

SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA

Tentative Ruling

**2023CUBC016051: ANDREW MACARTHUR MULDOWNEY vs FORD MOTOR
COMPANY, et al.**

**06/04/2026 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.

I. Preliminary Matters

A. Defendant’s Undisputed Material Facts (“UMF”)

UMF 1 through 16 are undisputed and established for purposes of this motion.

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II. Relevant Background

This lemon law action arises out of Plaintiff’s purchase of an alleged defective 2018 Ford Mustang. 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, ¶¶ 9-10 and Exh. A [pp. 8-15, 17-32].)

Plaintiff generally alleges that various defects manifested themselves during the applicable express warranty period, including, but not limited to “engine defects, infotainment defects, transmission 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.*, ¶¶ 14-15.)

The Complaint was filed on October 31, 2023, alleging several claims against Defendant Ford Motor Company 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 alleged a claim for fraudulent concealment against Defendant Ford Motor Company and a negligent repair claim against Defendant Hilltop Ford Kia.

A first amended complaint was filed on December 28, 2023. The operative second amended complaint was filed on March 20, 2024, alleging the same six claim.

Plaintiff’s fraudulent concealment claims against Defendant Ford Motor Company alleges that on Defendant concealed a known defect, described in the SAC as a defective 10-speed transmission that would exhibit one or more of the following symptoms: hesitation or delayed acceleration, harsh or hard shifting, and jerking, shuddering, or juddering, which presented a safety hazard affecting a driver’s ability to control the vehicle’s speed, acceleration, deceleration, and/or overall responsiveness. Plaintiff alleges that Defendant has known the particular 10-speed transmission is defective since as early as 2018, alleging the issuance of various Technical Service Bulletins related to the transmission, which is known as the “10R80 Automatic Transmission.” (Complaint, ¶¶ 40-53, 77-92.)

Plaintiff alleges that he presented the vehicle for repairs in December 2019 related on an issue with the infotainment system. At the time, the vehicle had 15,291 miles on it. (Complaint, ¶ 54.) Plaintiff alleges a second presentation for repairs in September 2022 for “ongoing engine and transmission complaint, including inter alia, engine misfires and a Check Engine Light.” The mileage at the time was 37, 989. (*Id.*, ¶ 55.) Plaintiff alleges a third presentation for repairs in December 2022, again for “ongoing engine and transmission complaints, including inter alia, an illuminated Check Engine Light.” The mileage at this time was 40,920. During this repair attempt, the entire engine was torn down and diagnosed. The head gasket, the battery, a high-pressure fuel line, and the spark plugs were replaced. The vehicle was returned to Plaintiff more than three months later, at which time Plaintiff was informed that the vehicle was repaired

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and was “working as designed.” (*Id.*, ¶ 56.) Despite this latest repair, the vehicle continued to experience the referenced defects. (*Id.* ¶ 57.)

The unopposed material facts in this case are straightforward. Plaintiff purchased the vehicle on December 20, 2017, from Marin County Ford in Novato, California. (UMF 1.) Although Plaintiff presented the vehicle for repairs several times during the warranty period, none of the issues for which Plaintiff presented the vehicle turned out to involve the transmission on the subject vehicle. (UMF 8-10, 12.)

Defendant Ford Motor Company filed the instant motion on January 26, 2026, seeking summary adjudication of the fifth cause of action for fraudulent concealment. Plaintiff did not file an opposition. Trial is set for July 6, 2026.

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

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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).)

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“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. Application

A. 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 summary adjudication of the fraudulent concealment claim should be granted in Defendant’s favor for three reasons. First, Plaintiff cannot establish that Defendant had knowledge of a defect at the time of the sale. Second, Defendant had no duty to disclose to Plaintiff because there was no transactional relationship between Defendant and Plaintiff. Third, the claim is barred by the Economic Loss Rule.

1. Defendant’s Knowledge of Defect

Defendant initially argues that Plaintiff cannot establish that Defendant had knowledge of a transmission defect in *Plaintiff’s* vehicle at the time of sale. Defendant also argues that Plaintiff never presented the vehicle for any transmission-related issues during the warranty period.

In support of its position, Defendant has produced 71 pages of documents comprising Plaintiff’s document production during litigation of this matter. (Alarcon Decl., Exh. 3 [MUL000001 – MUL000071].) A review of the documents produced establishes that the vehicle was presented to a Ford dealership on the following occasions:

- On December 26, 2018, for “10K Service,” at which time the vehicle had 10,276 miles on it. (Alarcon Decl., Exh. 3 [MUL000015 – MUL000016].)
- On December 24, 2019, for an apparent oil change and because the “instrument cluster does not work. The screen is black.” At this time, the vehicle had 15,291 miles on it. The complaint was verified and the instrument cluster was replaced. (*Id.*, Exh. 3 [MUL000017 – MUL000018].)
- On January 21, 2020, for an issue with the left front headlight and a loose steering wheel cover. The mileage at the time was 16,630. (*Id.*, Exh. 3 [MUL000019 – MUL000020].)
- On September 27, 2022, because the “Check Engine” light was illuminated. The mileage at the time was 37,989. (*Id.*, Exh. 3 [MUL000022 – MUL000027].)
- On December 21, 2022, because the “Check Engine” light was illuminated again. The mileage at the time was 40,920. The vehicle was diagnosed and was found to be misfiring. The head gasket, the batter, a high-pressure fuel line, and the spark plugs were

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replaced. The vehicle was returned to Plaintiff on March 29, 2023. (*Id.*, Exh. 3 [MUL000021 – MUL000022, MUL000028 – MUL000034].) In addition, Plaintiff took the vehicle to non-dealer facilities to check a possible coolant leak on May 31, 2023; to have the tires replaced and have the wheels aligned in early 2024; for an issue related to a sensor in June 2024; and to have the oil changed in July 2024. (*Id.*, Exh. 3 [MUL000035, MUL000066 – MUL000071].) Moreover, there is an email from Plaintiff to the salesperson regarding some scratches on the vehicle that Plaintiff sought to have repaired under the “enviroguard warranty” that he purchased. This was in February 2018. (*Id.*, Exh. 3 [MUL000045].)

Also among the documents is an email exchange between Plaintiff and the individual who presumably sold the vehicle to Plaintiff, Amir Levay, in which recalls are discussed. The salesperson appears to refer to more than one recall and also states that vehicles with recalls cannot be sold. (*Id.*, Exh. 3 [MUL000041 – MUL000043].) There is also a recall notice among the documents that appears to be attached to an email thread. It is dated December 19, 2017, and it pertains to 2018 Mustangs with particular build dates at a particular assembly plant. (*Id.*, Exh. 3 [MUL000042].)

Defendant also offers Plaintiff’s deposition testimony, during which he was questioned about each of the above-referenced repairs. (Alarcon Decl., Exh. 7 [Pl. Depo. at 37:15 – 52:20].) Plaintiff testified that with regard to the “Check Engine” light he was told that “it was a blown head gasket” for which the car was in the shop for nearly four months. (*Id.*, Exh. 7 [Pl. Depo. at 48:23-24].) The last issue he had with the vehicle was when a “radiator hose blew” in May of 2023. (*Id.*, Exh. 7 [Pl. Depo. at 51:5 – 52:20].)

Finally, Defendant offers Plaintiff’s special interrogatory responses, where, in response to being asked for all facts supporting his fraudulent concealment claim, Plaintiff repeatedly referred Defendant to the Complaint, the vehicle’s repair history, and the documents produced by Plaintiff in response to Defendant’s request for production of documents. (Alarcon Decl., Exh. 4 [responses to special interrogatories 24, 26, 28, 30, 32, 34, 36, 38, 40, 41, 47, 49, 51, 53, 55].)

The Court finds that the undisputed evidence presented by Defendant establishes that Plaintiff did not present his vehicle for a transmission-related issue. Given that the basis for the fraudulent concealment claim is the existence of an alleged defective 10-speed transmission, and given Plaintiff’s failure to present evidence of the manifestation of the defect in his vehicle or of damages related to such a defect, such as repair expense, diminished value, loss of use directly related to a transmission issue, or other non-speculative injury due to Defendant’s alleged concealment of the alleged defective transmission, Plaintiff cannot establish causation or damages on his fraudulent concealment claim. The Court also notes that Plaintiff, in failing to oppose this motion, has also failed to introduce admissible evidence, including but not limited to pre-sale Technical Service Bulletins, NHTSA complaints, or internal documents, that might tend to show that Defendant was aware of the alleged defect in vehicles containing the 10-speed transmission, including Plaintiff’s vehicle. Accordingly, summary adjudication of the fifth cause of action in Defendant’s favor is warranted and the Court declines to address the elements of Ford’s duty to disclose or application of the economic loss rule.

V. Disposition

The motion is GRANTED.

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