges that it did not include a CLRA claim in the original pleading, and now wishes to correct that. Plaintiff (or at least plaintiff's counsel) seems to suggest that it placed all its eggs in one basket – the Song Beverly Act basket – following nearly "30 years of

[3] William Shakespeare, *Hamlet*, act 3, scene 4.

judicial precedent," starting with *Jensen v. BMW of North America* (1995) 35 Cal.App.4th 112, which allowed recovery for warranty claims for used leased vehicles, and now "needs to assert his allegations under new causes of action that permit warranty claims for used vehicles." Was this delay ***un***reasonable given the pending *Rodriguez* decision?

The court is not persuaded by defendant's claim that it was unreasonable for plaintiff to choose to pursue the two Song Beverly Act causes of action and not advance a CRLA cause of action at the time the lawsuit was initiated. The parties have been aware of the issue for quite some time, and defendant itself was awaiting the outcome in *Rodriguez*. The court in fact went as far as staying the present matter pending *Rodriguez*, and defendant was at least aware of the possibility of an amendment. Further, no doubt the CLRA remedies "are not exclusive," but rather "in addition to any other procedures or remedies for any for any violation or conduct provided for in any other law." (Civ. Code, § 1752.) The CLRA prohibits "unfair methods of competition and unfair or deceptive acts or practices" (Civ. Code, § 1770(a).) Specifically, it prohibits "[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions." (Civ. Code § 1770(a)(13).) In general, to bring a CLRA claim, the plaintiff must show that: (1) the defendant's conduct was deceptive; and (2) that the deception caused defendant to be harmed. (*Spann v. J.C. Penney Corp.* (C.D. Cal. 2015) 307 F.R.D. 508, 522, *modified* (C.D. Cal. 2016) 314 F.R.D. 312; *Bower v. AT & T Mobility, LLC* (2011) 196 Cal.App.4th 1545, 1555; *Carver v. Volkswagen Group of America, Inc.* (2024) 107 Cal.App.5th 864, 877.) While there is overlap between the two schemes, counsel would have been raising the CRLA and the Song Beverly Act claims as alternatives to each other. Given the law as it existed before *Rodriguez*, it was not unreasonable for plaintiff to focus on the warranty violations through the prism of the Song Beverly Act without resort to the CLRA. The court is not willing wholly to condemn plaintiff's choice under the circumstances. Simply put, the reason for the delay was a change in law as reflected in a brand new California Supreme Court decision; while plaintiff's counsel no doubt has obligations and responsibilities, clairvoyance is not one of them.

Further, the cases cited by defendant to support its claim of unreasonable delay as the exclusive basis to deny leave to amend are actually inapposite. (See, e.g., *Champlin/GEI Wind Holdings, LLC v. Avery* (2023) 92 Cal.App.5th 218, 294 [at the hearing on the motion for summary judgment, plaintiff orally moved to amend the cross-complaint to conform to a new theory; the trial court did not abuse its discretion because no written motion was filed, the delay was unexplained, and was in any event futile,]; *Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 175 [at the summary judgment hearing, plaintiff's orally moved to amend their complaint to add a new cause of action; it would be "patently unfair to allow plaintiffs to defeat [defendant's] summary judgment motion by allowing them to present a 'moving target' unbounded by the pleadings]; *Falcon v. Long Beach Genetics, Inc.* (2014) 224 Cal.App.4th 1263, 1280 [Falcons made oral motion to amend at summary judgment hearing; when plaintiff seeks leave to amend his complaint only after defendant had mounted a summary judgment motion directed at the allegations of the unamended complaint, even though plaintiff

had been aware of facts upon which the amendment is based, it would patently unfair to allow plaintiff to amend]; *Green v. Rancho Santa Margarita Mortg. Co*. (1994) 28 Cal.App.4th 686, 692-693 [defendant waited until after the first trial to allege a new explanation of why it did not find the Greens a loan; defendant offered no excuse for its delay in seeking to amend, and in fact, it appeared to be a conscious strategic decision to win the entire case by – there was no excuse in reality]; *Fisher v. Larsen* (1982) 138 Cal.App.3d 627, 649 [where plaintiff knew of the motions for summary judgment as early as January 6, 1981, and took no action to amend for five months – because there was no explanation for the unreasonable delay, trial court did not abuse discretion in denying leave to amend].) In each one of the cases plaintiff either waited until the summary judgment hearing to make an oral amendment or waited too long to amend without ***any*** explanation.

Neither situation is present here. True, defendant challenged the Song Beverly Act causes of action via summary adjudication; but unlike most of the cases relied on above, this court never ruled on its merits, instead affording the parties an opportunity to continue the hearing and ultimately issuing a stay pending *Rodriguez*. Further, at no point did plaintiff file the present motion in response to this court's decision – summary adjudication was stayed pending the California Supreme Court's decision in *Rodriguez*, after which plaintiff dismissed the two causes of action. There is nothing patently unfair to defendant under these circumstances. Further, unlike the *Green* and *Fisher*, it was not per se unreasonable for plaintiff to wait to add the CLRA cause of action until after the fate of the Song Beverly Act causes of action had been determined, given the pending high court decision. Explanations for the delay exist. As noted, the court is not inclined to deny the request for leave to amend based exclusively on unreasonable delay under these circumstances. The court will therefore look to other factors, such as prejudice (as suffered by defendant), and whether any amendment can be considered "futile" in order to determine the propriety of the present motion. (See, e.g., *Thompson Pacific Construction, Inc. v. City of Sunnyvadale* (2007) 155 Cal.App.4th 525, 544-545 [when there is no prejudice to the adverse party, it may be an abuse of discretion to deny leave to amend].) This seems particularly appropriate as courts have always considered it "fair" to allow plaintiff to litigate all related causes of actions when seemingly permissible. (See, e.g., *Morgan, supra*, 172 Cal.App.2d 527, 530.)

Prejudice to the opposing party exists where the amendment would require the trial court to delay trial, resulting in the loss of critical evidence or the added costs of preparation. (*Magpali, supra*, 48 Cal.App.4th at pp. 486-488; see also *Solit v. Tokai Bank* (1999) 68 Cal.App.4th 1435, 1448.) That does not seem to be the case here. No trial date has been scheduled, and we are far removed from the five years plaintiff has to prosecute this matter. Further, both parties in their respective Case Management Statements have recently indicated that substantial future discovery is yet to be propounded. Defendant, for example, in its Case Management Statement filed on March 17, 2025, indicates the following discover will be

completed by October 2025 (6 months from now) – deposition testimony of plaintiff and plaintiff's experts, and a vehicle inspection. Meditation has not yet been scheduled.

Further, the court is not persuaded by defendant's claim that the addition of the CLRA changes the tenor and complexity of the lawsuit, necessitating additional resources, and ultimately delaying trial and final resolution of the case. (See, e.g., *Magpoli, supra*,) At the outset, much of plaintiff's argument is predicated on its erroneous understanding that the first cause of action (a violation of Commercial Code) and the second cause of action (violations of the Magnusson-Moss Warranty Act) are new – but as noted above, they are ***not*** new. As for the CLRA cause of action, plaintiff must allege that plaintiff acquired by purchase or lease, the automobile at issue; that defendant (per Civil Code section 1770(a)) represented the car had characteristics or uses or standards that it actually did not have, that plaintiff was harmed, that plaintiff's harm resulted from defendant's conduct. (CACI 4700.)

The court does not see the parade of horribles envisioned by defendant, given the existence and presence since the inception of this lawsuit of both the Commercial Code and Magnusson-Moss Warranty Act causes of action. Further, defendant makes much of the fact that because the Song-Beverly Act claims can be based on post-sale conduct, while the CRLA cause of action can be based on pre-sale conduct (see, e.g., *Anderson v. Ford Motor Co*. (2022) 74 Cal.App.5th 946, 967), the addition of the CRLA fundamentally alters the lawsuit. But the court sees more bridges than canyons. For example, plaintiff alleges in the new proposed pleading that defendant's representations were made "both *in the written warranty* that Plaintiff received [the same one at issue in the Song Beverly Act causes of action] as well as through marketing materials designed and disseminated by Defendants for the purpose of inducing customers like Plaintiff to purchase their vehicles." Additionally, opines plaintiff, authorized service agents (i.e., those also at issue the Song Beverly Act) "also made these representations to Plaintiff at each and every presentation of the Vehicle for repair." Plaintiff also claims that defendant had no intention of performing any of these promises because, inter alia, it inadequately trained its dealers to diagnose and repair all potential defects, failed to maintain polices and procedures that ensure dealers and technicians were properly trained, failed to adequately compensate its dealers for doing repair work, adopted policies that prevented dealers from repairing potential defects, and dealers which defendant actually visited were unable to diagnose and repair the defects at issue. (¶ 44.) This conduct for the most part rests on post-sale conduct (or post-sale evidence), similar to the discovery associated with the Song Beverly Act. The tone and tenor of the lawsuit on the ground has ***not*** fundamentally been altered, and the court does not see significant prejudice to defendant, notably as the new cause of action still relates to the same general set of facts. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.)

Finally, the court is not persuaded by defendant's argument that the court should deny the motion because the three causes of action are "futile." True, the court has discretion to deny

leave to amend when the amendment would be "futile," defined as when amendment cannot state a cause of action as a matter of law. (See, e.g., *Singh v. Lipworth* (2014) 227 Cal.App.4th 813, 828 [the amendment was predicated on relitigating the final judgment and post-judgment orders based on intrinsic, rather than extrinsic fraud, making the claim legally untenable]; *Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 230 [because the cause of action in the amended pleading did not relate back to the filing of the original complaint, as it was based on a different incident, it was barred by one-year statute of limitations per § 340.6 as a matter of law]; see also *Heckendorn v. City of San Marino* (1986) 42 Cal.3d 481, 489 [leave to amend denied where there is no reasonable possibility that an amendment could cure the complaint's defect].) Absent these types of errors, however, a trial court should not consider the validity of the proposed amended pleading in deciding whether to grant leave to amend. Grounds for demurrer or motion to strike in this situation are premature; after leave to amend is granted, the opposing party will have the opportunity to attack the validity of the amended pleading. (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 790 [when challenge to amended pleading is based on claim that new causes of action were simply a retooling of the allegations, "we believe that the better course of action would have been to allow plaintiff to amend the complaint and then let the parties test its legal sufficiency in other appropriate proceeding"].) That is, where the defect in any proposed amendment can be cured by future amendment, the preferrable practice is to permit the amendment and allow the parties to test its legal sufficiency by demurrer or other appropriate motion. (*California Casualty Gen, Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 281, disapproved on other grounds in *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390, 407, fn. 11 [such a proceeding may develop the factual content of the cause of action or defense and to refine the language in which it is pleaded].)

The court categorically rejects defendant's argument that the court should deny the motion for leave to amend because the first and second causes of action of the proposed first amended complaint are legally untenable, as both were advanced in the original complaint and are advanced here without substantive change. Defendant filed an answer to the complaint, foregoing any pretrial challenges as a result. Defendant cannot now be seen advancing an argument that it failed to make before it filed an answer.

Nor does the court agree that plaintiff is unable to advance a CLRA claim *as a matter of law* based on the facial allegations of the proposed first amended complaint. The very case plaintiff cites in his opposition -- *Rouze v. One World Technologies, Inc.* (E.D. Cal., Nov. 15, 2021, No. 2:19-CV-01291-TLN-DB) 2021 WL 5304016, at *6 – concluded that plaintiff failed to allege sufficient facts to support, inter alia, a CRLA cause of action, and granted the federal version of the demurrer (a motion to dismiss) "***with leave to amend***." (*Ibid.*) More substantively, defendant argues that a claim under the CLRA based on fraudulent omissions, "to be actionable the omission must be contrary to a representation actually made by defendant, or an omission of a fact the defendant was obliged to disclose." (*Daugherty v. American Honda*

Co. Inc. (2006) 144 Cal.App.4th 824, 835.) Even if defendant is correct that the pleading falls short of this standard (something the court does not need to determine), plaintiff should be given an opportunity to allege what it can; it would be inappropriate to preclude that entirely by denying leave to amend.

In this same vein the court is not persuaded by defendant's futility argument based on the fact the proposed first amended complaint reveals plaintiff did not "enter into any transaction with GM at all," for a duty to disclose exists under the CLRA when there is no fiduciary relationship only when there is direct dealings between the plaintiff and defendant. (See, e.g., *Bigler-Engler v. Breg, Inc*. (2017) 7 Cal.App.5th 276, 312 [where there is no fiduciary or confidential relationship, nondisclosure of material facts must "necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large"].) Defendant, however, overlooks the import of *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, in which the appellate court addressed the following argument: "In its short argument on this point in its appellate brief, Nissan argues plaintiffs did not adequately plead the existence of a buyer-seller relationship between the parties, because plaintiffs bought the car from a Nissan dealership (not from Nissan itself). At the pleading stage (and in the absence of a more developed argument by Nissan on this point), we conclude plaintiffs' allegations are sufficient. Plaintiffs alleged that they bought the car 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***." (*Id.* at p. 844, emphasis added; see also *Zepeda v. General Motors, LLC* (S.D. Cal., Aug. 8, 2024, No. 3:23-CV-02305-W-JLB) 2023 WL 3732479, at *5 [while agency allegations alone would be insufficient to establish a duty to disclose, the Court agrees with *Dhital* that an allegation that defendant provided an express warranty is sufficient to establish a transactional relationship at the pleading stage]; *Kuehl v. General Motors LLC* (C.D. Cal., Nov. 17, 2023, No. 2:23-CV-06980-SB-SK) 2023 WL 8353784, at *3 [following *Dhital*, but concluding that Kuehl's conclusory allegations do not suffice to establish agency, and without agency,].) These cases directly counter defendant's argument, and appear sufficiently commodious to afford plaintiff an opportunity to plead a duty to disclose (even if the court assumes arguendo that one has not been alleged in the proposed amended pleading). Simply put, following *Dhital* and progeny, the omission of a direct relationship between plaintiff and defendant does not bar the claim as a matter of law (as defendant seems to think), meaning the challenge should be raised via demurrer (leaving plaintiff with the possible opportunity to amend). This also is no basis to deny the motion for leave to amend.

Summary:

The court grants plaintiff's motion for leave to file a first amended pleading. It deems the proposed first amended pleading filed as of today. Defendant has thirty days from today's

hearing to file a responsive pleading. Parties are directed to appear at the hearing either in person or by Zoom.