TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, May 6, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6724**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

TO JOIN ZOOM ONLINE:

Department 18:
Meeting ID: **160—739—4368**
Password: **000169**
https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWlIL3NBeE9LVHU2NVVpQlVRUT09

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
Call: +1 669 900 6833 US (San Jose)

Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. SCV-268120, Akiyoshi v. Andrade

Plaintiff's unopposed motion for entry of judgment is **GRANTED**.

Plaintiff's counsel shall submit a written order and judgment consistent with this tentative ruling. Due to the lack of opposition, compliance with Rule 3.1312 is excused.

This matter arises out of an alleged loan given by Plaintiff to Defendant in the amount of $100,000. The parties have stipulated to judgment being entered against Defendant in the total amount of $95,000 and for the Court to enter judgment pursuant to CCP § 664.6. The request for entry of judgment based on the parties' stipulation is granted.

2. 25CV05486, Esquivel v. Bell's Healdsburg Ambulance Services, et al.

Defendant's motion to compel arbitration of Plaintiff's individual PAGA claim is **GRANTED**.

Defendant's request for dismissal of Plaintiff's representative claims is **DENIED**.

Defendant's request for stay is **GRANTED**.

Defendant's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

Plaintiff brought this action against his former employer, Bell's Healdsburg Ambulance Service, as a class and representative action claiming several Labor Code violations under PAGA. Defendant now seeks to compel arbitration of Plaintiff's individual PAGA claims under the parties' arbitration agreement and to stay the representative claims.

On November 18, 2018, during his onboarding process, Plaintiff was presented with several onboarding documents, including the arbitration agreement, by Defendant's CEO, Pamela Bell Simmons. Plaintiff signed and returned the arbitration agreement during that same meeting. It was also signed by Defendant's CEO.

The arbitration agreement provides,

> In the event there is any dispute or claim arising out of the termination of Joseph Esquivel's (hereinafter referred to as the "EMPLOYEE") employment or any claim by EMPLOYEE of harassment or discrimination which the parties are unable to resolve through direct discussion or mediation (excluding claims for workers' compensation or unemployment insurance), the EMPLOYEE and BELL'S AMBULANCE SERVICE {hereinafter referred to as the "EMPLOYER") agree to submit all such disputes to final and binding arbitration.

It further provides,

> It is expressly agreed that among the disputes which are to be submitted to final and binding arbitration are those disputes or claims concerning discrimination, harassment, wrongful discharge, breach of ·contract, breach of the covenant of good faith and fair dealing, any alleged unlawful or wrongful act which might arise thereunder. any alleged unlawful or wrongful act which might arise under the Age Discrimination in Employment Act of 1967, the United States and California Constitution, California common law, the California Labor Code, Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Civil Rights Act of 1991, the Americans with Disabilities Act, the California Fair Employment and Housing Act, the Employee Retirement Income Security Act, and any and all federal and state executive orders and other statutes and regulations…

I. Defendant Has Met its Burden of Showing the Existence of a Valid Arbitration Agreement that Applies to this Dispute

"The party seeking to compel arbitration has the initial burden to plead and prove the existence of a valid arbitration agreement that applies to the dispute. Once that burden is satisfied, the party opposing arbitration must prove any defense to the agreement's enforcement, such as unconscionability." (*Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209.)

Defendant has shown that there exists a valid arbitration agreement that applies to this dispute. Any argument by Plaintiff that the arbitration agreement does not apply to this dispute is unpersuasive. The agreement expressly applies to claims that may arise under "the California Labor Code."

II. The Arbitration Agreement is Enforceable

Plaintiff argues that the agreement is unenforceable because it is both procedurally and substantively unconscionable. Unconscionability is a judicially created doctrine and involves a highly context-dependent analysis. (*Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 911.) Unconscionability has two elements: procedural and substantive. Well-established California law requires that both elements be present for an unconscionability defense to succeed. The two elements, however, need not be present to the same degree and are evaluated on a sliding scale. "[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114.)

A. Procedural Unconscionability

"Procedural unconscionability pertains to the making of the agreement; it focuses on the oppression that arises from unequal bargaining power and the surprise to the weaker party that results from hidden terms or the lack of informed choice." (*Ajamian v. CantorCO2e, L.P.* (2012) 203 Cal.App.4th 771, 795.) The first step in determining procedural unconscionability is an inquiry into whether the contract is one of adhesion. (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126 ("*OTO*").) "An adhesive contract is standardized, generally on a preprinted form, and offered by the party with superior bargaining power 'on a take-it-or-leave-it basis.'" (*Ibid*.) "Arbitration contracts imposed as a condition of employment are typically adhesive." (*Id.* at 126.) Once the court determines the contract is one of adhesion, the question becomes whether the circumstances of the contract's formation created such oppression or surprise that the overall fairness must be subject to closer scrutiny. (*Ibid*.)

> The circumstances relevant to establishing oppression include, but are not limited to (1) the amount of time the party is given to consider the proposed contract; (2) the amount and type of pressure exerted on the party to sign the proposed contract; (3) the length of the proposed contract and the length and complexity of the challenged provision; (4) the education and

experience of the party; and (5) whether the party's review of the proposed contract was aided by an attorney.

(*Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.* (2015) 232 Cal.App.4th 1332, 1348.)

Plaintiff argues that the agreement is procedurally unconscionable because it was one of adhesion. Defendant does not contest that the contract was one of adhesion but argues that adhesion contracts are not per se unconscionable. "'Where, as here, there is no other indication of oppression or surprise, the degree of procedural unconscionability of an adhesion agreement is low, and the agreement will be enforceable unless the degree of substantive unconscionability is high.'" (*Serpa v. Cal. Surety Investigations, Inc.* (2013) 215 Cal.App.4th 695, 704.)

The adhesive nature of the arbitration agreement in this matter shows a low degree of procedural unconscionability. However, Plaintiff has not shown any other elements, such as oppression or surprise, that would indicate a higher level of unconscionability.

Further supporting Plaintiff's claim of procedural unconscionability, Plaintiff represents that he had a high school diploma and some college credits at the time of signing and that Ms. Bell Simmons did not tell him that signing the document was optional, that he could negotiate the terms, or that he had the right to consult with an attorney before singing. He represents that he felt compelled and pressured to sign the agreement because he was given the document at his onboarding meeting and told to sign it in front of Ms. Bell Simmons that day. However, there is insufficient evidence in the record to indicate that if Plaintiff desired more time to review the arbitration agreement he would not be given more time. Rather, Ms. Bell Simmons testifies to the contrary. Ms. Bell Simmons represents that she did not express to Plaintiff that he was required to sign the arbitration agreement that same day. She represents that it is her practice to allow all employees to take documents home with them if they request additional time to review them. The record reflects a typical onboarding process.

The Court finds a very low degree of procedural unconscionability. Accordingly, a high degree of substantive unconscionability must be shown for this arbitration agreement to be unenforceable. This has not been shown, as discussed below.

B. Substantive Unconscionability

"Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 246.) Mere unequal benefit is insufficient to show substantive unconscionability, rather, the terms must be "so one-sided as to shock the conscience." (*24 Hour Fitness, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1199, 1213.) Though many factors go into determining substantive unconscionability, the primary consideration in assessing substantive conscionability is mutuality. *Abramson v. Juniper Networks, Inc.* (2004 115 Cal.App.4th 638, 657.) Lack of mutuality, unlimited duration, and broad scope of claims covered

are all factors which may be considered substantively unconscionable within an arbitration provision. (*Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, 321-328.)

Plaintiff argues that the arbitration agreement is substantively unconscionable because it is not mutual in its obligation to arbitrate claims; it would improperly compel Plaintiff to pay for fees and costs of arbitration; and it shortens applicable limitations periods.

The arbitration agreement contains a severance clause which provides that in the event that any provision of the arbitration agreement is determined to be illegal, invalid or unenforceable, that provision shall be enforced to the extent permissible under the law and all remaining provisions shall continue in full force and effect.

Mutuality of Obligation to Arbitrate

Plaintiff argues, "Nowhere in the Arbitration Agreement is it even hinted that Defendant waived its right to a jury trial on claims it might have against Plaintiff, and that it has agreed to submit all such claims to binding arbitration." However, the very first paragraph of the agreement provides, "In the event there any dispute or claim arising out of the termination of Joseph Esquivel's…*employment* or any claim by EMPLOYEE of harassment or discrimination which the parties are unable to resolve through direct discussion or mediation… the EMPLOYEE *and BELL'S AMBULANCE SERVICE*…agree to submit all such disputes to final and binding arbitration." (Italics added.)

This language clearly provides that both the employee and Defendant agree to arbitrate any disputes arising out of Plaintiff's employment. Any attempt by Plaintiff to argue that it is not mutual because of the language "or any claim by EMPLOYEE of harassment or discrimination" is not persuasive.

Plaintiff argues that the provision regarding requesting arbitration is not mutual because it only discusses what Plaintiff must do to request arbitration from Defendant. This provision is not "so one-sided as to shock the conscience," and does not render the agreement substantively unconscionable. It is simply explaining the procedure by which Plaintiff should request arbitration and it does not contain any repressive requirements. Taken as a whole, the agreement is mutual.

Payment of Fees by Plaintiff & Shortening of Limitations Periods

Plaintiff argues that the arbitration agreement would require Plaintiff to pay expenses that would not be required of him if he to litigate in Court, which is unlawful. Specifically, Plaintiff refers to Section XI.B. of the agreement, which states,

> Each party shall be responsible for one-half the cost of the court reporter's fee. the Arbitrator's fee, the cost of the Arbitrator's transcript of the hearing and any costs associated with the facilities for the arbitration, e.g., the hearing room.

Furthermore, Plaintiff argues that the arbitration agreement shortens all applicable limitations period, which has been found to be unconscionable. Specifically, Plaintiff refers to the portion of Section I that states,

> To request arbitration, submit the request for arbitration in writing to any partner within one (1) year of the date when the dispute first arose, or within one (1) year of the termination of employment, whichever occurs first. Any failure to timely request arbitration shall constitute a waiver of all rights to any claims in any forum arising out of any dispute that was subject to arbitration.

Defendant has not contested the unconscionability of these two provisions but instead requests that they be severed pursuant to the severance clause of the agreement. The court agrees that they must be severed. However, the remainder of the arbitration agreement is still enforceable.

Determining that certain provisions of the arbitration agreement are unconscionable and must be severed "does not vitiate the underlying agreement to arbitrate. When, as here, the arbitration agreement is not otherwise permeated by unconscionability, the offending provision, which is plainly collateral to the main purpose of the contract, is properly severed and the remainder of the contract enforced." (*Serpa v. California Surety Investigations, Inc.* (2013) 215 Cal.App.4th 695, 710.) "If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced. If the illegality is collateral to the main purpose of the contract, and the illegal provision can be extirpated from the contract by means of severance or restriction, then such severance and restriction are appropriate. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 124.

Here, the provisions regarding payment of fees and regarding time-limits for bringing claims are plainly collateral to the main purpose of the contract. They do not permeate the contract with unconscionability. Once severed, there remain no unconscionable terms. The sections of the agreement outlined above shall be severed. All remaining provisions remain enforceable.

III. Defendant's Request for Dismissal/Stay

Defendant seeks to have Plaintiff's remaining representative PAGA claims dismissed under the argument that "where an arbitration agreement does not expressly authorize class arbitration, and the plaintiff's individual claims are compelled to arbitration, the named plaintiff no longer has standing to represent a putative class in court…" (Def. MPA, p. 15.) This argument is in direct conflict with the authority of *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104. The *Adolph* Court stated,

> The question here is whether an aggrieved employee who has been compelled to arbitrate claims under PAGA that are "premised on Labor Code violations actually sustained by" the plaintiff [citation] maintains statutory standing to pursue "PAGA claims arising out of events involving other employees" [citation] in court. We hold that the answer is yes. To

> have PAGA standing, a plaintiff must be an "aggrieved employee"—that is, (1) "someone 'who was employed by the alleged violator' " and (2) " 'against whom one or more of the alleged violations was committed.' " [Citation.] Where a plaintiff has brought a PAGA action comprising individual and non-individual claims, an order compelling arbitration of the individual claims does not strip the plaintiff of standing as an aggrieved employee to litigate claims on behalf of other employees under PAGA.

(*Id*. at 1114.) The *Adolph* Court further explained,

> If the arbitrator determines that Adolph is not an aggrieved employee and the court confirms that determination and reduces it to a final judgment, the court would give effect to that finding, and Adolph could no longer prosecute his non-individual claims due to lack of standing.

(*Id*. at 1124.)

Since this matter has yet to be arbitrated, there has yet to be a determination made regarding whether Plaintiff is or is not an aggrieved employee. As such, under *Adolph*, Plaintiff still has standing to pursue the representative claims. Accordingly, the request for dismissal is denied. However, the requested stay pending the outcome of the arbitration of Plaintiff's individual claim is granted.

3. <u>SCV-271112, Sol Rise Farms v. Bartlett</u>

Defendant's motion to consolidate this case with case number 24CV01464 is **DENIED**.

Plaintiff's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Defendant moves to consolidate this matter with 24CV01464. However, the motion is procedurally defective. Defendant has failed to file a notice of motion in the case sought to be consolidated with this one.

California Rules of Court, Rule 3.350(a)(1)(C) provides that a notice of motion to consolidate cases must be filed in each case sought to be consolidated. Defendant did not do so here. The motion has only been filed in this case, but not in 24CV01464. Accordingly, the other case, which is not assigned to Department 18, has not been placed on the Department 18 calendar to be considered in conjunction with this case.

The Court notes that some attempts were made to file the notice of motion in 24CV01464, but they were unsuccessful. The attempted filing on February 24, 2026, was rejected for failure to pay the necessary filing fee. The attempted filing on March 19, 2026, was also rejected because the incorrect case number was listed on the document. Defendant made no further attempts to file the notice of motion in 24CV01464.

4. SCV-273372, Danaher v. Loe

Respondent's unopposed motion for attorney's fees on appeal is **GRANTED** in the amount of $26,721.93. Costs are awarded in the amount of $1,221.93.

Respondent's counsel shall submit a written order consistent with this tentative ruling. Due to the lack of opposition, compliance with Rule 3.1312 is excused.

Analysis:

Respondent, Petitioner's next-door neighbor, maintains a legal private shooting range on his property. On May 30, 2023, Petitioner filed a request for a restraining order pursuant to the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code §§ 15600 et seq.). The petition alleged that "Respondent shoots, entirely on his property, but the bullets often fly through the 25 neighborhood." Petitioner sought an order enjoining Respondent from physically abusing her, a no-contact order, and a 100-yard stay-away order, with exceptions allowing Respondent to occupy, enter, and exit his property.

A court trial was held and the Court ultimately denied the petition and issued a statement of decision. The Court subsequently granted Respondent's motion for attorney's fees pursuant to Welf. & Inst. Code § 15657.03(t).
Petitioner appealed the denial of the petition and the award of the attorney's fees. The Court of Appeal found no error and affirmed the trial court. The Court of Appeal issued a remittitur which stated "Respondent to recover costs" on appeal. Attorney's fees are allowable as costs. Accordingly, Respondent is entitled to recover its attorney's fees as costs incurred on the appeal.

Respondent requests $26,721.93 in attorney's fees for the appeal and has submitted a memorandum of costs seeking $1,221.93 in costs. Respondent's attorney's fees request is based on Respondent's counsel's hourly rate of $400 and his representation of having spent 63.7 hours on the appeal and 6.7 hours on this motion. The Court finds this request to be reasonable. The Court also finds the requested costs to be reasonable. They are both granted.

5. 25CV02976, Capital One N.A. v. Miller

Plaintiff's unopposed motion to vacate dismissal and enter judgment under CCP § 664.6 is **GRANTED**.

The Court will sign the proposed order and proposed judgment lodged with the moving papers.

The parties entered into a stipulated agreement wherein Defendant agreed to pay Plaintiff $8,948.50 in monthly installments. The parties agreed that the Court would retain jurisdiction pursuant to CCP § 664.6. They agreed that if Defendant defaulted on payments, Plaintiff could move have judgment entered for the principal sum, plus court costs, less credit for payments received. Defendant has defaulted on the payments after paying $2,857.50. Plaintiff seeks to have judgment entered against Defendant in the amount of $6,694.67, which is comprised of $6,091.06 for the remaining principal balance and $603.61 for costs. The request is granted.

6. SCV-268721, Russell v. Russell

Plaintiff's motion for attorney's fees pursuant to CCP § 473(b) is **CONTINUED** to May 20, 2026, at 3:00 p.m. in Department 18 in order to allow Plaintiff sufficient time to reply to the opposition filed by Simran Sekhon on May 30, 2026. Plaintiff may file a reply brief no later than May 8, 2026.

Plaintiff seeks attorney's fees under CCP § 473(b) following mandatory relief from default being granted due to the filing of Counsel Simran Sekhon's affidavit of fault under the statute. Mr. Sekhon did not file an opposition to this motion until April 30th, though it was due no later than April 23rd. It was not served upon Plaintiff until April 29th—the same day Plaintiff's reply would have been due. The Court exercises its discretion to consider the late-filed opposition, but will give Plaintiff sufficient time to review the opposition and file a reply brief.

7. 25CV01337, Bushman v. Volkswagen Group of America, Inc.

Plaintiff Ethan P. Bushman ("Plaintiff") filed the complaint (the "Complaint") in this action against defendants Volkswagen Group of America, Inc. ("Manufacturer"), Hansel Volkswagen of Santa Rosa ("Repair Facility" together with Manufacturer, "Defendants"), and Does 1-10. The Complaint contains causes of action for violations of the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act")(each against Manufacturer), negligent repair (against Repair Facility), and fraudulent inducement (against Manufacturer).

This matter is on calendar for Defendants' motion for judgment on the pleadings to the Complaint pursuant to Cal. Code Civ. Proc. ("CCP") §§ 438 for failure to state facts sufficient to constitute a cause of action as to each cause of action. The motion for judgment on the pleadings is **GRANTED IN PART AND DENIED IN PART.**

I. Governing Law

A. Judgment on the Pleadings

A motion for judgment on the pleadings may only be made on the grounds specified in the statute. CCP § 438(c)(1). "A motion for judgment on the pleadings is analogous to a general demurrer." *So v. Shin* (2013) 212 Cal.App.4th 652, 662. If the moving party is a defendant, the motion may be made on the grounds that the complaint does not state facts sufficient to constitute a cause or causes of action against the defendant. CCP § 438(c)(1)(B). A motion for judgment on the pleadings may be targeted to the entire complaint, or to any of the causes of action therein. CCP § 438 (c)(2)(A). "The fundamental question for the reviewing court is whether any cause of action is framed by the facts alleged in the complaint." *Surina v. Lucey* (1985) 168 Cal.App.3d 539, 541; cited by *Guild Mortgage Co. v. Heller* (1987) 193 Cal.App.3d 1505, 1508 ("Our primary task is to determine whether the facts alleged provide the basis for a cause of action against defendants under any theory."). As with a demurrer, the challenged pleading must be "liberally construed, with a view to substantial justice between the parties" and the court should give the pleading "a reasonable interpretation, reading it as a whole and its parts in their context." Code Civ. Proc. §452; see also, *Perez v. Golden Empire Transit Dist*. (2012) 209 Cal.App.4th 1228, 1238 (where allegations are

subject to different reasonable interpretations, court must draw "inferences favorable to the plaintiff, not the defendant."). "A plaintiff 'need not particularize matters 'presumptively within the knowledge of the demurring' defendant." *Elder v. Pacific Bell Telephone Co.* (2012) 205 Cal.App.4th 841, 858. "This includes matters such as a defendant's knowledge or notice or intent." *Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 611.

The grounds for a motion for judgment on the pleadings must appear on the face of the challenged pleading or be based on facts which the court may judicially notice, and not upon other extrinsic evidence. CCP § 438 (d). Where the motion is based on matters the court may judicially notice (under Evidence Code §§ 452, 453), such matters must be specified in the notice of motion or supporting points and authorities. CCP § 438(d); compare *Saltarelli & Steponovich v. Douglas* (1995) 40 Cal. App. 4th 1, 5.

"A motion for judgment on the pleadings is properly granted when the 'complaint does not state facts sufficient to constitute a cause of action against that defendant.' (Citation.) The grounds for the motion must appear on the face of the challenged pleading or from matters that may be judicially noticed. (Citation.) The trial court must accept as true all material facts properly pleaded, but does not consider conclusions of law or fact, opinions, speculation, or allegations contrary to law or facts that are judicially noticed." *Stevenson Real Estate Services, Inc. v. CB Richard Ellis Real Estate Services, Inc.* (2006) 138 Cal.App.4th 1215, 1219–1220; see also *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal. App. 3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal. App. 3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist*. (2012) 53 Cal. 4th 861, 872.

If the motion for judgment on the pleadings is granted, it may be granted with or without leave to amend. (CCP § 438(h)(1).) In ruling on the motion, the trial court should, ordinarily, permit the party whose pleadings are attacked to amend if it so desires. *Hardy v. Admiral Oil Co*. (1961) 56 Cal.2d 836, 841–842. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. However, "(i)f there is no liability as a matter of law, leave to amend should not be granted." *Schonfeldt v. State of California* (1998) 61 Cal.App.4th 1462, 1465.

D. Breach of Express Warranty

The Act "is a remedial statute designed to protect consumers who have purchased products covered by an express warranty." *Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 798. "Express warranty" is defined under the Act as any "written statement arising out of a sale to the consumer of a consumer good pursuant to which the manufacturer ... undertakes to preserve or maintain the utility or performance of the consumer good ...." Civ. Code § 1791.2, (a)(1). "If the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle … or promptly make restitution to the buyer ... However, the buyer shall be free to elect restitution in lieu of

replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle." Civ. Code, § 1793.2 (d)(2).

"To succeed on a claim for breach of an express warranty for a vehicle, the buyer plaintiff must prove that (1) the vehicle had a defect or nonconformity covered by a written warranty that substantially impaired the vehicle's use, value, or safety to a reasonable person in plaintiff's shoes (the nonconformity element); (2) the vehicle was presented to an authorized representative of the manufacturer for repair (the presentation element); (3) the manufacturer or its authorized repair facility did not repair the defect after a reasonable number of repair attempts (the failure to repair element); and (4) the manufacturer did not promptly replace or repurchase the vehicle from the plaintiff (the failure to replace or repurchase element)." *Carver v. Volkswagen Group of America, Inc.* (2024) 107 Cal.App.5th 864, 879; see also Judicial Council Of California Civil Jury Instruction ("CACI") 3201.

A claim for breach of express warranty may result in civil penalties if the plaintiff can show the breach was willful. Civ. Code, § 1794 (c). Offers made for repurchase under the Song-Beverly act are to include nearly all purchase expenses of the consumer, including taxes and fees paid. Civ. Code, § 1793.2 (d)(2)(B). Offers made for replacement under the Song-Beverly act are to include nearly all purchase expenses of the vehicle, which is to be substantially similar to the replaced vehicle, and "in no event shall the buyer be required by the manufacturer to accept a replacement vehicle." Civ. Code, § 1793.2 (d)(2)(B). When a consumer remits a product to the manufacturer or their representative for repair, "Unless the buyer agrees in writing to the contrary, the goods shall be serviced or repaired so as to conform to the applicable warranties within 30 days." Civ. Code, § 1793.2 (b).

Actions under the Song-Beverly Act for restitution or replacement of the vehicle are subject to several requirements for when the action must be brought. CCP §§ 871.20 and 871.21. Accordingly, the action shall not be brought later than six years after the date of original delivery of the vehicle. CCP § 871.21(b). The six-year period is tolled for any period where the vehicle is out of service by reason of repair for any nonconformity. *Id*. at subd. (c)(2).

E. Breach of Implied Warranty

Implied warranties apply to every sale of consumer goods at retail. See Civ. Code § 1792. Generally, "(a)s defined in the Song–Beverly Consumer Warranty Act, an implied warranty of merchantability guarantees that 'consumer goods meet each of the following: [¶] (1) Pass without objection in the trade under the contract description. [¶] (2) Are fit for the ordinary purposes for which such goods are used. [¶] (3) Are adequately contained, packaged, and labeled. [¶] (4) Conform to the promises or affirmations of fact made on the container or label.' (Civ. Code, § 1791.1, subd. (a).)" *Isip v. Mercedes-Benz USA, LLC* (2007) 155 Cal.App.4th 19, 26 (internal quotations omitted.)

> As defined in the Song–Beverly Consumer Warranty Act, "an implied warranty of merchantability guarantees that 'consumer goods meet each of the following: [¶] (1) Pass without objection in the trade under the contract description. [¶] (2) Are fit for the ordinary purposes for which such goods are used. [¶] (3) Are adequately contained, packaged, and labeled. [¶] (4) Conform to the promises or affirmations of

> fact made on the container or label.' (Civ.Code, § 1791.1, subd. (a).)" (*Mocek v. Alfa Leisure, Inc.* (2003) 114 Cal.App.4th 402, 406, 7 Cal.Rptr.3d 546.) Unlike an express warranty, "the implied warranty of merchantability arises by operation of law" and " 'provides for a minimum level of quality.' " (*American Suzuki, supra,* 37 Cal.App.4th at pp. 1295–1296, 44 Cal.Rptr.2d 526.)

Isip v. Mercedes-Benz USA, LLC (2007) 155 Cal.App.4th 19, 26; See also, CACI 3211.

"The duration of the implied warranty of merchantability and where present the implied warranty of fitness shall be coextensive in duration with an express warranty which accompanies the consumer goods, provided the duration of the express warranty is reasonable; but in no event shall such implied warranty have a duration of less than 60 days nor more than one year following the sale of new consumer goods to a retail buyer." Civ. Code, § 1791.1 (c). Similarly, "(t)he duration of the implied warranty of merchantability and where present the implied warranty of fitness with respect to used consumer goods sold in this state, where the sale is accompanied by an express warranty, shall be coextensive in duration with an express warranty which accompanies the consumer goods, provided the duration of the express warranty is reasonable, but in no event shall such implied warranties have a duration of less than 30 days nor more than three months following the sale of used consumer goods to a retail buyer." Civ. Code § 1795.5.

F. Negligent Repair

"The elements of a cause of action for negligence are: duty; breach of duty; legal cause; and damages." *Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 463. "Negligence is an unintentional tort, a failure to exercise the degree of care in a given situation that a reasonable man under similar circumstances would exercise to protect others from harm." *Donnelly v. Southern Pac. Co.* (1941) 18 Cal.2d 863, 869. "Ordinarily, negligence may be pleaded in general terms and the plaintiff need not specify the precise act or omission alleged to constitute the breach of duty." *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795. "In the ordinary personal injury lawsuit, in which the complaint's factual recitations show plainly the connection between cause and effect, it suffices to plead causation succinctly and generally." *Bockrath v. Aldrich Chemical Co., Inc.* (1999) 21 Cal.4th 71, 78.

G. Fraud in the Inducement

"The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638; see also Civ. Code §§ 1571-1574. Fraud may be accomplished though suppression of a fact by one who is bound to disclose it. Civ. Code § 1710 (3). "The required elements for fraudulent concealment are (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would have acted differently if the concealed or suppressed fact was known; and (5) plaintiff sustained damage as a result of the concealment or suppression of the material fact." *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 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 qualify the facts disclosed or render the disclosure misleading (i.e., partial concealment); or (5) defendant actively conceals discovery of material fact from plaintiff (i.e., active concealment). *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 40; *Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 255; *Heliotis v. Schuman* (1986) 181 Cal.App.3d 646, 651; see also the *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336.

"'[I]n California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations.] "Thus 'the policy of liberal construction of the pleadings ... will not ordinarily be invoked to sustain a pleading defective in any material respect.'[Citation.] [¶] This particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.'" *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 993; *see Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1166-1167 [" 'the plaintiff must allege the names of the persons who made the representations, ... to whom they spoke, what they said or wrote, and when the representation was made' "]; *see also Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645. In pleading fraud claims, "(e)very element of the cause of action must be alleged in full, factually and specifically." *Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1249. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632; see *Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1060 (in pleading promissory fraud, a general allegation that the promise was made without intent to perform was sufficient); see also *Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 608 (pleading that a hospital intentionally withheld that a health practitioner was operating without a medical license was sufficient to meet the pleading requirements for intent).

To establish reliance on fraud, reliance upon the truth of the fraudulent misrepresentation does not have to be a predominant factor, but it must be a substantial factor in the plaintiff's subsequent conduct. *OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 864. Plaintiffs in fraud by concealment claims must show that if the information had not been omitted, plaintiff would have been aware of it and therefore would have behaved differently. *Id.* The pleading must be adequately specific to show actual reliance on the omission, and that the damages causally resulted therefrom. *Id*. California law "requires a plaintiff to allege specific facts not only showing he or she actually and justifiably relied on the defendant's misrepresentations, but also how the actions he or she took in reliance on the defendant's misrepresentations caused the alleged damages." *Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1499.

H. Economic Loss Doctrine

"The (economic loss rule) itself is deceptively easy to state: In general, there is no recovery in tort for negligently inflicted "purely economic losses," meaning financial harm unaccompanied by physical or property damage. *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 922. The economic loss rule "functions to bar claims in negligence for pure economic losses in deference to a

contract between litigating parties." *Ibid*. "[T]here is no liability in tort for economic loss caused by negligence in the performance or negotiation of a contract between the parties." *Id.* at 923, quoting Restatement 3d Torts, § 3.

Affirmative intentional representations constituting fraud are not conduct which may be protected by the economic loss doctrine. *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 991-992. "When evaluating whether the parties' expectations and risk allocations bar tort recovery, the court must consider the alleged facts. First, applying standard contract principles, it must ascertain the full scope of the parties' contractual agreement, including the rights created or reserved, the obligations assumed or declined, and the provided remedies for breach. Second, it must determine whether there is an independent tort duty to refrain from the alleged conduct. Third, if an independent duty exists, the court must consider whether the plaintiff can establish all elements of the tort independently of the rights and duties assumed by the parties under the contract." *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 26. Fraudulent concealment in an automobile sale is fraud in the formation of the contract sufficient that it falls outside the economic loss rule. *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 843.

II. Judgment on the Pleadings

A. Civ. Code § 1793.2

Plaintiff's first three causes of action rely on three different subdivisions of Civ. Code § 1793.2. Plaintiff pleads breach of express warranty, failure to repair in 30 days, and failure to provide repair facilities with sufficient service bulletins and replacement parts.

Defendants make one argument attacking all three on the same basis. Defendants argue that the Complaint does not contain facts sufficient to show that Plaintiff is a "buyer" under the statute. To this argument, the burden related to Defendants determining whether Plaintiff purchased under the act seems adequately addressed by ¶ 9. That Plaintiff alleges that the is a "buyer" is likely sufficient on a detail which is possibly remedied through mere rephrasing. If Plaintiff had merely alleged that he "bought" the vehicle, that would appear to be sufficient. Pleading does not generally require magic words to state a cause of action, and it makes little sense to state that Plaintiff's use of the statute's term of art would serve as a magic word to defeat it. Plaintiff's use of quotes rendering the matter insufficient also appears to be an absurd result. The Court also notes that while Defendant argues that it is not clear whether Plaintiff purchased the vehicle in the state of California, as is required by the Act, that particular fact should be clear to both the parties at this juncture due to the required exchange of materials under CCP § 871.26 (f)(1). While it appears from the pleadings that the parties did not perform such an exchange (using the passive construal that Manufacturer didn't "opt" in), it is not clear why, as this framework appears to the Court to be mandatory. CCP § 871.26(b) ("Within 60 days after the filing of the answer or other responsive pleading, all parties shall, without awaiting a discovery request, provide to all other parties an initial disclosure and documents pursuant to subdivisions (f), (g), and (h)."). Plaintiff's allegations in this regard are sufficient.

However, the claim for breach of express warranty is nonetheless insufficiently pleaded. In determining this, the Court examines the elements of the claim. "To succeed on a claim for breach of an express warranty for a vehicle, the buyer plaintiff must prove that (1) the vehicle had a defect

or nonconformity covered by a written warranty that substantially impaired the vehicle's use, value, or safety to a reasonable person in plaintiff's shoes (the nonconformity element); (2) the vehicle was presented to an authorized representative of the manufacturer for repair (the presentation element); (3) the manufacturer or its authorized repair facility did not repair the defect after a reasonable number of repair attempts (the failure to repair element); and (4) the manufacturer did not promptly replace or repurchase the vehicle from the plaintiff (the failure to replace or repurchase element)." *Carver v. Volkswagen Group of America, Inc.* (2024) 107 Cal.App.5th 864, 879.

Plaintiff attempts to link these matters together with assertions of bare legal conclusions, and presenting little to no actual facts. For example, Plaintiff's claims for breach of express warranty require that Defendant have failed to conform the vehicle after a reasonable number of repair attempts. Plaintiff attempts to meet this element by parroting the statutory language, simply stating that Defendant failed to conform the car to warranty after a reasonable number of repair attempts. This is purely conclusory, failing to rise to the standard of an "ultimate fact". Plaintiff's bare averment of "reasonable" provides nothing which would appraise the Court or Defendant of how many repair attempts were alleged to have been made. Given that a multiplicity is necessary under the statute (*Silvio v. Ford Motor Co.* (2003) 109 Cal.App.4th 1205, 1209 [one repair attempt insufficient]), Plaintiff cannot plead a legal conclusion and have it be sufficient. Here, mere rephrasing is not sufficient to cure the missing factual pleading. Ultimate facts are required.

Turning to Plaintiff's allegations of defects, the Complaint is pleaded in such a way as to provide Defendant with no information of the averred defects which form the breach of warranty. As with the failure to provide factual pleading of repair attempts, here Plaintiff has essentially indicated that the entire car was defective without providing any indication as to what was defective about it. While complaints are entitled to liberal construction at demurrer, Plaintiff must still plead *facts* that appraise Defendant of the claim. "A complaint will be upheld so long as the pleading gives notice of the issues sufficient to enable preparation of a defense." *Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 611 (internal quotations omitted). Here, because Plaintiff provides next to nothing in the way of factual pleading, it is impossible to augur what Plaintiff's allegations of defect may be. Plaintiff indicates purported deficiencies with huge, vague categories of Vehicle systems. See, Complaint, ¶ 12. The Complaint contains no fact indicating symptoms for which the Vehicle was tendered for repair. The general rule is that statutory causes of action must be pleaded with particularity. *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790. Plaintiff provides no authority showing this rule of general pleading is inapplicable to claims under the Act.

Plaintiffs second cause of action fails for similar reasons. Plaintiff avers the conclusion that Defendants failed to repair the vehicle within 30 days. Plaintiff's pleading is so vague that the Court cannot conclude that any of the language alleges that a single repair attempt took longer than thirty days. While Civ. Code § 1793.2 (b) is not perfectly clear, and California courts of appeal have declined to grapple with defining this provision (*Ramos v. Mercedes-Benz USA, LLC* (2020) 55 Cal.App.5th 220, 226, fn. 2), the Court nonetheless construes the statute as requiring an individual repair attempt as exceeding the thirty-day period. Federal courts have persuasively interpreted the statute in such a manner. *Schick v. BMW of North America, LLC* (9th Cir. 2020) 801 Fed.Appx. 519, 521. Other statutes construe the 30 days as being "out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days" only if the vehicle meets stringent statutory requirements. Civ. Code, § 1793.22 (a)(3). The only reasonable construal of 30-day repair timelines not under Civ. Code § 1793.22 is in accord

with the findings of the Ninth Circuit, and Plaintiff must allege facts sufficient that to show that the Vehicle was out for more than thirty days *on a single instance of repair.* The Court does not find that Plaintiff's conclusion that the vehicle exceeded 30 days provides any factual pleading which would put Defendants or the Court on notice as to anything more than recitation of statutory language. It is a conclusion, and not facts. The motion must be granted as to the second cause of action as a result.

The third cause of action is similarly vague, but due to the nature of the claim is subject to different considerations. Where the facts are more in the power of the defendant, pleading is entitled to less specificity. The information related to claims of insufficient service bulletins and replacement parts are clearly more in the control of Defendants, and not Plaintiff. The third cause of action is adequately stated.

The motion for judgement on the pleadings is GRANTED as to the first and second causes of action, and DENIED as to the third cause of action.

B. Implied Warranty

The implied warranty fails for the same reasons as Plaintiff's first cause of action. Simply put, there is no factual pleading sufficient for the Court to determine whether there is a breach of the warranty, because no defect is truly identified.

The motion for judgment on the pleadings is GRANTED as to the fourth cause of action.

C. Negligent Repair.

Defendants argue that Repair Facility cannot be held liable for negligent repair, because Plaintiff has not pled sufficient facts, and because such causes of action are precluded by the economic loss rule. Negligence is a common law cause of action. *State Farm General Ins. Co. v. Oetiker, Inc.* (2020) 58 Cal.App.5th 940, 950. Pleading is broadly construed, and the elements of negligence are often pled in a general manner. The negligence basis here is apparent. Plaintiff has a Vehicle which is defective, and the cause of that defect may in part result from Repair Facility's failure to appropriately repair the Vehicle. The allegations of negligence here appear sufficient.

Second, the economic loss doctrine does not appear to preclude such a cause of action. While Defendants, citing exclusively to *Seely v. White Motor Co.* (1965) 63 Cal.2d 9, 18. *Seely* is a products liability and warranty case, with limited application to the claim for negligent repair. More recently, our high court in *Rattagan* acknowledged that contracts for services are sometimes exempt from the economic loss rule, and did not address the issue because it was not contended by the parties. *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 23. Plaintiff argues that the economic loss doctrine does not preclude the cause of action entirely, and so the motion must be denied, and that contractual duties sometimes result in tortious liability. The Court notes that service contracts have long been exempt from the economic loss rule where the conduct is both breach of contract and tortious. *North American Chemical Co. v. Superior Court* (1997) 59 Cal.App.4th 764, 774. The Court need not disentangle the two. Plaintiff accurately notes that the motion cannot be granted as to only portions of a cause of action. As was already addressed, Plaintiff's allegations of negligence are sufficient. Defendants' argument that Plaintiff's recovery

might be precluded under the economic loss rule presupposes that Plaintiff's damages are entirely within the scope of the contractual relationship. This requires the Court to read into the Complaint sufficient allegations to *presume* that Plaintiff's damages are entirely within the contractual relationship, or to impose some form of heightened pleading standard because the economic loss rule *may* be implicated. Defendants provide support for neither. The face of the Complaint does not contain facts sufficient to preclude the negligent repair cause of action under the economic loss doctrine.

The motion is DENIED as to the fifth cause of action.

D. Fraudulent Inducement Claim

Defendants attack the sixth cause of action on four theories. First, that Plaintiff has failed to plead adequate facts to meet the specificity required for fraud claims both generally and in relation to any omission. Second, Defendants argue that Plaintiff has failed to plead facts supporting a duty to disclose. Defendants also argue that the allegations of scienter are not supported by factual pleading. Finally, Defendants argue that the economic loss rule applies.

1. <u>There is Adequate Specificity for Fraudulent Concealment Claims</u>

Defendants generally aver that Plaintiff has not pled fraud with adequate specificity. Defendants argue that Plaintiff must show who concealed the material fact in order to plead the cause of action. Plaintiff in turn argues that Manufacturer misapprehends the elements of fraudulent concealment, which does not require an affirmative misrepresentation, so long as a material fact was suppressed.

Throughout their opposition, Plaintiff cites to *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828 ("*Dhital*"). Defendants avoid addressing the matter in their moving papers. The posture and facts of that case are relevant to the analysis that follows. First, the Court notes that review had been granted by the California Supreme Court, but the review was dismissed following the ruling in *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1. *Dhital v. Nissan North America* (Cal. 2024) 327 Cal.Rptr.3d 898. Given this, *Dhital* is no longer just persuasive authority, but binding. Defendants concede this on Reply, *Dhital* analyzes a host of questions which are at issue in the instant demurrer. As is noted throughout, Defendants produces no binding authority which conforms to the instant issues.

In *Dhital*, the consumer plaintiff had pled claims for fraudulent inducement, alleging that defendant car manufacturer had withheld, actively suppressed, and made affirmative representations which led the lack of disclosure to be misleading. *Dhital, supra,* 84 Cal.App.5th at 833-834. The trial court granted defendant's demurrer and motion to strike without leave to amend as to plaintiff's cause of action for fraudulent inducement and request for punitive damages. *Dhital, supra,* 84 Cal.App.5th at 832. The trial court based this in large part on the contention that plaintiff's claims were precluded by the economic loss rule. *Ibid*. Plaintiff appealed. *Ibid*. Nissan argued that the matter should be affirmed, based on the economic loss rule, or in the alternative that affirmance should occur because the complaint was insufficiently pled. The First District Court of Appeal reversed, finding that the economic loss rule did not apply to fraud claims, and that the complaint was sufficiently pled to state a cause of action for fraud. "Plaintiffs alleged the CVT transmissions installed in numerous Nissan vehicles (including the one plaintiffs purchased) were defective; Nissan knew of the defects

and the hazards they 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; plaintiffs 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 844. The Court of Appeal found that agency allegations regarding the dealer were sufficient to survive demurrer in creating the relationship between defendant and plaintiff for fraudulent inducement. *Ibid*. The *Dhital* court also found that the plaintiffs had adequately stated what should have been disclosed, as they had pled defendant "was aware of the defects as a result of premarket testing and consumer complaints that were made both to NHTSA and to Nissan and its dealers." *Id.* at 844. The Supreme Court has declined to review that conclusion, and it sits as published appellate authority binding on this Court.

Here, it is apparent that Plaintiff has pled adequate facts to present knowledge of the defects and failure to disclose. This is sufficient to show a suppressed fact as would be required for fraudulent concealment claims. Plaintiff persuasively argues that they cannot plead a false statement where one did not occur, but instead Defendants simply failed to communicate facts they were required to disclose. The vehicle was prone to a specific defect, of which Manufacturer was aware. Complaint ¶¶ 53, 58. Manufacturer had exclusive knowledge of this information. Complaint ¶ 58, 60. Manufacturer failed to disclose the material facts. Complaint ¶ 63. Defendants contention that Plaintiff does not allege the defect was present in the Vehicle fails to acknowledge the express allegation to the contrary. Complaint ¶ 58 ("… the Vehicle and its ADAs system suffered from an inherent defect.."). This is sufficiently specific to establish the underlying facts to a fraudulent concealment cause of action.

The Court notes that the type of specificity posed in this segment appears to be reflective of the factual pleading which was lacking in other segments of the Complaint. While it is true that the facts alleged in the fraudulent concealment cause of action are quite detailed, they are not incorporated into those prior deficient causes of action. Therefore, they do not vitiate them. CCP § 425.10; Rule of Court, Rule 2.112; *Kajima Engineering and Const., Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921, 931 (express incorporation by reference).

The Complaint is clear, had Manufacturer not allegedly engaged in fraudulent inducement, Plaintiff would not have purchased the vehicle. Complaint ¶ 57. This is sufficient.

2. Plaintiff Pleads Facts Supporting a Duty to Disclose

Defendants also assert that there is no duty to disclose. The Court notes that there are *five* separate bases triggering a duty to disclose, and any one would be sufficient to state Plaintiff's claim. *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 40. The Court addresses the two which appear in the Complaint.

a. The Parties had Adequate Relationship to Create a Duty

Also unavailing is Defendants' averment that the lack of direct contract between Manufacturer and Plaintiff constitutes a basis for demurring. Manufacturer argues that as a manufacturer, they have made no direct sale to Plaintiff, and therefore there can be no duty to disclose defects from Manufacturer to Plaintiff. Defendants particularly cites *LiMandri v. Judkins* (1997) 52 Cal.App.4th

326, 336. Plaintiff relies on *Dhital*, and indeed the Court finds it instructive due to strong similarity of specific facts. *Dhital* offers analysis on point. To quote that court:

> 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.

Dhital v. Nissan North America, Inc. (2022) 84 Cal.App.5th 828, 844.

As Plaintiff clearly elucidates, *Dhital* offers salient analysis on this subject. Defendants' citation to a case which is significantly distinguishable, as *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336 does not speak to the particular relationship between an auto manufacturer and an auto dealer as is present in both this case and *Dhital*. Nor does it account for the express warranty between Plaintiff and Manufacturer.

Here, as with *Dhital*, Plaintiff has alleged that the Vehicle was issued with an express warranty by Manufacturer to Plaintiff, creating a direct contractual relationship between them. See Complaint ¶ 7. Such arguments were sufficient at demurrer in *Dhital*, and they are sufficient here at the pleading stage. *Dhital, supra,* 84 Cal.App.5th at 844. Defendants' arguments that there is no contractual relationship is unpersuasive based on this analysis. Manufacturer continues this argument on reply, arguing *Dhital* should be given no weight because that court found that the argument failed due to "absence of a more developed argument". Again, the Court notes that modern caselaw supports sufficient transactional relationship between a manufacturer and eventual purchasing consumer, regardless of intermediaries.

b. There are Facts Alleged Triggering Duty to Disclose

As to Defendants' assertion that they have no duty to disclose, and has found that there was sufficient relationship alleged to proceed to the second part of the question of duty, whether Plaintiff has alleged that "the defendant had exclusive knowledge of material facts not known to the plaintiff". *Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 255. As is covered above under the first basis for demurrer, Plaintiff has adequately alleged that there was material facts that Manufacturer failed to disclose which were known internally, but not publicly disseminated. Complaint ¶¶ 57, 60-62. As such, Plaintiff pleads exclusive knowledge, and therefore a duty to disclose.

Given that Plaintiff has met one of the bases of disclosure, the Court need not prognosticate on alternative theories of the same element.

3. <u>Economic Loss Rule does not Apply</u>

Finally, Manufacturer argues regarding application of the economic loss rule. As the Court has expressed above, since the filing of the motion, *Dhital* has become binding authority. This is sufficient to show the fraud exception to the economic loss rule does apply here. *Rattagan* specifically declined to overturn *Dhital*. Moreover, here the alleged fraud *precedes* the formation of the contract. It is fraud underlying the formation of the contract, and as such cannot be part of the contractual duties. The argument on Reply to the contrary is Manufacturer sticking its head into the sand, to their detriment. *Dhital* is applicable controlling precedent. Based on the facts alleged, Defendants cannot rely upon the economic loss rule to overcome Plaintiff's fraudulent concealment claims.

4. Scienter

There is no need to address this issue expansively. General averments of scienter are sufficient. *Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 611. Defendants' arguments to the contrary are without basis in law.

The motion for judgment on the pleadings to the Sixth Cause of Action is DENIED.

IV. Damages

The motion fails to show why judgment on the pleadings proper as to punitive damages for two reasons. First, the motion has been denied as to the cause of action for fraudulent concealment. Accordingly, there is sufficient basis for the relief requested. Second, the motion for judgment on the pleadings is improperly targeted to damages. Motions for judgment on the pleadings address causes of action. CCP § 438. Defendants offer no authority showing that damages are appropriately addressed through judgment on the pleadings. *Fire Ins. Exchange v. Superior Court* (2004) 116 Cal.App.4th 446, 452 (judgment on the pleadings is the equivalent to a general demurrer); a *Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1047 ("(A) demurrer cannot rightfully be sustained to part of a cause of action or to a particular type of damage or remedy."). Defendants' attempt on Reply to parlay the instant motion into a motion to strike is not well taken. Defendants have the burden to bring the appropriate motion. Defendants' contention that plaintiff misstates the requested relief is legally incorrect. Plaintiff has accurately opined the purpose of a motion for judgment on the pleadings, and it is Defendnats who misstate the legal framework of the motion they elected to file.

V. Leave to Amend

The Court's granting of the motion above to the First, Second, and Fourth causes of action are all predicated on Plaintiff's failure to be adequately specific. There is no cohesive reason why these are not matters Plaintiff could remedy through amendment. Indeed, as is noted above, at least some of the lack of specificity is simply omitted from the necessary causes of action, and is not missing in total. Leave to amend each of the causes of action addressed appears not just appropriate, but necessary.

The motion for judgment on the pleadings is GRANTED with leave to amend as to the First, Second, and Fourth causes of action.

VI. Conclusion

Based on the foregoing, the motion for judgment on the pleadings is **GRANTED with leave to amend as to the First, Second, and Fourth causes of action. It is DENIED as to the Third, Fifth and Sixth causes of action.**

Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

*****This is the end of the Tentative Rulings*****