SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA

Tentative Ruling

2025CUBC050323: JIM RADEMACHER vs GENERAL MOTORS, LLC
03/03/2026 in Department 44
Demurrer to Plaintiff's First Amended Complaint

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. **You MUST register by 4:00 p.m. the court day before your hearing or you will be DENIED entry to the hearing:**

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

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.

Motions:

(1) Defendant General Motors, LLC's Demurrer to Plaintiff's First Amended Complaint, and
(2) Defendant General Motors, LLC's Motion to Strike Punitive Damages from Plaintiff's First Amended Complaint.

Tentative Ruling:

The demurrer is SUSTAINED WITH LEAVE TO AMEND on statute of limitations grounds as to the fourth and fifth causes of action. The demurrer is OVERRULED on all other grounds. The motion to strike is DENIED as moot in light of the Court's ruling on the demurer.

Discussion

1. 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.)

The complaint is given a reasonable interpretation, and is read as a whole, reading its parts in their context. (*Blank v. Kirwan*, *supra*, 39 Cal.3d at p. 318.)

The limited role of a demurrer is to test the legal sufficiency of a complaint. A court cannot consider the substance of declarations, matters not subject to judicial notice, or the truth of matters in judicially-noticed documents. (*Donabedian v. Mercury Ins. Co.*, *supra*, 116 Cal.App.4th at p. 994.)

"A complaint otherwise good on its face is subject to demurrer when facts judicially noticed render it defective." (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6 (citation and quotation marks omitted).) For example, if an amended complaint contradicts or omits facts pleaded in a prior complaint, a court may take judicial notice of the earlier complaint and disregard inconsistent allegations, absent an explanation for the inconsistency. (*Holland v. Morse Diesel Intern., Inc.* (2001) 86 Cal.App.4th 1443, 1447.)

Further, when a pleading attaches documents to it and incorporates them by reference, a court may, upon demurrer, examine and treat the pleader's allegations of its legal effect as surplusage. (*Cohen v. Ratinoff* (1983) 147 Cal.App.3d 321, 327.) "If facts appearing in the exhibits contradict those alleged, the facts in the exhibits take precedence." (*Holland v. Morse Diesel Intern., Inc.*, *supra*, 86 Cal.App.4th at p. 1447.)

A party demurring to a complaint or cross-complaint may demur on any of numerous grounds, including, but not limited to lack of jurisdiction; lack of capacity to sue; defect or misjoinder of parties; failure to state facts sufficient to constitute a cause of action; and uncertainty, the meaning of which also includes ambiguity and unintelligibility. (Code Civ. Proc., § 430.010, subds. (a), (b), (d), (e), (f).)

"A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.

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.)

2. Meet-and-Confer Efforts

The parties did not meet and confer. Defense counsel attempted to meet and confer on November 4 by email and November 5 by telephone but was unsuccessful. Based on prior experience, counsel concludes an impasse was likely. Defendant has not complied with Code of Civil Procedure section 430.41. (Kay Decl., ¶ 2.) However, the Court may not sustain or overrule the demurrer on this failure. (Code Civ. Proc., § 430.41, subd. (a)(4).) Defense counsel is admonished to make a better effort to meet and confer. An email followed by a single phone call is insufficient.

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

Defendant argues the fraudulent concealment claim is time-barred because the subject vehicle was purchased on June 28, 2022, and the Complaint was filed after June 28, 2025, specifically, on September 5, 2025, as a result of which the claim is barred by the statute of limitations. 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 September 5, 2022, three years prior to the filing of the Complaint on September 5, 2025.

Defendant argues that Plaintiff was on inquiry notice because the vehicle's alleged defects and nonconformities manifested themselves during the applicable express warranty period. In the FAC, Plaintiff alleges the vehicle was presented for repairs on various occasions due to a defective engine, beginning in July 2024. (FAC, ¶¶ 18, 33-39, 47-51.) 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, before, or after the time of sale.

Plaintiff alleges the first time he discovered an engine defect was on the July 16, 2024, visit for the "Service Engine Soon" warning light, and argues that that date is the first time that Plaintiff, with reasonable diligence, could have discovered the engine defects because the vehicle had not, until that time, exhibited or manifested engine problem. Plaintiff points to Paragraph 47 of the FAC. (Opposition at 4:9 – 5:5)

Plaintiff, like Defendant, conflates discovery of the alleged defect with discovery of Defendant's alleged concealment of its wrongful conduct. The FAC does not, however, allege when or how Plaintiff discovered Defendant's alleged wrongful conduct in concealing the alleged defect. Thus, the Court finds that the FAC does not state facts sufficient to determine whether Plaintiff's fraudulent concealment claim accrued before or after September 5, 2022. Consequently, the Court sustains the demurrer with leave to amend on statute of limitations grounds.

4. Failure to State a Claim-Fraudulent Concealment

"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.)

Fraud must be alleged with specificity. (*Id.* at p. 43.) "General and conclusory allegations are insufficient." (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469.) 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.)

Here, specific defects are alleged. (FAC, ¶¶ 18, 33-39, 47-51, 131.) Active, i.e., intentional, concealment by Defendant is alleged. (*Id.*, ¶¶ 22-23, 27, 78, 80-90, 134., 137.) Materiality and reliance are also alleged, acted differently if he had known of the defect, specifically, he would not have purchased the vehicle or would have paid less for it. (*Id.*, ¶¶ 29, 44-45, 136-137.) Harm is also alleged, including that continued driving of the subject vehicle poses a significant risk to Plaintiff's safety. (*Id.*, ¶¶ 28, 30-31, 79, 135)

Plaintiff also alleges that Defendant owed a duty to Plaintiff. (93-104, 131-132.) Defendant disagrees because Plaintiff did not purchase the vehicle directly from Defendant and thus has not alleged a transactional relationship between Plaintiff and Defendant.

"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.*)

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.)

The manufacturer argued that the plaintiffs did not adequately plead the existence of a buyer-seller relationship because they bought the car from a dealership, not the manufacturer itself. The plaintiffs alleged they bought the care from a dealership, but that the manufacturer backed the car with an express warranty, and that the authorized dealerships were agents of the manufacturer for purposes of the sale of Nissan vehicles to consumers. The Court of Appeal held these allegations were sufficient to state a concealment claim. (*Id.* at pp. 844-845.)

Defendant relies in part on *Bigler-Engler v. Breg* (2017) 7 Cal.App.5th 276 in arguing that the dealings between Plaintiff and Defendant must have been "direct," and since they were not, the demurrer must be sustained. Although the Court of Appeal is *Bigler-Engler* did use the word "direct," it also went through a factored analysis to determine whether the relationship in that case was direct.

The facts of *Bigler-Engler* are instructive. The alleged defective product was a machine used post-surgically to help with swelling. The plaintiff's doctor—also a defendant in the case—had "recommended" the use of the machine after the plaintiff's knee surgery and assured the plaintiff it was okay to use the machine continuously. The machine was considered a Class II medical device and was available only by prescription. (*Id*. at p. 286.) The doctor gave Plaintiff and her parents the choice of buying the device from his medical group, called Oasis, or renting the device from Oasis. (*Id*. at p 287.) Plaintiff rented the device from Oasis. The defendant doctor concealed from the plaintiff that he had a financial interest in the transaction. Further, he did not tell the plaintiff that the device was available from other sources. (*Id*.) The plaintiff followed instructions but suffered nonfreezing cold injuries to her skin that required multiple subsequent surgeries. (*Id*. at p. 289.) The plaintiff learned of another lawsuit involving her doctor and the product, after which she filed her own lawsuit. (*Id*.) Based on injury reports, the plaintiff's experts opined at trial that the defendant manufacturer knew that its device could cause injury. The manufacturer did not investigate the reports of injury from others. Further, it did not investigate whether the device was safe to use continuously before it marketed the device. Moreover, one of the manufacturers' founders had only a high school education. Additionally, a study conducted on pigs several months before the plaintiff's surgery was not promising, resulting in the deaths of three of the pigs. Further, several of the pigs showed evidence of the same injuries alleged by the plaintiff. (*Id*. at pp. 289-291.)

After the jury returned a verdict in the plaintiff's favor on the fraudulent concealment claim, the defendant manufacture appealed, arguing the evidence at trial failed to support that the manufacturer had a duty to disclose to the plaintiff because there was no transactional relationship between the plaintiff and the manufacturer defendant. (*Id*. at p. 310.) In reversing, the Court of Appeal stated at one point in its opinion that "[s]uch a transaction must necessarily

arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large." (*Id*. at p. 312.) In the same opinion, however, the Court of Appeal, when responding to another of the plaintiff's arguments on duty, stated, "[A] duty to disclose arises in this context only where there is already a sufficient relationship or transaction between the parties. [citation] Where, as here, a sufficient relationship or transaction does not exist, no duty to disclose arises even when the defendant speaks." (*Id*. [citation omitted].)

In reversing, the Court of Appeal held that there was no evidence of a duty to disclose, reasoning as follows:

> [T]here was no evidence of a relationship between Engler (or her parents) and Breg sufficient to give rise to a duty to disclose. Breg did not transact with Engler or her parents in any way. Engler obtained her Polar Care device from Oasis, based on a prescription written by Chao, all without Breg's involvement. The evidence does not show Breg knew—prior to this lawsuit—that Engler was a potential user of the Polar Care device, that she was prescribed the Polar Care device, or that she used the Polar Care device. The evidence also does not show that Breg directly advertised its products to consumers such as Engler or that it derived any monetary benefit directly from Engler's individual rental of the Polar Care device. Indeed, Oasis appears to have obtained the Polar Care device Engler used from Breg several years before Engler's surgery and maintained the device itself for rental to its patients. Under these circumstances, there was no relationship between Breg and Engler (or her parents) sufficient to give rise to a duty to disclose.

(*Id*. at p. 314.)

Bigler-Engler stands for the principle that whether a relationship is sufficiently "direct" for purposes of establishing a duty to disclose depends on the totality of the circumstances. While relationships such as buyer-seller and employer-employee are more obvious relationships, they are only examples. In any event, the facts alleged here, unlike those of *Bigler-Engler*, do show evidence of a "relationship" between Plaintiff and Defendant. Thus, the Court finds that the duty allegations are sufficient to allege a sufficient relationship or transaction between Plaintiff and Defendant for purposes of alleging a duty to disclose. (*Bigler-Engler v. Breg* (2017) 7 Cal.App.5th 276, 310-314.)

Finally, Defendant also relies on a decision from the United States District Court, *Antonov g. General Motors LLC*, in which the district judge found no duty to disclose. The Court disregards *Antonov* because it is not binding and is contrary to *Dhital*.

In sum, Plaintiff has alleged many more facts than the Court of Appeal found to be sufficient to state a claim in *Dhital*. Thus, the Court overrules the demurrer on grounds that Plaintiff has failed to state a claim.

5. <u>Statute of Limitations-Fifth Cause of Action for Violation of the CLRA</u>

The statute of limitations for a claim brought under Civil Code section 1770 is three years from the date of the method, act, or practice. (Civ. Code, § 1783.)

To the extent that the CLRA claim is based on Defendant's omissions, the gravamen of the claim is the same as that of the fraudulent concealment claim, as a result of which the Court also sustains the demurrer with leave to amend as to this claim so Defendant can clarify when he discovered Defendant's wrongful conduct.

6. <u>Failure to State a Claim-CLRA</u>

Civil Code section 1770 lists 29 actionable unfair methods of competition and unfair or deceptive actions and practices. (Civ. Code, § 1770, subd. (a); *Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 639.)

Here, Plaintiff's claim is based on subdivisions (a)(5), (7), (9), and (14). (FAC, ¶¶ 147-159.) Under these subdivisions, the following conduct is unlawful:

- Representing that goods have characteristics that they do not have;
- Representing that goods are of a particular standard, quality, or grade;
- Advertising goods with the intent not to sell them as advertised;
- Representing that a transaction confers or involves rights, remedies, or obligations that it does not have or involve.

"[S]ubdivision (a)(5), (7), and (9) of Civil Code section 1770 proscribe material omissions in certain situations." (*Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1258; see also *Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 255.)

Defendant argues that Plaintiff has not alleged any misrepresentations. (Memorandum at 14:8 – 15:12) However, "an omission is actionable under the CLRA if the omitted fact is (1) contrary to a [material] representation actually made by the defendant" or (2) is a fact the defendant was obliged to disclose." (*Gutierrez*, *supra*, at p. 1258; see also *Daugherty v. American Honda Motor Co.* (2006) 144 Cal.App.4th 824, 835 "[A]lthough a claim may be stated under the CLRA in terms constituting fraudulent omissions, to be actionable the omission must be contrary to a representation actually made by the defendant, or an omission of a fact the defendant was obliged to disclose."].)

"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*, *supra*, at p. 255.)

To establish the claim, a plaintiff must prove that he acquired, or sought to acquire, by purchase or lease, a specific product for personal, family, or household purposes; must specify one or more practices prohibited by Civil Code section 1770(a); must prove harm; and must prove that

his harm resulted from the defendant's conduct. (CACI No. 4700.)

As set forth above, Plaintiff has alleged facts sufficient to state a claim for fraudulent concealment, including facts sufficient to give rise to a duty to disclose. The CLRA incorporates by reference the FAC's other allegations. (FAC, ¶ 139.) Thus, the FAC states a claim for violation of the CLRA based on omissions of facts that Defendant was obliged to disclose. (*Gutierrez*, *supra*, at p. 1258; *Daugherty*, *supra*, 144 Cal.App.4th at p. 835.)

Setting that aside, the FAC also does, in fact, identify specific representations that were relied upon by Plaintiff. (FAC, ¶¶ 144-145; see also *id*., ¶¶ 34 [referring to marketing efforts], 42 [allegations of Plaintiff's review of "marketing materials, including video advertisements"], 44 [reference to marketing materials again].)

For these reasons, the Court overrules the demurrer to the fifth cause of action for violation of the CLRA on grounds it fails to state a claim.

7. Failure to Provide Notice-CLRA

Defendant argues for the sustaining of the demurrer to the CLRA claim on grounds that Plaintiff has failed to provide required statutory notice before filing suit. (Memorandum at 12:15 – 13:18.)

"Thirty days or more prior to the commencement of an action for damages pursuant to this title, the consumer shall do the following: (1) Notify the person alleged to have employed or committed methods, acts, or practices declared unlawful by Section 1770 of the particular alleged violations of Section 1770. (2) Demand that the person correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation of Section 1770." (Civ. Code, § 1782, subd. (a).) "The notice shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the place where the transaction occurred or to the person's principal place of business within California." (*Id*.) "Except as provided in subdivision (c), no action for damages may be maintained under Section 1780 if an appropriate correction, repair, replacement, or other remedy is given, or agreed to be given within a reasonable time, to the consumer within 30 days after receipt of the notice." (*Id*., subd. (b).) "An action for injunctive relief brought under the specific provisions of Section 1770 may be commenced without compliance with subdivision (a). Not less than 30 days after the commencement of an action for injunctive relief, and after compliance with subdivision (a), the consumer may amend his or her complaint without leave of court to include a request for damages. The appropriate provisions of subdivision (b) or (c) shall be applicable if the complaint for injunctive relief is amended to request damages." (*Id*., subd. (d).)

The notice requirement "exists in order to allow a defendant to avoid liability for damages if the defendant corrects the alleged wrongs within 30 days after notice, or indicates within that 30–day period that it will correct those wrongs within a reasonable time." (*Morgan v. AT&T Wireless Services, Inc.* (2009) 177 Cal.App.4th 1235, 1261.) "The purpose of the notice requirement of section 1782 is to give the manufacturer or vendor sufficient notice of alleged defects to permit appropriate corrections or replacements. The notice requirement commences the running of certain time constraints upon the manufacturer or vendor within which to comply with the

corrective provisions. The clear intent of the act is to provide and facilitate precomplaint settlements of consumer actions wherever possible and to establish a limited period during which such settlement may be accomplished. This clear purpose may only be accomplished by a literal application of the notice provisions." (*Outboard Marine Corp. v. Superior Court* (1975) 52 Cal.App.3d 30, 40-41.)

"A dismissal *with prejudice* of a damages claim filed without the requisite notice is not required to satisfy this purpose. Instead, the claim must simply be dismissed until 30 days or more after the plaintiff complies with the notice requirements. If, before that 30–day period expires the defendant corrects the alleged wrongs or indicates it will correct the wrongs, the defendant cannot be held liable for damages." (*Morgan*, *supra*, 177 Cal.App.4th at p. 1261.)

Plaintiff responds that such notice was provided on September 5, 2025, pointing to Paragraph 161 of the FAC, wherein Plaintiff alleges compliance with the notice requirement. (FAC, ¶ 161.) Defendant appears to concede the point, as it is not addressed in the reply.

For these reasons, the Court overrules the demurrer to the CLRA claim on grounds that Plaintiff has failed to provide the require notice.

8. <u>Motion to Strike</u>

In light of the Court's ruling on the demurrer, the motion to strike is DENIED as moot.