SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA

Tentative Ruling

2024CUBC031700: ELSA CAZARES GARCIA vs FORD MOTOR COMPANY, et al.
02/26/2026 in Department 44
Motion for Summary Adjudication

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://www2.ventura.courts.ca.gov/Courtroom/C44.

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 Link:

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.

Motion: Defendant Ford Motor Company's Motion for Summary Adjudication

Tentative Ruling:

Defendant Ford Motor Company's Motion for Summary Adjudication is GRANTED IN PART and DENIED IN PART.

The motion is GRANTED as to ISSUE 1, the first cause of action for failure to repurchase or replace after a reasonable number of repair attempts (Civ. Code, § 1793.2, subd. (d)); ISSUE 2, the second cause of action for failure to commence repairs within a reasonable time or complete repairs within 30 days (Civ. Code, § 1793.2, subd. (b)); ISSUE 3, the third cause of action for failure to provide service literature and replacement parts (Civ. Code, § 1793.2, subd. (a)(3)); and ISSUES 5, the sixth cause of action for fraud because Plaintiff cannot establish that Defendant breached its duty to disclose a known defect.

The motion is DENIED as to ISSUE 7, the fourth cause of action for breach of the implied warranty of merchantability (Civ. Code, §§ 1791.1, 1794, 1795.5).

In light of the Court's ruling granting summary adjudication of ISSUE 5, the Court's ruling on ISSUES 4 and 6 are MOOT.

I. Preliminary Matters

A. Request for Judicial Notice

Plaintiff's request for judicial notice of the existence and contents of Technical Service Bulletin 20-2271 on the National Highway Traffic Safety Administration's website is granted in part. The Court takes judicial notice of the existence of the Technical Service Bulletin, its apparent date, its apparent issuing manufacturer, and the fact that it appears in NHTSA's public database. (Evid. Code, § 452, subd. (c).) The Court declines to take judicial notice of the truth of the contents of the TSB, however, because the factual statements therein, such as whether a particular condition exists or whether it constitutes a defect, must not be reasonably subject to dispute. (Evid. Code, § 452, subd. (h).) Even if the Court were to consider the contents of the TSB, the Court would find the document to be irrelevant. Although Plaintiff's Complaint alleges a defective transmission, the evidence before the Court in connection with this motion indicates that Plaintiff's vehicle was presented once for replacement of a leaking water pump, as set forth below. The only other issue involving Plaintiff's vehicle concerned the windshield, which was addressed pursuant to a recall notice, also as set forth below.

B. Defendant's Undisputed Material Facts ("UMF")

UMF 4, 5, 7, 8, 10, 11, 20, 21, 23, 24, 26, 27, 38, 39, 41, 42, 44, 45, 54, 64, 70, 79, 80, 82, 84, 85 are undisputed and established for purposes of this motion.

UMF 1, 2, 3, 6, 9, 16, 17, 18, 19, 22, 25, 32, 35, 36, 37, 40, 43, 50, 53, 56, 57, 62, 63, 66, 67, 68, 69, 72, 73, 74, 76, 77, 78, 81, 83, and 90 are disputed but established for purposes of this motion.

UMF 12, 13, 14, 15, 28, 29, 30, 31, 33, 34, 46, 47, 48, 49, 51, 52, 55, 58, 59, 60, 61, 65, 68, 69, 71, 86, 87, 88, 89 are disputed but immaterial for purposes of this motion. (*Bayramoglu v. Nationstar Mortgage LLC* (2020) 51 Cal.App.5th 726, 736 ["[A] defendant cannot contend a plaintiff's discovery responses are factually devoid for purposes of summary judgment merely because they include only improper objections."]; see also *Gaggero v. Yura* (2003) 108 Cal.App.4th 884, 893 [improper privacy objection to deposition question not equivalent to a factually devoid interrogatory response].)

II. Relevant Background

This lemon law action arises out of Plaintiff's purchase of an alleged defective certified pre-owned 2019 Ford Explorer on May 7, 2022. Plaintiff alleges that the purchase was accompanied by various warranties, including a 3-year/36,000-mile bumper-to-bumper warranty,

a 5-year/60,000-mile powertrain warranty, and other warranties. (Complaint, ¶¶ 7-8 and Exh. A [pp. 8-15, 17-26].)

Plaintiff further alleges that various defects manifested themselves during the applicable express warranty period, including, but not limited to "transmission defects, engine defects, electrical defects," among others. Such defects impaired "the use, value, or safety" of the subject vehicle. Defendant had an affirmative duty to repurchase or replace the subject vehicle after a reasonable number of repair attempts but failed to do so. (*Id*., ¶¶ 12-16.)

The established material facts in this case are straightforward. They are that the vehicle, a used 2019 Ford Explorer with 47,944 miles on it, was purchased on the date alleged in the Complaint from Vista Ford Lincoln of Oxnard, a dealership in Oxnard, California. (UMF 1, 17, 35, 53, 57, 63, 68, 69, 76.) Plaintiff's primary concern at purchase was the color of the vehicle. Vista had the color, and that is why Plaintiff purchased the vehicle from Vista. Neither the engine nor the transmission were factors or concerns. (UMF 62.) On June 17, 2024, Plaintiff presented the vehicle to Envision Ford Lincoln of Oxnard for an engine issue. (UMF 4, 5, 21, 38, 39, 79, 80.) The vehicle was repaired and returned to Plaintiff on July 9, 2024, 22 days later. (UMF 6, 7, 22, 23, 40, 41, 81, 82.) The issue turned out to be an internal water pump leak. (Calabria, Exh. 2 [Invoice No. 529140 at p. 1].) The issue had not recurred as of the date of Plaintiff's deposition on November 19, 2025. (UMF 2, 9, 18, 25, 36, 43, 77, 83.) Other than the water pump issue, Plaintiff presented the vehicle once to the dealership for a windshield issue pursuant to a recall notice. (UMF 3, 19, 37, 78 ; Calabria Decl., Exh. 5 [Pl. Depo. At 51:4-25, 60:19-23.) Other than that, Plaintiff has taken the vehicle in only for routine maintenance, such as oil changes. (UMF 10, 26, 44, 84.)

The Complaint was filed on October 4, 2024, alleging several claims against Defendant for violation of the Song-Beverly Act, including failure to repurchase or replace after a reasonable number of repair attempts (Civ. Code, § 1793.2, subd. (d)); failure to commence repairs within a reasonable time or complete repairs within 30 days (Civ. Code, § 1793.2, subd. (b)); failure to provide service literature and replacement parts (Civ. Code, § 1793.2, subd. (a)(3)); and breach of the implied warranty of merchantability (Civ. Code, §§ 1791.1, 1794, 1795.5).

Plaintiff also alleges a claim for fraudulent concealment grounded on Defendant's alleged concealment of a known defect, described in the Complaint as a defective 6-speed transmission that would exhibit one or more of the following symptoms: hesitation or delayed acceleration, harsh or hard shifting, jerking, shuddering, juddering, surging and/or inability to control the vehicle's speed, acceleration, or deceleration, symptoms requiring reprogramming of the transmission control module ("TCM") and/or powertrain control module ("PCM"), and/or failure or replacement of the transmission. (Complaint, ¶¶ 50-62.)

Trial was originally set for February 2, 2026. On October 9, 2025, the Court continued trial to May 4, 2026, and keyed all deadlines and cut-offs to the new trial date.

The instant motion was filed on January 12, 2026, and was originally noticed for hearing on February 26, 2026. Plaintiff initially opposed the motion on the sole ground that Defendant had provided insufficient notice of the motion, having given 43 calendar days' and 2 court days'

notice of the motion. But on February 20, 2026, the Court signed an order on the parties' stipulation, continuing trial to June 29, 2026, and continuing the hearing on this matter to May 28, 2026. On May 6, 2026, Plaintiff filed an opposition on the merits. On May 15, 2026, Defendant filed its reply memorandum. The Court notes that in opposing this motion, Plaintiff has offered no additional material facts of her own and no evidence supporting her opposition, other than the above-referenced request for judicial notice of a technical service bulletin.

III. Legal Standard: Summary Judgment and Summary Adjudication

"A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code Civ. Proc., § 437c, subd. (a).) "A cause of action has no merit if either of the following exists: (1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded. (2) A defendant establishes an affirmative defense to that cause of action." (Code Civ. Proc., § 437c, subd. (o).)

"The motion shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The supporting papers shall include a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denying the motion." (Code Civ. Proc., § 437c, subd. (b)(1); Cal. Rules of Court, rule 3.1350, subds. (d), (h).)

"The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact." (Code Civ. Proc., § 437c, subd. (c).) What issues are "material" is determined by the pleadings and substantive law. (*Joseph E. Di Loreto, Inc. v. O'Neill* (1991) 1 Cal.App.4th 149, 156; *Seibert Security Services, Inc. v. Superior Court* (1993) 18 Cal.App.4th 394, 404, fn. 2.)

"A defendant moving for summary judgment has the initial burden[.]" (*Dollinger DeAnza Associates v. Chicago Title Ins. Co.* (2011) 199 Cal.App.4th 1132, 1144.) "For purposes of motions for summary judgment and summary adjudication: . . . (2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) "[A] moving defendant need not support his motion with affirmative evidence negating an essential element of the plaintiff's case; instead, the defendant may point to

the absence of evidence in support of the plaintiff's case." (*Padilla v. Rodas* (2008) 160 Cal.App.4th 742, 752.)

"If the defendant fails to make this initial showing, it is unnecessary to examine the plaintiff's opposing evidence and the motion must be denied." (*Dollinger DeAnza Associates v. Chicago Title Ins. Co.*, *supra*, 199 Cal.App.4th at p. 1144.)

"[I]f the moving papers make a prima facie showing that justifies a judgment in the defendant's favor, the burden shifts to the plaintiff to make a prima facie showing of the existence of a triable issue of material fact." (*Id*.)

"Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." (Code Civ. Proc., § 437c, subd. (p)(2).) "A party cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact." (*LaChapelle v. Toyota Motor Credit Corp.* (2002) 102 Cal.App.4th 977, 981.) A statement in the separate statement that a material fact is not disputed is a conclusive admission of fact for purposes of the summary judgment motion only, which a court is entitled to rely upon in deciding the motion. (*City of San Diego v. DeLeeuw* (1993) 12 Cal.App.4th 10, 14; *Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 747, *as modified* (Nov. 20, 2009).)

"Inasmuch as summary judgment is a drastic procedure and should be used with caution [citation], the moving party's papers are strictly construed, while the opposing party's papers are liberally construed [citations]." (*Murillo v. Rite Stuff Foods, Inc.* (1998) 65 Cal.App.4th 833, 840 [internal citation omitted].) "Courts deciding motions for summary judgment or summary adjudication may not weigh the evidence but must instead view it in the light most favorable to the opposing party and draw all reasonable inferences in favor of that party.' (*Weiss v. People ex rel. Dept. of Transportation* (2020) 9 Cal.5th 840, 864.)

"If any triable issue of fact exists, it is error for the trial court to grant a party's motion for summary judgment." (*Robinson v. City and County of San Francisco* (1974) 41 Cal.App.3d 334, 337.) "[A]ny doubts about the propriety of summary adjudication must be resolved in favor of the party opposing the motion." (*See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 900.) "[S]ummary judgment law turns on issue finding rather than issue determination." (*Diep v. California Fair Plan Assn.* (1993) 15 Cal.App.4th 1205, 1207 [19 Cal.Rptr.2d 591, 592], *as modified* (June 10, 1993).)

"A summary adjudication motion is subject to the same rules and procedures as a summary judgment motion." (*Lunardi v. Great-West Life Assurance Co.* (1995) 37 Cal.App.4th 807, 819; see also Code Civ. Proc., § 437c, subd. (f)(2) ["A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment."].)

IV. Discussion

A. Failure to Repurchase or Replace After a Reasonable Number of Repair Attempts (Civ. Code, § 1793.2, subd. (d))

"If the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle in accordance with subparagraph (A) or promptly make restitution to the buyer in accordance with subparagraph (B)." (Civ. Code, § 1793.2, subd. (d)(2).)

"A plaintiff pursuing an action under the Act has the burden to prove that (1) the vehicle had a nonconformity covered by the express warranty that substantially impaired the use, value or safety of the vehicle (the nonconformity element); (2) the vehicle was presented to an authorized representative of the manufacturer of the vehicle for repair (the presentation element); and (3) the manufacturer or his representative did not repair the nonconformity after a reasonable number of repair attempts (the failure to repair element)." (*Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1101; see also CACI No. 3201 [elements of claim].)

" 'Nonconformity' means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle.' (§ 1793.2, subd. (e)(4)(A).) This definition is nothing more than a means of describing what the average person would understand to be a defect. The two words are in effect synonyms." (*Ibrahim v. Ford Motor Co.* (1989) 214 Cal.App.3d 878, 887; see also *Schreidel v. American Honda Motor Co.* (1995) 34 Cal.App.4th 1242, 1249 [citing *Ibrahim*].)

"The duty to promptly provide restitution arises only after the manufacturer is unable to repair the vehicle after being afforded the opportunity to make a reasonable number of repair attempts." (*Kirzhner v. Mercedes-Benz USA, LLC* (2020) 9 Cal.5th 966, 986.) "A single attempt does not meet the statutory threshold[.]" (*Silvio v. Ford Motor Co.* (2003) 109 Cal.App.4th 1205, 1209 [noting that section 1793.2, subdivision (d)(2) uses "attempts"]; see also *Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 799 ["The reasonableness of the number of repair attempts is a question of fact to be determined in light of the circumstances, but at a minimum there must be more than one opportunity to fix the nonconformity." (citing *Silvio*)].)

A presumption of reasonableness of the number of repair attempts may arise under certain conditions if the attempts were made 18 months of delivery or 18,000 miles. (Civ. Code, § 1793.22, subd. (b).) To establish the presumption, the attempts must be related to the "same nonconformity" (*Id*., subds. (b)(1)-(2)) or for more than 30 calendar days for "nonconformities." (*Id*., subd. (b)(3).)

"[T]he plaintiff is not obligated to identify or prove the cause of the car's defect. Rather, he is required only to prove the car did not conform to the express warranty." (*Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138, 149.)

Defendant argues that Plaintiff cannot establish her claim because she presented the vehicle for repair on a single occasion, on June 17, 2024, before filing suit. Plaintiff argues in opposition that the repair need not be for the same issue. In other words, Plaintiff argues that the entire vehicle must conform to warranty. Additionally, Plaintiff argues that the reasonableness of the number of repair attempts is a question of fact for the jury. Further, in her separate statement Plaintiff points out that Defendant concedes that Plaintiff also presented the vehicle in response to a recall notice issued by Defendant. Defendant responds that Plaintiff ignores the repair history and the facts, impliedly conceding that she brought the vehicle in for a warranty repair only once, and further responds that Plaintiff's argument that the vehicle as a "whole" must conform to warranty is not the law. Defendant also argues that presentation in response to a recall notice does not constitute a repair attempt.

Here, the evidence shows that Plaintiff presented the vehicle only once for her engine-related complaint. Further, Plaintiff has offered no evidence that her vehicle was out of service for a cumulative total of more than 30 calendar days. Because Song-Beverly requires more than one repair attempt for the same nonconformity (*Silvio*, *supra*, 109 Cal.App.4th at p. 1209; *Robertson*, *supra*, 144 Cal.App.4th at p.799), Plaintiff cannot establish as a matter of law the repair element of her claim. Accordingly, the Court grants summary adjudication of the first cause of action in Defendant's favor.

B. Failure to Commence Repairs Within a Reasonable Time or Complete Repairs Within 30 Days (Civ. Code, § 1793.2, subd. (b))

"Where those service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods shall be serviced or repaired so as to conform to the applicable warranties within 30 days. Delay caused by conditions beyond the control of the manufacturer or its representatives shall serve to extend this 30-day requirement. Where delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay." (Civ. Code, § 1793.2, subd. (b).)

"Section 1793.2 governs the duties of a manufacturer making an express warranty. One of those duties appears in section 1793.2, subdivision (b). It provides that where repair of consumer goods is necessary "because they do not conform with the applicable express warranties," the goods must be repaired 'so as to conform to the applicable warranties within 30 days.' (We will refer to this as the 30-day repair requirement, or section 1793.2(b).)" (*Ramos v. Mercedes-Benz USA, LLC* (2020) 55 Cal.App.5th 220, 224-225; see also *Schreidel v. American Honda Motor Co.* (1995) 34 Cal.App.4th 1242, 1249 ["Service or repairs of nonconforming goods must be commenced within a 'reasonable time,' within 30 days unless the buyer agrees in writing to the contrary."]; see also CACI No. 3205 [elements of claim].)

"[A] buyer may not obtain restitution of the full price he paid for a new motor vehicle, where the manufacturer failed to complete repairs to a defect within 30 days, but the defect did not substantially impair the vehicle's use, value or safety." (*Ramos v. Mercedes-Benz USA, LLC* (2020) 55 Cal.App.5th 220, 222.) "The issue of whether the problems constituted substantial impairment is one for the trier of fact." (*Schreidel v. American Honda Motor Co.* (1995) 34 Cal.App.4th 1242, 1250.)

Defendant argues that the second claim fails because Plaintiff's vehicle was returned to her within 30 days of her presentation of the vehicle for repairs. Plaintiff argues in opposition that her second cause of action consists of two components: that Defendant failed to commence repairs within a reasonable time and that Defendant failed to repair the vehicle. Section 1793.2, subdivision (b), requires Defendant to conform the vehicle to warranty within 30 days, not merely attempt to repair it. Finally, there is no requirement for a minimum number of attempts that Plaintiff must comply with in order to prevail under subdivision (b). Defendant responds that Plaintiff does not dispute that the repairs were completed within 30 days. Defendant also asserts that Plaintiff cannot show damages, which alone is sufficient to defeat the claim. Plaintiff's argument that Defendant did not commence repairs within a reasonable time is a novel theory not supported by the facts or the law. It is undisputed that Plaintiff's vehicle was returned to her within 30 days after presenting the vehicle for the first and only time.

Here, it is undisputed that Plaintiff presented her vehicle for repair on June 17, 2024, and that it was returned 22 days later on July 9, 2024. Plaintiff has offered no evidence that repairs were not begun within a reasonable time of presentation for repair. In fact, Plaintiff testified at her deposition that she spoke with someone at the dealer a week after the car had been towed and that they were working on it. (Calabria Decl., Exh. 5 [Pl. Depo. At 58:23 – 59:12].) Consequently, the Court finds as a matter of law that Defendant commenced and completed repairs within 30 days. (*Ramos*, *supra*, 55 Cal.App.5th 224-225; *Schreidel*, *supra*, 34 Cal.App.4th at p. 1249.) Summary adjudication of the second cause of action in Defendant's favor is also therefore granted.

C. Failure to Provide Service Literature and Replacement Parts (Civ. Code, § 1793.2, subd. (a)(3))

"Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall: . . . (3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period." (Civ. Code, § 1793.2, subd. (a)(3).)

Defendant argues that Plaintiff has no evidence that Defendant failed to make available sufficient service literature and replacement parts, based on Plaintiff's boilerplate response to an "all facts" interrogatory supporting the claim and the documents produced by Plaintiff during discovery. Plaintiff argues in a point heading that Defendant cannot meet its burden and in her brief cites section 1793.2(a)(3), stating, "By its plain terms, this statutory section does not require any certain number of repair visits." In response, Defendant argues that Plaintiff presented the vehicle once for repairs during the warranty period, and the vehicle was repaired. Defendant

further argues that Plaintiff's discovery responses, including her document production, establish that she has no evidence to support her claim.

Here, Defendant's evidence shows that the vehicle was presented for repair and repaired within 22 days of presentation, as set forth above. The Court infers from the evidence that sufficient service literature and replacement parts were available. (Code Civ. Proc., § 437c, subd. (c).) This shifts the burden to Plaintiff. (*Id*., subd. (p)(2).) In response, Plaintiff has offered no evidence to create a triable issue of fact regarding the sufficiency of the service literature or replacement parts during the express warranty period. Therefore, summary adjudication of the third cause of action in Defendant's favor is also warranted.

D. Breach of the Implied Warranty of Merchantability (Civ. Code, §§ 1791.1, 1794, 1795.5)

"Unless disclaimed in the manner prescribed by this chapter, every sale of consumer goods that are sold at retail in this state shall be accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable." (Civ. Code, § 1792.)

" 'Implied warranty of merchantability' or 'implied warranty that goods are merchantable' means that the consumer goods meet each of the following: (1) Pass without objection in the trade under the contract description. (2) Are fit for the ordinary purposes for which such goods are used. (3) Are adequately contained, packaged, and labeled. (4) Conform to the promises or affirmations of fact made on the container or label." (Civ. Code, § 1791.1, subd. (a); *Isip v. Mercedes-Benz USA, LLC* (2007) 155 Cal.App.4th 19, 26 [quoting § 1791.1, subd. (a)]; see also CACI No. 3210 [elements of claim].) "The elements for this claim are lack of merchantability, causation, and damages." (*Carver v. Volkswagen Group of America, Inc.* (2024) 107 Cal.App.5th 864, 888-889.)

"[A] core test of merchantability is fitness for the ordinary purpose for which such goods are used." (*Brand v. Hyundai Motor America* (2014) 226 Cal.App.4th 1538, 1546 [quoting *Mexia v. Rinker Boat Co., Inc.* (2009) 174 Cal.App.4th 1297, 1303 (internal quotation marks omitted)]; *Carver*, *supra*, 107 Cal.App.5th at p. 889 [also quoting *Mexia*].) "[A] new car need not 'be perfect in every detail'; rather, its implied merchantability 'requires only that a vehicle be reasonably suited for ordinary use.' " (*Brand*, *supra*, 226 Cal.App.4th at p. 1546 [quoting *Keegan v. American Honda Motors Co., Inc.* (C.D. Cal. 2012) 838 F.Supp.2d 929, 945]; see also *Simgel Co., Inc. v. Jaguar Land Rover North America, LLC* (2020) 55 Cal.App.5th 305, 319 ["[T]he mere existence of a defect does not equate to a breach of the implied warranty of merchantability." (citing *Brand*, *supra*, 226 Cal.App.4th at p. 1546)].)

"Because the defects involved in an implied warranty of merchantability are so fundamental, 'the buyer is not required to await a seller's attempt to make repairs.' " (*Carver*, *supra*, 107 Cal.App.5th at p. 878 [quoting *Brand*, *supra*, 226 Cal.App.4th at p. 1548].)

"The duration of the implied warranty of merchantability and where present the implied warranty of fitness shall be coextensive in duration with an express warranty which accompanies the consumer goods, provided the duration of the express warranty is reasonable; but in no event

shall such implied warranty have a duration of less than 60 days nor more than one year following the sale of new consumer goods to a retail buyer. Where no duration for an express warranty is stated with respect to consumer goods, or parts thereof, the duration of the implied warranty shall be the maximum period prescribed above." (Civ. Code, § 1791.1, subd. (c).)

Defendant argues that the implied warranty expired on May 7, 2023, one year after the vehicle was purchased. Because she first presented the vehicle for repair on June 17, 2024, "after the implied warranty expired," she cannot establish a breach of the implied warranty as a matter of law. Defendant also argues that Plaintiff has no damages because she has no evidence that the vehicle was worth less due to any implied warranty issue. Plaintiff argues in opposition that there is no minimum number of repair visits required; that the one-year warranty period is not a statute of limitations; that the statute of limitations for breach of implied warranty is four years; and that because the implied warranty arises by operation of law and sets a minimum level of quality of consumer goods, Plaintiff had not obligation to seek repairs of any kind before asserting the claim. Defendant responds that Plaintiff has produced no evidence of a latent defect that was present during the implied warranty period and has produced no evidence that the vehicle was unmerchantable.

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. (Complaint, ¶ 43.) "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 May 7, 2022, and filed suit on October 4, 2024, fewer than four months after presenting the vehicle for the alleged defect on June 17, 2024. Thus, Plaintiff filed suit within four years of the discovery of the alleged defect. Accordingly, the Court rejects Defendant's argument that Plaintiff cannot establish a breach based on filing her lawsuit after May 7, 2023.

The Court also rejects Defendant's no-damages argument, which appears to be based on Defendant's claim that Plaintiff "has no evidence" to support any claim that the vehicle "was worth less" and also on the fact that Plaintiff has had no issues with the vehicle since it was repaired in June/July 2024. (Moving Papers at 25:18-25 [citing UMF 9].) Defendant, as the moving party, has the burden of establishing that Plaintiff has no damages. The Court finds that Defendant's claim that Plaintiff has no evidence pertaining an alleged reduction in value is unsupported and therefore does not shift the burden to Plaintiff regarding that claim.

The Court also finds that Defendant has failed to shift the burden as to damages based on the lack of issues with the vehicle since it was repaired. Defendant's argument ignores its own undisputed evidence that Plaintiff lost use of the vehicle for 22 days and also incurred a $100 deductible relating to the repairs. (UMF 4, 7, 8, 24, 42.) Further, Plaintiff testified at her deposition that she put in a claim with her insurance company due to having to have the vehicle towed for which she did not receive any payment from her insurance company and the cost of which the dealer also declined to pay. (Calabria Decl., Exh. 5 [Pl. Depo. at 50:16-21, 57:16 – 58:12].) Moreover, although Plaintiff was provided with a rental car, it was not until the vehicle had apparently been at the dealership for two weeks. (*Id.*, Exh. 5 [Pl. Depo. at 59:5-15].)

For these reasons, the Court denies the motion as to the fourth cause of action for breach of the implied warranty of merchantability.

E. 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.)

Defendant argues that the fraudulent concealment claim fails because Defendant had no duty to disclose. It was not a party to the purchase contract and the issuance of a warranty in connection with the purchase is insufficient to establish a transactional relationship with Plaintiff. Defendant further argues that Plaintiff cannot prove that Defendant had knowledge of a defect that it could not repair at the time Plaintiff purchased the vehicle. Finally, Defendant argues that the claim is barred by the Economic Loss Rule. Plaintiff contends that issuance of a warranty in connection with the purchase was sufficient to establish a transactional relationship between for purposes of creating a duty to disclosure.

1. Duty to Disclose

"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 *Bigler-Engler v. Breg* (2017) 7 Cal.App.5th 276, the Court of Appeal went through a factored analysis to determine whether the relationship in that case was sufficiently direct for purposes of establishing a duty. The alleged defective product in that 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 manufacturer's 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.

Here, there is no apparent dispute that a warranty was issued in connection with Plaintiff's purchase of the subject vehicle. Thus, the Court finds that, unlike in *Bigler-Engler*, the facts before the Court do show sufficient evidence of a "relationship" between Plaintiff and Defendant, especially since warranties generally only arise in connection with the sale of a good, whether purchased new or used. This is especially the case in the purchase of a vehicle in which a warranty issued with the purchase of the vehicle, as is the case here. The issuance of such a warranty is an inducement to purchase because it promises post-sale performance of repairs that

directly benefits a buyer like Plaintiff. Accordingly, the Court rejects Defendant's argument that it did not owe a duty to Plaintiff to disclose known defects.

2. Knowledge of Defect

Defendant also argues that Plaintiff cannot prove that Defendant had knowledge of a defect that it could not repair at the time Plaintiff purchased the vehicle. Plaintiff's opposition does not address this particular argument in light of the facts of this case but rather generally argues that Defendant has a duty to disclose defects, spending a great deal of time discussing *Ford Motor Warranty Cases*.

Plaintiff's fraudulent concealment theory as alleged in the Complaint is based on an alleged undisclosed defect relating to the six-speed transmission. (Complaint, ¶¶ 52-53.) But the evidence offered at summary judgment does not show that the subject vehicle ever experienced any transmission symptom, complaint, diagnosis, or repair. The only vehicle-specific evidence concerns a leaking water pump repair and a windshield recall, neither of which tends to prove the existence or materiality of a transmission defect in Plaintiff's vehicle and which fails to connect the proffered Technical Service Bulletin to Plaintiff's vehicle, rendering the TSB irrelevant. The facts of this case underscore that a manufacturer's submission of a TSB to the NHTSA does not equate to knowledge that *every* vehicle within a TSB's defined coverage is defective.

Setting that aside, Plaintiff's pleadings frame the issues for purposes of summary judgment. (*The Irvine Co. LLC v. Superior Court* (2023) 96 Cal.App.5th 858, 874-875.) The Complaint in no way suggests a fraudulent concealment claim against Defendant based on the alleged concealment of any defects related to water pumps or windshields in vehicles of the same year, make, and model of Plaintiff's vehicle.

In sum, because fraudulent concealment requires suppression of a material fact that Defendant was bound to disclose, and because plaintiff has not presented any facts in this case that Defendant was bound to disclose and failed to do so, Defendant is entitled to summary adjudication of the fraudulent concealment claim.

3. 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, the alleged basis for Plaintiff's fraudulent concealment is Defendant's pre-purchase concealment of an alleged transmission defect. Given that the fraudulent concealment claim fails, there is no misconduct independent of any contractual or warranty right arising between Plaintiff and Defendant. Accordingly, the Court need not determine the applicability of the Economic Loss Rule in this case.

V. Disposition

For the reasons stated herein, the motion for summary adjudication is granted as to the first, second, third, and sixth causes of action and denied as to the fourth cause of action.

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