**SUPERIOR COURT OF CALIFORNIA**
**COUNTY OF VENTURA**

**Tentative Ruling**

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**2025CUBC046583: CHRISTOPHER T TAYLOR vs FCA US LLC, et al.**
**03/03/2026 in Department 44**
**Demurrer RE: FCA US LLC**

Effective **January 5, 2026**, Judge Charmaine H. Buehner and all cases previously assigned to Department J4 at the Juvenile Justice Center in Oxnard transferred to Department 44, located at the Hall of Justice, 800 South Victoria Avenue, Ventura, California 93009.

**Department Rules**. Parties and counsel shall follow the Department 44 rules and Zoom protocols, available at https://ventura.courts.ca.gov/department-44.

**Remote Appearances**. The Court allows Zoom appearances as a courtesy to parties and counsel. The Court does not accommodate Court Call appearances.

Register for each court appearance by 4:00 p.m. the day before your hearing:

**ZOOM REGISTRATION**:
https://ventura-courts-ca.zoom.us/meeting/register/iqN7uhQSQMuOqs-9TQXgEQ

**You will be denied remote entrance to the hearing if you do not timely register to appear via Zoom by 4:00 p.m. the court day before your hearing.**

**No advance notice is required to appear in person.**

**Tentative Rulings**. Oral argument should address the tentative decision. To submit on the tentative decision, email courtroom44@ventura.courts.ca.gov before 8:00 a.m. on the hearing date, copying all other parties, Use the subject line "SUBMISSION ON TENTATIVE", [Case Number], [Case Title] and [Party]. If not, all parties submit, the hearing will proceed, and the tentative ruling may change.

The Court may adopt, modify or reject the tentative ruling after hearing. The tentative ruling has no legal effect unless and until adopted by the Court.

**Motion**: Defendant FCA US LLC's Demurrer to Plaintiff's First Amended Complaint (*Opposed*)

**Tentative Ruling**:

As to the first, second, third, and fourth causes of action, Defendant FCA US LLC's Demurrer to Plaintiff's First Amended Complaint is SUSTAINED WITHOUT LEAVE TO AMEND.

As to the sixth cause of action for fraudulent concealment, the demurrer is SUSTAINED WITH LEAVE TO AMEND on statute of limitations grounds and OVERRULED on other grounds.

Counsel for Defendant is to give notice of the Court's ruling.

Preliminary Matters

The Court takes judicial notice of the Department of Consumer Affairs' list of manufacturers who have elected to opt-in to the Lemon Law procedures set forth in Code of Civil Procedures sections 871.20 through 871.30, found at https://www.dca.ca.gov/acp/accepted_manufacturers.shtml (visited February 24, 2026). (Evid. Code, § 452, subd. (h).)

Discussion

General Principles

It is long settled that a demurrer admits all material facts properly pleaded, but not contentions, deductions, or conclusions of law or fact. A court may also consider matters that may be judicially noticed. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 976; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 (quoting *Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

It is an abuse of discretion to deny leave to amend if there is any reasonable possibility that any defects in the complaint can be cured by amendment. But the burden is on the plaintiff to show how the complaint can be amended and how such an amendment will change the legal effect of the pleading. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

1. Statute of Repose (Code Civ. Proc., § 871.21)

a. Principles

Under Code of Civil Procedure section 871.21 (effective Jan. 1, 2025), an action under the Song-Beverly Act must be filed no later than: (1) one year after expiration of the express warranty, and (2) six years after the vehicle's original delivery to the buyer, whichever occurs first, unless limited tolling applies. (Code Civ. Proc., § 871.21, subds. (a)-(b).)

"[W]hile a statute of limitations normally sets the time within which proceedings must be commenced once a cause of action accrues, the statute of repose limits the time within which an action may be brought and is not related to accrual. Indeed, "the injury need not have occurred, much less have been discovered. Unlike an ordinary statute of limitations which begins running upon accrual of the claim, [the] period contained in a statute of repose begins when a specific event occurs, regardless of whether a cause of action has accrued or whether any injury has resulted." (54 C.J.S. Limitations of Actions, § 4, pp. 20–21.) A statute of repose thus is harsher than a statute of limitations in that it cuts off a right of action after a specified period of time, irrespective of accrual or even notice that a legal right has been invaded. (*Ibid.*)." (*Giest v. Sequoia Ventures, Inc.* (2000) 83 Cal.App.4th 300, 305." "Whereas statutes of limitations affect a remedy, statutes of repose extinguish a right of action after the period has elapsed." (*PGA West Residential Assn., Inc. v. Hulven Internat., Inc.* (2017) 14 Cal.App.5th 156, 177, *as modified* (Aug. 23, 2017).) "And unlike a procedural statute of limitations, substantive statutes of repose are generally *not* subject to statutory or equitable tolling." (*Id*. at p. 178 [italics in opinion].)

The procedures in Code of Civil Procedure sections 871.20 to 871.27 apply only if the manufacturer elects to participate in the new framework established by Assembly Bill No. 1755. (Code Civ. Proc., § 871.20, subd. (a).) Senate Bill No. 26 (2023–2024 Reg. Sess.) created the opt-in mechanism. Manufacturers must notify the Department of Consumer Affairs of their decision. (Code Civ. Proc., § 871.29, subd. (a)(1).) Once elected, the new procedures apply for an irrevocable five-year term. (Id., subd. (a)(2).) Section 871.29 was added to the Code of Civil Procedure by Senate Bill 26 and became effective April 2, 2025.

Code of Civil Procedure section 871.30 was also added to the Code of Civil Procedure by Senate Bill 26. It provides that, if a manufacturer elects to be governed by Chapter 12 (Code of Civil Procedure sections 871.20 through 871.30) within 30 days of its enactment, such election will pertain to all of its motor vehicles sold in the year 2025 **and in all prior years**[.]" (Code Civ. Proc., § 871.30, subd. (a) [boldfacing added].). Section 871.30 became effective April 2, 2025, so such election must have been made by May 2, 2025.

The one-year and six-year deadlines set forth in § 871.21, subdivision (b), apply only to certain claims: "Notwithstanding any other law, this chapter applies to an action, brought against a manufacturer who has elected under Section 871.29 to proceed under this chapter, seeking restitution or replacement of a motor vehicle pursuant to subdivision (b) or (d) of Section 1793.2, Section 1793.22, or Section 1794 of the Civil Code, or for civil penalties pursuant to subdivision (c) of Section 1794 of the Civil Code, where the request for restitution or replacement is based on noncompliance with the applicable express warranty." (Code Civ. Proc., § 871.20, subd. (a).)

If a manufacturer chooses not to opt in, then the sections 871.20 to 871.28, inclusive, will not apply to an action described in section 871.20, subdivision (a). (Code Civ. Proc., § 871.29, subd. (b).)

b. Tolling Under Code of Civil Procedure Section 871.21, Subdivision (c)

Code of Civil Procedure section 871.21, subdivision (c), limits tolling to three circumstances:

1. Third-Party Dispute Resolution Tolling

If the buyer participates in a qualified third-party dispute resolution process, tolling applies as provided in Civil Code section 1793.22, subdivision (c). Any applicable limitations period is extended for the number of days between the date a complaint is filed with the third-party process and the latter of (a) the date of the decision or (b) the date before which the manufacturer must fulfill the decision, if accepted by the buyer. (Code Civ. Proc., § 871.21, subd. (c)(1); Civ. Code, § 1793.22, subd. (c).)

2. Out-of-Service Repair Tolling

The statute is tolled for the period during which the motor vehicle is out of service due to repair of a nonconformity that substantially impairs its use, value, or safety. (Code Civ. Proc., § 871.21, subd. (c)(2).)

3. Pre-Suit Notice Tolling

If the buyer sends a written notice and demand to the manufacturer in compliance with Code of Civil Procedure section 871.24 prior to filing suit, the statute is tolled for up to 60 days from the date of receipt of the notice by the manufacturer. (Code Civ. Proc., § 871.21, subd. (c)(3).)

c. Analysis

This lawsuit was filed June 30, 2025. Plaintiff acquired the subject vehicle, a 2017 model, on June 25, 2019. (FAC, ¶ 7.) The vehicle was apparently used when purchased by Plaintiff and thus sometime after the "original" delivery date of the vehicle. Code of Civil Procedure section 871.21 bars action brought "later than six years after the date of original delivery of the motor vehicle." (Code Civ. Proc., § 871.21, subd. (b).) The date of original delivery is not alleged in the FAC. By the Court's calculation, and in light of Emergency Rule 9, which by its express language applies to statutes of repose, if the first delivery date of the 2017 model vehicle occurred on or after January 3, 2019, the Complaint would be timely as to the Song-Beverly claims. Plaintiff has not opposed this demurrer and took delivery of the used vehicle in mid-2019. On these facts, the Court finds that the six-year statute of repose bars the Song-Beverly claims and will sustain the demurrer as to the first through fourth causes of action, without leave to amend, unless Plaintiff can supply the Court with information at the hearing that persuades the Court that leave to amend should be granted. Even so, leave to amend would be granted only as to the first three causes of action as explained below.

2. Four-Year Statute of Limitations re: Implied Warranty Claim

The fourth claim for breach of the implied warranty of merchantability is also barred for the independent reason that it was not filed within four years of delivery of the vehicle to Plaintiff on June 26, 2019. The Song–Beverly Act does not include its own statute of limitations." (*Mexia v. Rinker Boat Co., Inc.* (2009) 174 Cal.App.4th 1297, 1305.) "California courts have held that the statute of limitations for an action for breach of warranty under the Song–Beverly Act is governed by the same statute that governs the statute of limitations for warranties arising under the Uniform Commercial Code: section 2725 of the Uniform Commercial Code." (*Id*. at pp. 1305-1306.) "The statute of limitations for breaches of the implied warranty of merchantability is four years." (*Montoya v. Ford Motor Co.* (2020) 46 Cal.App.5th 493, 495.)

Plaintiffs' implied warranty claim is based on the existence of a latent defect. (FAC, ¶ 86.) "The implied warranty of merchantability may be breached by a latent defect undiscoverable at the time of sale." (*Mexia v. Rinker Boat Co., Inc.* (2009) 174 Cal.App.4th 1297, 1304.) "In the case of a latent defect, a product is rendered unmerchantable, and the warranty of merchantability is breached, by the existence of the unseen defect, not by its subsequent discovery." (*Id*. at p. 1305.)

"A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is

or should have been discovered." (Com. Code, § 2725, subd. (2).) "The scope of the 'future performance' exception has been the subject of numerous, and sometimes conflicting, decisions throughout the country." (*Cardinal Health 301, Inc. v. Tyco Electronics Corp.* (2008) 169 Cal.App.4th 116, 130.) "But the majority view is that the exception must be narrowly construed, and that it applies only when the seller has expressly agreed to warrant its product *for a specific and defined period of time*." (*Ibid*. [emphasis in original].) "Because an implied warranty is one that arises by operation of law rather than by an express agreement of the parties, courts have consistently held it is not a warranty that explicitly extends to future performance of the goods[.]" (*Id*. at p. 134 [internal quotation marks and punctuation omitted].) The effect of this is that the discovery rule does not apply to implied warranty claims. (See also *Mandani v. Volkswagen Group of America, Inc.*[1] (N.D. Cal., July 13, 2020, No. 17-CV-07287-HSG) 2020 WL 3961975, at *3 ["Accordingly, because more than four years elapsed between Madani's April 2013 purchase of the car and the December 2017 initiation of the present action, the claim for breach of implied warranty under the Song-Beverly Act is time-barred."]; see also *Mangiapane v. Ford Motor Company* (N.D. Cal., Oct. 16, 2019, No. 19-CV-02014-HSG) 2019 WL 5199534, at *3 ["Because Plaintiff's cause of action against Tuttle-Click is for breach of an implied warranty, the future performance exception is inapplicable to her claim."].)

Here, Plaintiff acquired the subject vehicle on June 26, 2019, but filed his lawsuit on June 30, 2025, two years after the four-year limitations period expired. Given that the discovery rule does not apply to implied warranty claims, Plaintiff's implied warranty claim was time-barred as of June 26, 2023. Even COVID tolling cannot save this claim. Consequently, the Court finds that the fourth cause of action is barred independently by the four-year statute of limitations. (*Montoya v. Ford Motor Co.* (2020) 46 Cal.App.5th 493, 495.)

3. Statute of Limitations-Sixth Cause of Action for Fraudulent Concealment

Defendant argues the fraudulent concealment claim is barred because the Complaint was not filed on or before June 26, 2022. The argument improperly assumes accrual occurred at the time of purchase. The statute of limitations for fraud is three years and accrues upon discovery of the facts constituting the fraud, not upon occurrence of the underlying transaction. (Code Civ. Proc., § 338, subd. (d); *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807.) Accordingly, the claim is barred only if the alleged fraudulent concealment was discovered, or reasonably should have been discovered, before June 30, 2022, three years prior to the filing of the Complaint on June 30, 2025.

Plaintiff alleges the vehicle was presented for repairs on June 28, 2019, May 8, 2020, and January 29, 2025, along with additional repair visits, and that Defendant repeatedly represented the vehicle had been repaired or was functioning as designed despite continuing symptoms. (FAC, ¶¶ 14–19.) These allegations do not establish accrual as a matter of law. Awareness of mechanical issues does not necessarily constitute discovery that Defendant fraudulently concealed defects at or before the time of sale.

[1] "Although not binding, unpublished federal district court cases are citable as persuasive authority." (*Aleman v. AirTouch Cellular* (2012) 209 Cal.App.4th 556, 576 fn. 8.)

Defendant's contention that inquiry notice arose during the warranty period therefore does not establish untimeliness on the face of the pleading. However, Plaintiff's allegation that discovery occurred "shortly before the filing of the complaint" is conclusory and does not adequately plead the time and manner of discovery or explain the inability to have discovered the alleged concealment earlier despite reasonable diligence. (*Fox*, *supra*, 35 Cal.4th at p. 808.)

4. Tolling Allegations

Defendant also argues that the FAC fails to allege facts sufficient to support tolling on any of the alleged theories.

In the original Complaint, Plaintiff alleged that he discovered Defendant's wrongful conduct "shortly before the filing of the complaint" and further alleges various tolling doctrines apply to avoid a time bar:

> To the extent there are any statutes of limitation applicable to Plaintiff's claims including, without limitation, the express warranty and implied warranty– the running of the limitation periods have been tolled by, *inter alia*, the following doctrines or rules: equitable tolling, the discovery rule, the fraudulent concealment rules, equitable estoppel, the repair rule, and/or class action tolling (e.g., *the American Pipe rule*).
>
> Plaintiff discovered Defendants' wrongful conduct alleged herein shortly before the filing of the complaint, as the Vehicle continued to exhibit symptoms of defects following FCA's unsuccessful attempts to repair them. However, FCA failed to promptly provide restitution pursuant to the Song-Beverly Consumer Warranty Act.

(Cmplt., ¶¶ 37-38.)

These same allegations are made in the FAC. (FAC, ¶¶ 49-50.) The Court agrees that these allegations are conclusory in nature and insufficient to support tolling. But in some instances, they are supplemented in the FAC. Each of the theories is addressed below in light of the new allegations.

A. Equitable Tolling

"A plaintiff seeking the benefit of equitable tolling must show three elements: timely notice, and lack of prejudice, to the defendant, and reasonable and good faith conduct on the part of the plaintiff." (*Long v. Forty Niners Football Co., LLC* (2019) 33 Cal.App.5th 550, 555, *as modified* (Apr. 8, 2019); *Saint Francis Memorial Hospital v. State Dept. of Public Health* (2020) 9 Cal.5th 710, 724 [citation omitted].) "Where a claim is time-barred on its face, the plaintiff must specifically plead facts that would support equitable tolling." (*Long*, *supra*, 33 Cal.App.5th at p. 555.)

Plaintiff did not make additional allegations in the FAC relating to equitable tolling. Reading the FAC as a whole, the Court finds that Plaintiff has not pled facts with sufficient specificity to support his claim that equitable tolling applies.

B. Delayed Discovery/Discovery Rule

Plaintiff made the following additional allegations in the FAC regarding delayed discovery/discovery rule:

> Making it even more difficult to discover that the Subject Vehicle suffered from a safety defect was Defendant's purporting to be able to fix various symptoms of the defects.
>
> As a result of the foregoing, Plaintiff did not become suspicious of Defendant's concealment of the latent defects and its inability to repair it until shortly before the filing of the complaint, when the issue persisted following Defendant's representations that the Vehicle was repaired and/or working as designed.
>
> Plaintiff always acted diligently in presenting the Subject Vehicle for repairs and following the directives of Defendant's authorized repair personnel.
>
> Defendant was under a continuous duty to disclose to Plaintiff the true character, quality, and nature of the Defendant Vehicles suffering from the Defects, and the inevitable repairs, costs, time, and monetary damage resulting from the Defects. Due in part to Defendant's failure to do so, Plaintiff was unable to discover Defendant's wrongful conduct alleged herein until the issues persisted following Defendant's attempts to conform the Vehicle to its warranties.
>
> Plaintiff discovered Defendant's wrongful conduct alleged herein when Plaintiff continued to experience symptoms of the Vehicle's defects after Defendant's unsuccessful attempts to repair it and or representations the Vehicle was working as designed.
>
> Plaintiffs incorporate herein the portions of Plaintiffs' repair history set forth below, by reference.

(FAC, ¶¶ 53-58.)

"In order to rely on the discovery rule for delayed accrual of a cause of action, [a] plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence. [citation omitted] In assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to show diligence; conclusory allegations will not withstand demurrer." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 808 [internal citation and quotation marks omitted].)

The additional allegations are still conclusory, as Plaintiff continues to rely on alleged discovery "shortly before the filing of the complaint." But Plaintiff still does not plead exactly when he discovered the alleged fraud, how he discovered it, or what specific facts came to light shortly before suit was filed that were not previously available to Plaintiff. Further, Plaintiff does not explain why the recurrence of problems necessitating repair visits over an extended period dating as far back to June of 2019 did not prompt him to investigate earlier the possibility of concealment. Plaintiff's general assertions that he lacked knowledge and acted reasonably are insufficient to invoke delayed discovery without factual specificity. Accordingly, delayed discovery is insufficiently pled as a basis for tolling.

C. Fraudulent Concealment Doctrine

Plaintiffs' allegations regarding the fraudulent concealment doctrine are as follows:

> Separately, the statute of limitations is equitably tolled due to Defendant's fraudulent conduct alleged herein.
>
> Defendant (and its agents, representatives, officers, directors, employees, affiliates, and/or dealerships) concealed the defects, minimized the scope, cause, and dangers of the defects with inadequate TSBs and/or Recalls, and refused to investigate, address, and remedy the defects as it pertains to all affected vehicles as set forth herein.
>
> Furthermore, Defendant's fraudulent concealment was ongoing. Defendant blamed the symptoms of the defects on other issues and not the actual defect itself and purported to be able to repair.
>
> Based on the foregoing, Defendant is estopped from relying on any statutes of limitation in defense of this action.

(FAC, ¶¶ 63-66.)

"The fraudulent concealment doctrine will also toll the statute of limitations." (*Britton v. Girardi* (2015) 235 Cal.App.4th 721, 734; see also *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1192 ["The doctrine of fraudulent concealment tolls the statute of limitations where a defendant, through deceptive conduct, has caused a claim to grow stale."].) "To take advantage of this doctrine the plaintiff must show ... the substantive elements of fraud ... and ... an excuse for late discovery of the facts." (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1123 [167 Cal.Rptr.3d 832, 847], *as modified on denial of reh'g* (Feb. 27, 2014) [internal quotation marks omitted].) If a plaintiff is on notice of a potential claim, however, the doctrine does not come into play. (*Rita M. v. Roman Catholic Archbishop* (1986) 187 Cal.App.3d 1453, 1460.)

As with the additional allegations of delayed discovery, these additional allegations are conclusory. For example, Plaintiff does not specify when or how he learned that Defendants "minimized the scope, cause, and dangers of the defects." Further, he does not specify which TSBs or Recalls were inadequate. Additionally, he does not provide the necessary detail regarding Defendant's alleged refusal to investigate, address, or remedy the defects. Moreover,

he does not state when or how Defendant blamed the symptoms of the alleged defects on other issues. Consequently, fraudulent concealment is also insufficiently pled as a basis for tolling.

D. Equitable Estoppel

"Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.) "The general rule is that estoppel must be specifically pleaded in the complaint with sufficient accuracy to disclose the facts relied upon." (*Minish v. Hanuman Fellowship* (2013) 214 Cal.App.4th 437, 459 ["The general rule is that estoppel must be specifically pleaded in the complaint with sufficient accuracy to disclose the facts relied upon."].)

"The rule of equitable estoppel includes, of course, the requirement that the plaintiff exercise reasonable diligence. [citation omitted] Thus, under our holding the statute will toll *only* until such time that the plaintiff knows, or through the exercise of reasonable diligence should have discovered, the defendant's identity. Lack of knowledge alone is not sufficient to stay the statute; a plaintiff may not disregard reasonably available avenues of inquiry which, if vigorously pursued, might yield the desired information." (*Bernson v. Browning-Ferris Industries* (1994) 7 Cal.4th 926, 936.)

As with equitable tolling, Plaintiff does not provide additional allegations in support of equitable estoppel as a tolling basis. Reading the FAC as a whole, the Court finds that equitable estoppel is also insufficiently pleaded as a basis for tolling.

E. Repair Rule

Plaintiff alleges the statute of limitations is tolled based on Defendant's unsuccessful repair efforts and repeated assurances that the vehicle was repairable. (FAC, ¶¶ 59–62.) Repair efforts may toll the limitations where the plaintiff reasonably relies on the defendant's representations that defects will be repaired, a principle grounded in equitable estoppel. (*Cardinal Health 301, Inc. v. Tyco Electronics Corp.* (2008) 169 Cal.App.4th 116, 133-134.) Although *Cardinal Health* arose in the context of Commercial Code warranty claims, the reliance-based tolling principle applies more broadly where repair assurances reasonably delay investigation or suit.

Here, Plaintiff specifically alleges the vehicle was presented for repairs on June 28, 2019, May 8, 2020, and January 29, 2025, along with additional unspecified repair visits, and that Defendant repeatedly represented the vehicle had been repaired or was functioning as designed despite continuing symptoms. (FAC, ¶¶ 14–19.) These allegations may support a plausible inference that Plaintiff relied on Defendant's repair efforts and assurances rather than pursuing legal remedies earlier. Although not all repair dates are specified and there are intervals between the identified repairs, the existence and reasonableness of repair-related reliance present factual issues not appropriately resolved at the pleading stage.

7. Class Action Tolling (*American Pipe* Rule)

Plaintiff's class action tolling allegations state as follows:

> Under the tolling rule articulated in *Am. Pipe & Const. Co. v. Utah*, 414 U.S. 538, 94 S. Ct. 756, 38 L. Ed. 2d 713 (1974) ("American Pipe"), the filing of a class action lawsuit in federal court tolls the statute of limitations for the claims of unnamed class members until the class certification issue is resolved. In applying *American Pipe* tolling to California cases, the California Supreme Court summarized the tolling rule derived from American Pipe and stated that the statute of limitations is tolled from the time of commencement of the suit to the time of denial of certification for all purported members of the class. *Jolly v. Eli Lilly & Co.,* 44 Cal.3d 1103, 1119 (1988). Tolling lasts from the day a class claim is asserted until the day the suit is conclusively not a class action. *Falk v. Children's Hosp. VENTURA*, 237 Cal. App. 4th 1454, 1464 (2015).
>
> The tolling of Plaintiff's individual statute of limitations encourages the protection of efficiency and economy in litigation as promoted by the class action device, so that putative class members would not find it necessary to seek to intervene or to join individually because of fear the class might never be certified or putative class members may subsequently seek to request exclusion.

(FAC, ¶¶ 51-52.)

"The equitable tolling of an individual's claim against a defendant because of a class action is a common law expansion of the United States Supreme Court, construing rules of federal class actions in both *American Pipe and Construction Co. v. Utah* (1974) 414 U.S. 538, 94 S.Ct. 756, 38 L.Ed.2d 713 (*American Pipe*) and *Crown, Cork & Seal Co., Inc. v. Parker* (1983) 462 U.S. 345, 346-347, 103 S.Ct. 2392, 76 L.Ed.2d 628 (*Crown Cork*). The phrase '*American Pipe* tolling' appears in a handful of California cases and in literally hundreds of federal ones. As we explain below, the doctrine was developed to strike a balance between the judiciary's need for economy and efficiency and the policy against stale claims that animates statutes of limitations. It was *not* developed, as Justice Blackmun stressed in his concurring opinion in *American Pipe*, to 'save members of the purported class who have slept on their rights.'" (*Montoya v. Ford Motor Co.* (2020) 46 Cal.App.5th 493, 495.)

Here, Plaintiff has not pled the existence of a particular class action filed in any court in which he is or was a putative class member. Thus, the Court should find that class action tolling is insufficiently pled as a basis for tolling.

8. COVID Tolling

Plaintiff alleges applicable limitations periods were tolled by Emergency Rule 9 issued by the Judicial Council in response to the COVID crisis. They allege as follows:

> Separately, Plaintiffs' claims were tolled by Judicial Council of California, App'x. I, Emergency Rules Related to COVID-19. (Cal. Rules of Court, App'x. I,

> Emergency Rules Related to COVID-19 (https://www.courts.ca.gov/documents/appendix-i.pdf) [as of August 1, 2023].) This allows for tolling of the statute of limitations from April 6, 2020, until October 1, 2020.

(FAC, ¶ 67.)

Emergency Rule 9, as amended effective March 11, 2022, appears, on its face to toll statutes of repose: "Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020." The tolling period is 178 days.

Here, even assuming the rule applies, COVID tolling does not materially extend the limitations period unless the fraud claim accrued before or during that interval such that the statute was running while the rule was in effect. A fraud claim accruing during the tolling period would ordinarily expire no later than October 1, 2023. Here, Plaintiff instead alleges discovery of Defendant's wrongful conduct shortly before filing suit in June 2025. COVID tolling therefore does not establish timeliness and does not substitute for adequately pleaded delayed discovery.

In sum, because Plaintiff's discovery allegations are conclusory and fail to plead the time and manner of discovery and the inability to have discovered the alleged concealment earlier despite reasonable diligence, the statute of limitations issue is not resolved in Plaintiff's favor on the current pleading. Accordingly, the Court sustains the demurrer on statute of limitations grounds and grants leave to amend.

Failure to State a Claim-Sixth Cause of Action for Fraudulent Concealment

Defendant argues that Plaintiff has failed to allege facts sufficient to state a claim. "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.*, *supra*, 17 Cal.5th. at pp. 40-41.) A duty can arise out of a buyer-seller relationship. "As a matter of common sense, such a relationship can only come into being as a result of some sort of *transaction* between the parties." (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 337.) "Thus, a duty to disclose may

arise from the relationship between seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual agreement." (*Ibid.*)

Fraud must be alleged with specificity. (*Rattagan*, *supra.* at 43.) "General and conclusory allegations are insufficient." (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469.) "Determining whether a pleading alleges facts sufficient to state a cause of action is a question of law." (*Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1019.) "[L]ess specificity is required in pleading matters of which the defendant has superior knowledge." (*Id*. at p. 1028.) "For policy reasons, some causes of action, such as fraud and negligent misrepresentation, must be pleaded with particularity—that is, the pleading must set forth how, when, where, to whom, and by what means the representations were made." (*Ibid*.) The pleading standard is not more relaxed when a fraud claim is based on concealment rather than an affirmative misrepresentation. (*Rattagan v. Uber Technologies, Inc.*, *supra*, 17 Cal.5th at p. 43; see also *Cansino*, *supra*, 224 Cal.App.4th at p. 1472.)

Here, Plaintiff alleges that he entered into a warranty contract with Defendant on or about June 26, 2019, regarding a Pre-Owned 2017 Ram 2500, which was manufactured and distributed by Defendant. (FAC, ¶¶ 7-8, Exh. A.)

Within the warranty period, the vehicle exhibited defects. (FAC, ¶¶ 13-20, 25, 29.) The defects impaired the use, value, and safety of the vehicle. (*Id*., ¶¶ 26, 30.)

In his fraud claim, Plaintiff incorporates by reference the FAC's other allegations. (FAC, ¶ 93.) Defendant further alleged that Defendant committed fraud by permitting the vehicle to be sold to Plaintiffs without disclosing the defects, despite knowledge of such defects. (*Id*., ¶¶ 30, 32, 34-38, 94-95.) Defendant acquired its knowledge of the engine defect before Plaintiff purchased the vehicle through sources not available to consumers such as Plaintiff, including the following: pre-production and post-production testing data; early consumer complaints about the engine defect made direct to Defendant and its network of dealers; aggregate warranty data compiled from Defendant's network of dealers; testing conducted by Defendant in response to complaints; and warranty repair and part replacement data received by Defendant from its network of dealers. (*Id*., ¶¶ 31, 96.)

Plaintiff interacted with sales representatives and reviewed materials disseminated by Defendant before purchasing the vehicle. (*Id*., ¶¶ 33, 99.) Such concealment of this safety defect was material. Had Plaintiff known of the defects, he would not have purchased the vehicle. (*Id*., ¶ 98.)

Defendant had a duty to disclose the defective nature of the vehicle because Defendant knew of the defects before Plaintiffs purchased the vehicle, acquiring knowledge through various sources; because Defendant was in a superior position to know the true facts; and because Plaintiffs could not have been expected to learn of the defects until after purchasing the vehicle. (*Id*., ¶ 96.)

Plaintiff was harmed. (*Id*., ¶¶ 47, 100.) Further, he was unknowingly exposed to the risk of liability, accident, and injury as a result of Defendant's fraudulent concealment of the transmission defect. (*Id*., ¶¶ 29, 100.)

In *Dhital v. Nissan North America* (2022) 84 Cal.App.5th 828, which was not overruled after the Supreme Court's *Rattagan* decision, the Court of Appeal held that the following allegations were sufficient to withstand demurrer:

> Plaintiffs alleged the above elements of fraud in the SAC. As we have discussed, 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 p. 844.)

In *Dhital*, the defendant argued on appeal that the plaintiffs had not adequately pled the existence of a "buyer-seller relationship," given that the complaint had alleged that the car was purchased from a dealership and not from the defendant manufacturer. In response to that argument, the court stated:

> At the pleading stage (and in the absence of a more developed argument by Nissan on this point), we conclude plaintiffs' allegations are sufficient. Plaintiffs alleged that they bought the car from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers. In light of these allegations, we decline to hold plaintiffs' claim is barred on the ground there was no relationship requiring Nissan to disclose known defects.

(*Id*. at p. 844.)

Plaintiff's alleged facts here are more detailed than those alleged in *Dhital*. Given the allegations of the First Amended Complaint and the holding in *Dhital*, the Court finds that the allegations of the fraudulent concealment claim are sufficiently specific to state a claim at the pleading stage. In any event, whether Defendant ultimately owed a duty to disclose is a fact-intensive question better resolved on a developed record. At the pleading stage, Plaintiff's allegations are sufficient.

But, as stated above, although Plaintiff has stated a claim for fraudulent concealment, he is not exempt from the requirement to specifically plead diligence in discovering the alleged fraud, or when and how he discovered it.

Economic Loss Rule

"[T]o be held liable in tort, a defendant must commit a tort. If all the defendant has allegedly done is violate the terms of the parties' contract, depriving the plaintiff of the benefits the contract ensures, the defendant's liability is limited by the contract. Broader tort liability only

arises if a defendant violates an independent legal duty and the type of harm that ensues was not reasonably contemplated or accounted for by the contractual parties." (*Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 37.)

"Under the economic loss rule, tort recovery for breach of a contract duty is generally barred [citation] unless two conditions are satisfied. A plaintiff must first demonstrate the defendant's injury-causing conduct violated a duty that is independent of the duties and rights assumed by the parties when they entered the contract. Second, the defendant's conduct must have caused injury to persons or property that was not reasonably contemplated by the parties when the contract was formed." (*Id.* at pp. 20-21.)

"The economic loss rule requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual promise." (*Robinson Helicopter Co., Inc., v. Dana Corp.*, (2004) 34 Cal.4th 979, 988.)

"Not all tort claims for monetary losses between contractual parties are barred by the economic loss rule. But such claims are barred when they arise from — or are not independent of — the parties' underlying contracts." (*Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 924.)

In *Robinson Helicopter Company, Inc., v. Dana Corporation*, the plaintiff helicopter manufacturer purchased clutches from the defendant, the only manufacturer of the clutches. The purchases were made pursuant to a contract. When the defendant sent the clutches to the plaintiff, it also provided certifications that the clutches had been made in conformance with the plaintiff's specifications. (*Id*. at p. 985.) The plaintiff eventually had to replace numerous clutches not made to specifications after the FAA grounded its helicopters, which came at great expense. (*Id*. at pp. 985-988.) The plaintiff sued the defendant for breach of contract, breach of warranty, and fraud. (Id. at p. 987.) The fraud claim was based on the defendant's provision of false certificates of conformance, failure to provide the serial numbers of affected clutches until five months after the clutches failed, and a claim that one of the defendant's employees redacted a reference to the hardness of the clutches on a list of products requested by Robinson. (Id. at p. 990). After the trial court awarded damages for fraud, the Court of Appeal reversed. (*Id*. at pp. 987-988.)

The Supreme Court held that fraud and intentional misrepresentation claims were not barred by the Economic Loss Rule because the provision of false certificates when the parts was independent of the contract: "But for Dana's affirmative misrepresentations by supplying the false certificates of conformance, Robinson would not have accepted delivery and used the nonconforming clutches over the course of several years, nor would it have incurred the cost of investigating the cause of the faulty clutches. Accordingly, Dana's tortious conduct was separate from the breach itself, which involved Dana's provision of the nonconforming clutches. In addition, Dana's provision of faulty clutches exposed Robinson to liability for personal damages if a helicopter crashed and to disciplinary action by the FAA. Thus, Dana's fraud is a tort independent of the breach." (*Id*. at pp. 990–991.) The Court did not address the issue of whether the defendant's fraudulent concealment constituted an independent tort. (*Id.*)

The fraudulent concealment question was answered, however, in *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1: "Can a plaintiff assert an independent claim of fraudulent concealment in the performance of a contract? The answer to this question is also yes. A plaintiff may assert a tort claim for fraudulent concealment based on conduct occurring in the course of a contractual relationship, if the elements of the cause of action can be established independently of the parties' contractual rights and obligations and the tortious conduct exposes the plaintiff to a risk of harm beyond the reasonable contemplation of the parties when they entered into the agreement." (*Id*. at p. 38.)

As set forth above, Plaintiff has alleged facts sufficient to state a claim for fraudulent concealment. Consequently, his fraud claim is not barred by the Economic Loss Rule.