

**TENTATIVE RULINGS  
LAW & MOTION CALENDAR  
Wednesday, July 3, 2024 3:00 p.m.  
Courtroom 19 –Hon. Oscar A. Pardo  
3055 Cleveland Avenue, Santa Rosa**

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) 521-6602**, 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 19 Hearings**

MeetingID: 160-421-7577

Password: 410765

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**1-2. 23CV00796, Morton v. General Motors, LLC**

Defendant General Motors, LLC (“GM” or “Defendant”) demurs to the fifth cause of action for fraudulent inducement in Plaintiff Alexandria and Thomas Morton’s First Amended Complaint (“FAC”). The demurrer is **SUSTAINED with leave to amend** as to the fifth cause of action in the FAC.

GM also moves to strike punitive damages in the FAC. The motion to strike is **GRANTED with leave to amend**.

**I. Procedural History**

The FAC alleges four causes of action under the Song-Beverly Consumer Warranty Act and one cause of action for common-law fraudulent inducement by concealment. The action is related to Plaintiffs’ purchase of a Chevrolet Colorado (the “Truck”) that GM manufactured. The Truck came with a warranty coverage that was still in effect when Plaintiffs experienced issues with the Truck.

Plaintiffs' initial complaint alleged the same causes of action and prayed for punitive damages. GM previously demurred to the complaint as to the fifth cause of action for fraudulent inducement by concealment and moved to strike punitive damages. The Court previously sustained the demurrer with leave to amend and granted the motion to strike with leave to amend as well.

The FAC continues to allege the fifth cause of action and to request punitive damages. The significant changes between the FAC and the initial complaint are in the additional allegations contained in the FAC that discuss the tolling of the statute of limitations and also the warranty contract with GM. GM again demurs as to the fifth cause and moves to strike the prayer for punitive damages from the FAC. Plaintiffs oppose the motions.

## **II. Legal Standard**

### **A. Demurrer**

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) 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.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." (*Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473.) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.)

### **B. Fraudulent Inducement by Concealment**

"(T)he elements of an action for fraud and deceit based on concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage." (*Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 612–613.) "A failure to disclose a fact can constitute actionable fraud or deceit in four circumstances: (1) when the defendant is the plaintiff's fiduciary; (2) when the defendant has exclusive knowledge of material facts not known or reasonably accessible to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations that are misleading because some other material fact has not been disclosed." (*Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 255.)

“In California, fraud must be pled specifically; general and conclusory allegations do not suffice. Thus, the policy of liberal construction of the pleadings . . . will not ordinarily be invoked to sustain a pleading defective in any material respect. This particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered.” (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645, internal citations and quotation marks omitted.) Intent is a fact and sufficient as an allegation that defendant intended to deceive plaintiff. (5 Witkin, California Procedure § 725.)

To establish reliance on fraud, reliance upon the truth of the fraudulent misrepresentation does not have to be a predominant factor in the plaintiff’s subsequent conduct, but it must be a substantial factor. (*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. (*Ibid.*) The pleading must be adequately specific to show actual reliance on the omission, and that the damages causally resulted therefrom. (*Ibid.*) 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.)

### **C. Motion to Strike**

A motion to strike lies where a pleading contains “irrelevant, false, or improper matter[s]” or is “not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” (C.C.P. § 436(b).) However, “falsity” must be demonstrated by reference to the pleading itself or judicially noticeable matters, not extraneous facts. (See CCP § 437.)

### **D. Punitive Damages**

When a plaintiff claims a breach of an obligation against a defendant, not arising from any contract, punitive damages may be recovered in addition to actual damages when it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice against the plaintiff. (Cal. Civ. Code § 3294.) The code describes “malice” as conduct that the defendant intended to cause injury to the plaintiff, or “despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.” (*Id.* at § 3294(c)(1).) “Oppression” is defined as “despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.” (*Id.* at § 3294(c)(2).) Finally, “fraud” is defined as the “intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.” (*Id.* at § 3294(c)(3).)

For an employer to be liable for punitive damages for the actions of an employee, it must be shown that “the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice.” (Civ. Code § 3294(b).) “With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be

on the part of an officer, director, or managing agent of the corporation.” (*Ibid.*) Where punitive damages are alleged against an employer under Civil Code section 3294(b), the knowledge on the part of the employer stands as their equivalent of oppression, fraud or malice otherwise required under Civ. Code section 3294 (a); no oppression, fraud or malice on the part of the employer need be shown. (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1154.) Plaintiff must plead facts sufficient to show either knowledge or ratification by an officer, otherwise claims for punitive damages are inadequately pled. (*Hart v. National Mortgage & Land Co.* (1987) 189 Cal.App.3d 1420, 1433.)

### **III. Analysis**

#### **A. GM’s Demurrer to the Fifth Cause of Action for Fraudulent Inducement**

Defendant demurs to the fifth cause of action for fraudulent concealment in the FAC on three grounds: (1) the cause of action is time-barred by the statute of limitations; (2) the cause of action fails to state facts relevant to the elements of claim; and (3) the cause of action fails to allege a transactional relationship between Defendant and Plaintiffs giving rise to a duty to disclose.

##### **1. Statute of limitations**

GM argues that the statute of limitation period for fraud is three years per Code of Civil Procedure (“C.C.P.”) section 338(d). The FAC relates back to the initial complaint, which was filed five years after Plaintiffs purchased the Truck. Section 338(d) explicitly states that a cause of action for fraud “is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.” The FAC alleges that defects and nonconformities to warranty manifested within the applicable express warranty period, which warranty period began in 2018 when Plaintiffs purchased the Truck. Per the FAC, Plaintiffs discovered the defects shortly before filing the complaint during a check up at GM’s authorized repair facility on June 15, 2023.

Regardless, GM argues that because they did not file their complaint until 2023, Plaintiffs had surpassed the statute of limitations by over two years. Plaintiffs argue that the operative portion of the statute of limitations cited is that the cause of action accrues when the aggrieved party discovered the facts constituting the fraud claim.

As Plaintiffs have alleged in the FAC, they did not actually discover the facts constituting their fraud claim until June of 2023. Therefore, the Court finds that the fifth cause of action is not barred by the statute of limitations.

##### **2. Sufficiency of Allegations of Elements of Fraud**

Defendant argues that the FAC failed to plead a claim for fraud with the requisite specificity. Specifically, “Plaintiffs failed to allege (i) the identity of the individuals at GM who purportedly concealed material facts or made untrue representations about their Colorado (ii) their authority to speak and act on behalf of GM, (iii) GM’s knowledge about alleged defects in Plaintiffs’ Colorado at the time of purchase, (iv) any interactions with GM before or during the purchase of their Colorado, or (v) GM’s intent to induce reliance by Plaintiffs to purchase the specific Colorado at issue.”

Plaintiffs allege that if GM had disclosed the known issues with the type of transmission used in their vehicle, they would not have purchased it. (FAC, ¶ 65.) Plaintiffs generally allege that GM and its directors, officers, employees, affiliates, and or agents all concealed and failed to disclose the defective nature of the vehicle. Court does not find that this allegation is in sufficient detail so that GM can actually identify the individuals responsible within their company or that Plaintiffs have alleged enough to demonstrate GM or any of the many agents described intended to induce reliance by Plaintiffs to purchase the Truck at issue.

The Court will sustain the demurrer on this basis. However, the Court finds that this defect may be cured by amendment.

### 3. Transactional Relationship Between the Parties

Defendant argues the FAC does not allege that Plaintiffs purchased their Truck directly from GM, there is no direct transaction between them to support the fraud cause of action. Plaintiffs rely on the case *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, in which the Court of Appeals concluded that allegations that plaintiffs in that matter bought the car from the dealership of the defendant and that the vehicle was backed by express warranty from the manufacturer, plaintiffs' allegations were sufficient to show a transactional relationship.

The Court finds that the FAC has sufficiently alleged that the Truck they purchased from GM's authorized dealer, Victory Chevrolet, and that it was backed by an express warranty from GM. Thus, there are facts sufficient in the FAC to support a transactional relationship.

### **B. Motion to Strike**

GM again moves to strike the prayer for punitive damages from the FAC, arguing that punitive damages are not available under the Song-Beverly Act. GM also argues that as the fifth cause of action should fail for the reasons discussed in the demurrer, that punitive damages are not properly sought in the FAC. Plaintiffs argue instead that they have sufficiently alleged oppression, fraud, and malice in the FAC to support the punitive damages sought. Plaintiffs argue that in cases of willful breach punitive damages are recoverable under the Song-Beverly Act.

### **C. Application**

The Court does not find that Plaintiffs have sufficiently alleged willful breach or intent in the FAC such that punitive damages are warranted. Plaintiffs have not made the allegations required by Civil Code section 3294(b) as a prerequisite to punitive damages and Plaintiffs have not specifically identified any employee or agent of GM who was in a position to tell them about the issues with the type of transmission used in the Colorado but did not do so.

On that basis, the Court will grant the motion to strike with leave to amend.

### **IV. Conclusion**

Based on the foregoing, the demurrer is **SUSTAINED WITH LEAVE TO AMEND**. The motion to strike is **GRANTED WITH LEAVE TO AMEND**. Plaintiffs shall file a second amended complaint within 20 days of notice of this order. GM 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).

**3. MCV-262637, Loya-Lopez v. Aguilar**

The Court previously continued Counsel Arnold's motion to be relieved as counsel due to his failure to file any proof of service showing timely service to his client, Plaintiff, prior to the hearing date. Counsel also failed to explain whether he attempted to obtain consent of withdrawal from his client and why he did not file a substitution of counsel instead per Code of Civil Procedure section 284. The declaration in support states that counsel was unsuccessful in attempts to serve Plaintiff personally at her last known address.

As counsel has still not sufficiently shown that he adequately served his client with notice of this motion, Counsel's motion is **DENIED**.

**4. SCV-266356, The Design Build Company, LLC v. SDW Construction, Inc.**

Counsel Chrissinger and Hoy Chrissinger Vallas, PC's motion to be relieved as counsel for SDW Construction, Inc. is **CONTINUED** to August 7, 2024, at 3:00 P.M. in Department 19, per the parties' stipulation filed June 27, 2024.

**5. SCV-273509, Gutierrez Ortega v. American Honda Motor Co, Inc.**

Plaintiffs Pedro Gutierrez Ortega and Yolanda Rivera Gonzalez move to compel further discovery responses from Defendant American Honda Motor Co., Inc. regarding Plaintiffs' Request for Production of Documents, Set Two. The request is **GRANTED** as to Request Nos. 10, 14, 23, 24, 33, 37, 46, and 47.

**PROCEDURAL HISTORY**

Plaintiffs filed this action against Defendant for alleged defects in a 2020 Honda Accord Hybrid (the "Honda") Plaintiffs purchased. Plaintiffs' complaint alleges causes of action under the Song-Beverly Consumer Warranty Act for breach of implied and express warranties and for violation of section 1793.2 under the Act.

Plaintiffs propounded Requests for Production of Documents, Set Two, on Defendant for documents relating to Defendant's policies and procedures for handling Song-Beverly cases and for the Honda, and to Defendant's internal investigations of defects exhibited in the Honda, which primarily included, but not limited to, ELECTRICAL DEFECTS and STRUCTURAL DEFECTS, as defined in the discovery requests. To those requests covered in this motion, Defendant responded with only boilerplate objections and indicated it had no documents to produce. Plaintiffs then met and conferred with Defendant. Plaintiffs concern is that Defendant's responses may imply that relevant documents may exist but for the asserted objections. Defendant failed to respond to the meet and confer efforts and to supplement the responses.

Plaintiffs seek further responses to Request Nos. 10, 14, 23, 24, 33, 37, 46, and 47. Defendant opposes the motion.

## ANALYSIS

### Legal Standard

A party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. (C.C.P. §2031.210(a).) If a responding party is not able to comply with a particular request, or part thereof, that party “shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand.” (C.C.P. § 2031.230.) The response shall also specify “whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party” and also must set forth the “name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.” (*Ibid.*) Otherwise, if a responding party is objecting to a demand only, then the responding party must identify the demanded document, tangible thing, land, or electronically stored information to which an objection is being made, set forth the grounds for objection, and if privileged, provide a privilege log for the demanded items that are privileged. (CCP § 2031.240.)

Upon receipt of a response to a request for production, the propounding party may move for an order compelling further response if the propounding party deems that a statement of compliance with the demand is incomplete; a representation of inability to comply is inadequate, incomplete, or evasive; or an objection in the response is without merit or too general. CCP § 2031.310(a). A motion to compel further responses to a request for production of documents must “set forth specific facts showing ‘good cause’ justifying the discovery sought by the demand.” CCP §2031.310(b)(1). The right to discovery is generally liberally construed. *Williams v. Superior Court* (2017) 3 Cal.5th 531, 540. Good cause can be met through showing specific facts of the case and the relevance of the requested information. *Associated Brewers Distributing Co. v. Superior Court of Los Angeles County* (1967) 65 Cal.2d 583, 586–587. “(T)he good cause which must be shown should be such that will satisfy an impartial tribunal that the request may be granted without abuse of the inherent rights of the adversary. There is no requirement, or necessity, for a further showing.” *Greyhound Corp. v. Superior Court In and For Merced County* (1961) 56 Cal.2d 355, 388. As the right to discovery is liberally construed, so too is good cause. *Id* at 377-378.

Furthermore, the court in *Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138, found evidence about vehicles “other” than the specific one at issue in a case regarding consumer warranties to be relevant and proper to consider at trial. Defendant’s knowledge regarding the Vehicle or defects, and its policies and procedures for handling such issues are relevant to claims under Song-Beverly and particularly the bases for civil penalties. *Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1104-1105; *Kwan v. Mercedes-Benz of North America* (1994) 23 Cal.App.4th 174, 185.

## Motion to Compel

Plaintiffs seek further responses to Request Nos. 10, 14, 23, 24, 33, 37, 46, and 47, to which Defendant has only responded to each request with boilerplate objections and a statement that after a diligent search, no responsive documents could be found. Plaintiffs argue that the standard, boilerplate objections are without merit and not code-compliant. Plaintiff further argues that certain types of documents such as Diagnostic Trouble Code, Powertrain Control Module, and Body Control Module reports, which were not produced, are either included and/or implied in these requests. (See Motion at pg. 9:1-5). Plaintiff further argues that the request also seeks policies and procedures related to what is covered under said warranties, how coverage is determined, training related to warranty coverage, and other related documents. (See Motion at pg. 9:17-19). Finally, Plaintiffs also argue that by their requests they are entitled to receive documents related to refund policies and procedures. (See Motion at pg. 10:12-13). Plaintiffs contend that internal investigation and warranty records of other similarly related vehicles and manufacturing issues (as claimed here) are relevant to their showing of willfulness. (See Motion at pg. 10:12-20).

All of Plaintiffs' requests initially asks for the production of undefined 'field technical reports' related to warranty parts replacements trends (RFP #10); common part failures (RFP #14); suggested repair procedures (RFP #23); repeated repair failures (RFP # 24); warranty replacement part trends (RFP #33); electrically stored information on common part failures (RFP #37); electronically stored information on suggested repair procedures (RFP#46); and electronically stored information related to repeat repair failures. Nowhere in Plaintiffs' request, meet and confer letter, its motion, or separate statement is there a definition or full explanation of what this phrase means. However, Plaintiffs did address this phrase in a letter dated 02/07/24 sent to Defendants. (See Opposition, Declaration of Jeanette Saurez, Ex. D). Defendant did not respond.

Defendant argues that the responses were all code-compliant with stated objections and that there are no documents that are responsive to this demand in its possession because none have ever existed. Defendant also argues that Plaintiff is only entitled to discovery as to Plaintiffs' own vehicle.

## Application

The Court's initial concern as to this discovery was Plaintiffs' repeated use of the phrase "field technical reports" in each contested request. Defendant raised the overly broad, vague, and ambiguous objections which the Court now overrules. Such objections are not well received if they are used to impede or frustrate a propounding party's request. That appears to be the case here. Although the requests do not contain a definition for "field technical reports" Plaintiff did provide this clarification during the meet and confer process. The Court also overrules Defendant's objection of relevancy in its attempt to limit discovery only as to Plaintiffs' vehicle. A plaintiff is entitled to request, and if responsive documents exist, receive documents about vehicles "other" than the specific one at issue in a case regarding consumer warranties. *Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138. Such documents may then be used as evidence of

willfulness. Defendant's knowledge regarding the Vehicle or defects, and its policies and procedures for handling such issues are also relevant to claims under Song-Beverly and particularly the bases for civil penalties. *Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1104-1105; *Kwan v. Mercedes-Benz of North America* (1994) 23 Cal.App.4th 174, 185.

Per Code of Civil Procedure section 2031.230, if Defendant responds with an inability to comply because no responsive documents are in their possession, Defendant also must set forth the "name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." Defendant has not provided any such reference to any natural person or organization known that may have possession, custody, or control of that item or the requested documents. As such, the Court finds that Defendant's responses are not code-compliant and further responses are warranted. If Defendant still has no additional information to provide or documents to produce, it can simply provide a further response that is compliant with CCP §2031.230, without objections.

### **CONCLUSION**

Based on the foregoing, Plaintiffs' motion is **GRANTED**. Defendant is ordered to provide further responses and any potential responsive documents as ordered above within 10 days of receiving service of the notice of entry of this order. Plaintiffs did not request nor present proper evidence for the consideration of sanctions.

Plaintiffs' counsel 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.\*\***