SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16, Honorable Roberta S. Hayashi, Presiding

Courtroom Clerk:
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LAW AND MOTION TENTATIVE RULINGS

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

DATE: FRIDAY, JANUARY 31, 2025
TIME: 9:00 A.M.
Please Read Carefully As Some of Our Protocols Have Changed.

All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed or referred to. All persons should spell their names for the benefit of Court Staff.

Appearances.

Personal appearances in the courtroom are strongly encouraged. If you must appear remotely, you must use the MS Teams link from a device with a camera. Please "name" yourself when you log in, as: Line #/name/party. Remote appearances should be made from a quiet location with no background noise (and not from a moving vehicle). IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY, AND NOT TO INTERRUPT WHEN SOMEONE ELSE IS SPEAKING.

Please notify this Court immediately if the matter will not be heard on the scheduled date. ***California Rules of Court***, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. ***California Rules of Court***, rule 3.1304(d).

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 7(E) and ***California Rules of Court***, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the court by 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. ***California Rules of Court***, rule 3.1304(c).

Court Reporters.

This Court does not appoint Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a private court reporter, please use Local Form #CV-5100.

No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. Use of the Court's Electronic Recording (ER) system is limited to proceedings permitted by statute or General Order of the Court. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); ***California Rules of Court***, rule 1.150.

Orders After Hearing

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel shall comply with ***California Rules of Court***, rule 3.1312.

TROUBLESHOOTING TENTATIVE RULINGS

If you see last week's tentative rulings, you have checked prior to the posting of the current week's tentative rulings. You will need to either "REFRESH" or "QUIT" your browser and reopen it. If you fail to do either of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

Tentative Rulings Are Continued Below. Full Orders Are on The Following Pages.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV426612	Bathena Dixon vs General Motors, LLC	Defendant's Motion to Strike allegations supporting punitive damages is denied. See below for further details. Court to prepare Order.

LINE #	CASE #	CASE TITLE	RULING
LINE 2	23CV426612	Bathena Dixon vs General Motors, LLC	Defendant's Demurrer to Plaintiff's First Amended Complaint is sustained without leave to amend as to the first cause of action and overruled as to all other causes of action. See tentative ruling re: Line 1 below for details. Court to prepare Order.
LINE 3	21CV381418	Bryan Carrera, directly and derivatively on behalf of Axon Design, Inc. et al vs John Noori et al	Judgment Creditor's Motion to Compel Production of Documents by Judgment Debtor John Noori (filed 10/10/2024) is GRANTED. No opposition was filed. Judgment Creditor shall produce all documents which he identified in paragraphs 3.6, 10, 13, 14 and 15 of his 7/23/2024 written Response to Request for Production of Documents on or before 20 days after service of this Order on him. Failure to produce the documents will result in further sanctions. The Court further orders monetary sanctions in the amount of $2,760. (6 hours of attorney time + $60/filing fee) to be paid to Plaintiff's counsel within 30 days of the date of hearing. Order to be prepared by moving party.
LINE 4	23CV418364	Gregory Crowley vs Clari, Inc.	Motion: Compel, cont'd by stipulation and order to 2/21/2025 at 9 a.m.
LINE 5	17CV310715	Jon Remington et al vs Sierra Land Associates, LLC	Judgment Creditor's Motion (filed 8/14/2024) to compel response and production of documents pursuant to request for production served 5/31/2024 to seek discovery of income and assets of the Judgment Creditor, is GRANTED. No response or documents were produced. There is no opposition to the motion. All objections are deemed waived. Judgment Debtor Stephen Wade shall serve a code-compliant verified response to the request for production and production of documents shall be made in 30 days; sanctions in the amount of $2,510. are awarded as reasonable ($2,450 fees + $60 filing fee). Judgment Debtor Stephen Wade is ordered to pay the sanctions on or before 30 days to the Greenfield firm, counsel for Plaintiffs/Judgment Creditors. Order to be prepared by moving party.
LINE 6	22CV408303	THERESA FOSTER vs RLJ LODGING TRUST, L.P. et al	Defendant's Motion for Sanctions Based on Failure to provide any responses to discovery (filed and served 9/26/2024) is GRANTED. See tentative ruling below for details. Order to be prepared by moving party.

LINE #	CASE #	CASE TITLE	RULING
LINE 7	23CV409625	ALI RAHBAR et al vs SUTTER HEALTH et al	Motion to Withdraw of Plaintiffs' counsel Alipour (filed 9/11/2024) is GRANTED effective as the filing and service of an Order that includes the phone number and e-mail address of the Plaintiffs, and identifies all hearings set, specifically the CMC set 2/19/2025. Order to be prepared by moving party.
LINE 8	23CV418931	Hormoz Barandar et al vs Angel Vo	Motion to Withdraw of Plaintiffs' counsel SAC Attorneys, LLP and James Cai (filed 8/7/2024) is GRANTED effective only as of the filing and service of an Order that includes telephone number and e-mail address of both Plaintiffs, an admonition that the Plaintiff LLC cannot represent itself, and must be represented by counsel, discloses that the Court did not enter the Default Judgment (see Order dated 12/20/2024), and identifies all hearings set, specifically the CMC set on 3/5/2025. Order to be prepared by moving party.
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LINE 10			

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Calendar Line 1

Case Name: *Dixon v. General Motors, LLC, et al.*
Case No.: 24CV426612

This is an action for breach of statutory warranties and alleged fraud in connection with the sale of an automobile. As alleged in the First Amended Complaint ("FAC"), on April 8, 2023, plaintiff Bathena Dixon ("Plaintiff") purchased a 2019 Chevrolet Volt ("subject vehicle") from defendant General Motors, LLC ("GM") which had a New Vehicle Limited Warranty, including a bumper-to-bumper warranty, powertrain warranty, emission warranty and drive motor battery coverage provided with it. (See FAC, ¶¶ 6-8, exh. A.) Unfortunately, the vehicle suffered from nonconformity to warranty, including defects relating to the transmission, the battery and the electrical system, substantially impairing the use, value and safety of the subject vehicle. (See FAC, ¶¶ 9-12.) Plaintiff subsequently delivered the subject vehicle to GM service and repair facilities for repair of the aforementioned defects on numerous occasions; however, GM has been unable to repair the vehicle pursuant to the applicable express and implied warranties under the Song-Beverly Consumer Warranty Act. (See FAC, ¶¶ 13-17, 60.)

On May 29, 2024, Plaintiff filed the FAC against GM, asserting causes of action for:

1) Violation of Civil Code section 1793.2, subdivision (d)—failure to replace or make restitution;
2) Violation of Civil Code section 1793.2, subdivision (b)—failure to commence repairs within a reasonable time and to complete them within 30 days;
3) Violation of Civil Code section 1793.2, subd.(a)(3)—failure to make available sufficient service literature and replacement parts to effect repairs during the warranty period;
4) Breach of the implied warranty of merchantability (Civ. Code §§ 1791.1, 1794, and 1795.5);
5) Violation of the Magnuson-Moss Warranty Act; and,
6) Fraudulent inducement—concealment.

On July 29, 2024, GM filed its demurrer to each of the causes of action on the ground that they fail to state facts sufficient to constitute a cause of action and also filed its motion to strike allegations supporting punitive damages.

I. DEFENDANT GM'S DEMURRER TO THE FAC

First through third causes of action for violations of the Song-Beverly Consumer Warranty Act

Citing *Rodriguez v. FCA US, LLC* (2022) 77 Cal. App. 5th 209, GM demurs to the first through third causes of action under the Song-Beverly Consumer Warranty Act on the ground that the Act does not apply since the complaint does not allege that Plaintiff purchased a "new motor vehicle" as required by the Act. (See GM's memorandum of points and authorities in support of demurrer ("GM demurrer memo"), pp.9:10-28, 10:1-14.) Subsequent to GM's filing of its demurrer, the California Supreme Court issued its opinion in *Rodriguez v. FCA US LLC* (2024) 17 Cal.5th 189, on October 31, 2024, "conclud[ing] that a motor vehicle purchased

with an unexpired manufacturer's new car warranty does not qualify as a 'motor vehicle sold with a manufacturer's new car warranty' under section 1793.22, subdivision (e)(2)'s definition of 'new motor vehicle' unless the new car warranty was issued with the sale." (*Rodriguez v. FCA US LLC* (2024) 17 Cal.5th 189, 196.).

The demurrer to the first cause of action is SUSTAINED without leave to amend.

Apparently conceding that the California Supreme Court's decision rendered the first cause of action as being without merit, Plaintiff does not oppose the demurrer to the first cause of action. Accordingly, the demurrer to the first cause of action is SUSTAINED without leave to amend.

The demurrer to the second and third causes of action is OVERRULED.

Plaintiff argues that *Rodriguez*, *supra*, does not affect the second and third causes of action as the case only addressed the cause of action pursuant to Civil Code section 1793.2, subdivision (d). (See Opposition, p.1:22-28.) Section 1793.2(d)(2) provides that "[i]f 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).) In turn, Civil Code section 1793.22, subdivision (e)(2) states that "'new motor vehicle' means a new motor vehicle that is bought or used primarily for personal, family, or household purposes… [but] also means a new motor vehicle with a gross vehicle weight under 10,000 pounds that is bought or used primarily for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state… the chassis, chassis cab, and that portion of a motor home devoted to its propulsion… a dealer-owned vehicle and a "demonstrator" or other motor vehicle sold with a manufacturer's new car warranty." (Civ. Code § 1793.22, subd. (e)(2) ("demonstrator" is in turn, defined as "a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type").)

The second cause of action is for violation of Civil Code section 1793.2, subdivision (b), which states that "[w]here 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." (Civ. Code § 1793.2, subd. (b).) The third cause of action is for violation of Civil Code section 1793.2, subdivision (a)(3), which states that "[e]very manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall… [m]ake 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).)

Neither subdivision (a)(3) nor subdivision (b) refers to a "new motor vehicle," as defined in section 1793.22, subdivision (e). Rather, subdivision (a) states that it applies

to"[e]very manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty…." This language suggests that its applicability is broader than that of subdivision (d). (See *Siskiyou County Farm Bureau v. Department of Fish & Wildlife* (2015) 237 Cal.App.4th 411, 430 (stating that words "any," "every" and "all" "have [been] interpreted… [f]rom the earliest days of statehood… to be broad, general, and all embracing"); see also *Bains v. Department of Industrial Relations* (2016) 244 Cal.App.4th 1120, 1131 (stating same).) This distinction is confirmed by section 1793.22, subdivision (e) itself, which states that its definition of "new motor vehicle" is solely "[f]or the purposes of subdivision (d) of Section 1793.2 and this section…." (Civ. Code § 1793.22, subd.(e).) Accordingly, GM's demurrer to the second and third causes of action is OVERRULED.

The demurrer to the fourth cause of action for breach of the implied warranty of merchantability is OVERRULED.

Civil Code section 1792 states that "[u]nless 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.) Civil Code section 1791.1 states that "'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… [and] (4) Conform to the promises or affirmations of fact made on the container or label." (Civ. Code § 1791.1, subd. (a).) "Consumer goods" as stated in section 1791.1 is defined in section 1791, which states that "'consumer goods' means any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables." (Civ. Code § 1791, subd. (a)[1].)

Citing *Ruiz Nunez v. FCA US LLC* (2021) 61 Cal.App.5th 385, GM argues that "a plaintiff cannot maintain a cause of action for breach of implied warranty against a manufacturer where the vehicle at issue was purchased used." (GM's demurrer memo, p.10:16-25.) GM further states that "because Plaintiff purchased a used vehicle and 'has presented no evidence that [GM] was a distributor or retail seller of [the used vehicle] or in any way acted as such,' Plaintiff's breach of implied warranty claim fails as a matter of law." (*Id*. at pp.10:25-27, 11:1-2.) The *Ruiz* court noted that "Section 1795.5 governs the obligations 'of a distributor or retail seller of used consumer goods' in a sale in which an express warranty is given." (*Ruiz*, *supra*, 61 Cal.App.5th at p.399.) "These obligations, with stated exceptions, are 'the same as that imposed on manufacturers' under the Song-Beverly Act." (*Id*.) Citing section 1795.5, the *Ruiz* court concluded that "[i]t is evident from these provisions that only distributors or sellers of used goods—not manufacturers of new goods—have implied warranty obligations in the sale of used goods." (*Id*.) The *Ruiz* court then quoted *Kiluk v. Mercedes-Benz USA, LLC* (2019) 43 Cal.App.5th 334: "As one court has put it, the Song-Beverly Act

[1] Section 1791, subdivision (a) also notes that "consumer goods" also "include[s] new and used assistive devices sold at retail." (Civ. Code § 1791, subd. (a).) However, "'assistive devices' are defined as "any instrument, apparatus, or contrivance, including any component or part thereof or accessory thereto, that is used or intended to be used, to assist an individual with a disability in the mitigation or treatment of an injury or disease or to assist or affect or replace the structure or any function of the body of an individual with a disability…." (Civ. Code § 1791, subd. (p).) Here, it is clear that the subject vehicle is not an "assistive device" as defined by subdivision (p). Therefore, the relevant definition of "consumer goods" is as stated.

provides similar remedies (to those available when a manufacturer sells new consumer goods) 'in the context of the sale of used goods, except that the manufacturer is generally off the hook.'" (*Ruiz*, *supra*, 61 Cal.App.5th at p.399, quoting *Kiluk*, *supra*, 43 Cal.App.5th at p.339.) The *Ruiz* court continued:

> Of course, as *Kiluk* explains, "the assumption baked into section 1795.5 is that the manufacturer and the distributor/retailer are distinct entities. Where the manufacturer sells directly to the public, however, it takes on the role of a retailer." (*Kiluk*, *supra*, 43 Cal.App.5th at p. 340.) *Kiluk* involved a defendant manufacturer that "issu[ed] an express warranty on the sale of a used vehicle" that "would last for one year from the end of the new car warranty." (*Id*. at p. 337.) In *Kiluk*, the manufacturer "partnered with a dealership to sell used vehicles directly to the public by offering an express warranty as part of the sales package," and by doing so, "stepped into the role of a retailer and was subject to the obligations of a retailer under section 1795.5." (*Id*. at p. 340.)
>
> This is not such a case. Here, plaintiff presented no evidence that defendant was "a distributor or retail seller of used consumer goods" (§ 1795.5), or in any way acted as such."

(*Ruiz*, *supra*, 61 Cal.App.5th at p.399.)

The FAC alleges that the "Subject Vehicle was purchased at Capitol Chevrolet in San Jose, CA (GM's authorized dealership)" and that in connection with that purchase, "Plaintiff entered into a warranty contract with Defendant GM…." (FAC, ¶ 6.) These allegations are sufficient to allege a cause of action for breach of the implied warranty of merchantability pursuant to *Kiluk.* Here, GM's argument relies on the presentation of evidence; however, "on a demurrer, the question of the plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1339 (Sixth District opinion); see also *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496 (stating same); see also *Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1247 (stating same).) Accordingly, GM's demurrer to the fourth cause of action is OVERRULED.

The demurrer to the fifth cause of action for violation of the Magnuson-Moss Warranty Act is OVERRULED.

GM argues that the fifth cause of action is dependent on the prior causes of action, and, that as the first through fourth causes of action fail to state facts sufficient to constitute a cause of action, the fifth cause of action likewise is defective. (See GM's demurrer memo, p.11:4-22.) However, as previously discussed, the FAC sufficiently alleges facts to support the breaches of warranty alleged in the the second through fourth causes of action; therefore, GM's demurrer to the fifth cause of action is OVERRULED.

The demurrer to the sixth cause of action for fraud is OVERRULED.

GM argues that the sixth cause of action for fraudulent concealment fails to allege facts with sufficient particularity and fails to allege a transactional relationship giving rise to a duty to disclose. (See GM's demurrer memo, pp.11:23-28, 12:1-28, 13:1-25, 14:1-28, 15:1.)

The sixth cause of action is pled with sufficient particularity.

A cause of action for concealment is required to be pled with specificity. (See *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 878 (stating that "[c]oncealment is a species of fraud, and '[f]raud must be pleaded with specificity'").) GM argues that the sixth cause of action "fails as a matter of law because Plaintiff failed to allege (i) the identity of the individuals at GM who purportedly concealed material facts or made untrue representations about her Volt, (ii) their authority to speak and act on behalf of GM, (iii) GM's knowledge about alleged defects in Plaintiff's Volt at the time of purchase, (iv) any interactions with GM before or during the purchase of her Volt, or (v) GM's intent to induce reliance by Plaintiff to purchase the specific Volt at issue." (GM's demurrer memo, p.13:1-7.) GM cites to *Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, in which the court noted that "[t]he requirement of specificity in a fraud action against a corporation requires the plaintiff to allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." (GM's demurrer memo, p.23:19-23, citing *Tarmann*, *supra*, 2 Cal.App.4th at p.157.)

While it is true that "[i]f the duty to disclose arises from the making of representations that were misleading or false, then those allegations should be described… [t]his statement of the rule [regarding t]his particularity requirement necessitat[ing] pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered'…reveals that it is intended to apply to affirmative misrepresentations." (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384.) "[I]t is harder to apply this rule to a case of simple nondisclosure." (*Id*. (also stating, "How does one show 'how' and 'by what means' something didn't happen, or 'when' it never happened, or 'where' it never happened?").) "Less specificity should be required of fraud claims 'when 'it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy,' [citation]; '[e]ven under the strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party." (*Id*.)

Here, the FAC alleges that: Plaintiff interacted with GM representatives on direct calls, and with GM's authorized dealer sales representatives prior to purchase of the vehicle and representatives at GM's authorized repair facilities after the purchase; GM knew through its pre-production and post-production testing data, early consumer complaints about the battery defect made directly to GM and its dealers, aggregate warranty data compiled from GM's network of dealers and internal investigations into the battery defect that Volts such as the subject vehicle contained design and manufacturing defects in the battery that caused the battery to overheat when charged to full capacity, to lose propulsion power while driving, to catch fire or spontaneously combust, to reduce the range of the vehicle, or refuse to start ("no crank"); GM in fact made several communications to the National Highway Traffic Safety Administration concerning the battery components in Volt EV vehicles, recalled the Volt for

the battery defect and has instructed owners and lessees of the Volt to park their vehicles away from homes and other structures immediately after charging and not to leave their vehicles charging overnight; GM knew of the latency of the defect, the resulting conditions and the safety hazards it posed; GM had exclusive knowledge of the defects but intentionally and actively concealed and failed to disclose the information despite an affirmative duty to disclose such information; despite this knowledge, GM never disclosed the existence of the battery defect to Plaintiff, intentionally concealing these material facts to induce Plaintiff to purchase the subject vehicle. (See FAC, ¶¶ 21-37, 41, 45-46, 53, 56, 67-70, 93-104.) These allegations are not mere conclusionary allegations. As Plaintiff argues, these allegations were found to be pled with the requisite specificity in *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 844.

The sixth cause of action alleges a transactional relationship giving rise to a duty to disclose.

As to GM's argument regarding a transactional relationship, GM cites to *Bigler-Engler v. Breg, Inc*. (2017) 7 Cal.App.5th 276, in which the court stated that "[i]n transactions which do not involve fiduciary or confidential relations, a cause of action for non-disclosure of material facts may arise in at least three instances: (1) the defendant makes representations but does not disclose facts which materially qualify the facts disclosed, or which render his disclosure likely to mislead; (2) the facts are known or accessible only to defendant, and defendant knows they are not known to or reasonably discoverable by the plaintiff; (3) the defendant actively conceals discovery from the plaintiff." (*Bigler-Engler*, *supra*, 7 Cal.App.5th at p.311; see also GM's demurrer memo, pp.13:12-25, 10:1-25, 11:1-3.) "Such 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." (*Bigler-Engler*, *supra*, 7 Cal.App.5th at p.312.)

Here, the FAC plainly alleges that "Plaintiff entered into a warranty contract with Defendant GM regarding a 2019 Chevrolet Volt…." (FAC, ¶ 6.) This alleges a direct dealing between the parties.

GM's demurrer to the sixth cause of action is OVERRULED.

II. GM'S MOTION TO STRIKE PORTIONS OF THE FAC

GM moves to strike allegations supporting punitive damages, arguing that the FAC fails to adequately allege facts supporting malice, oppression or fraud. (See GM's memorandum of points and authorities in support of motion to strike, pp.9-26, 10:1-25.) Here, GM's argument largely relies on its assertion that it likewise made on demurrer that the FAC fails to allege that GM intended to cause harm. However, as previously stated, the FAC adequately alleges the intentional concealment of material facts regarding the purchase of the subject vehicle to induce the purchase of that vehicle. "[F]raudulent concealment is an intentional tort that may support a punitive damage award." (*Nissan Motor Acceptance Cases* (2021) 63 Cal.App.5th 793, 829; see also *Dhital*, *supra*, 84 Cal.App.5th at pp.843-845 (reversing trial court's granting of motion to strike punitive damages allegations where plaintiff adequately alleged a intentional concealment cause of action); see also *Anderson v. Ford Motor Co*. (2022) 74 Cal.App.5th 946, 971-973 (stating that punitive damages may be awarded for fraudulent concealment and that plaintiffs award of penalties pursuant to Song-Beverly Act

does not preclude the award of punitive damages, "conclud[ing] that punitive damages and the Song-Beverly Act civil penalty were both properly awarded to plaintiffs").)

GM's motion to strike allegations supporting punitive damages is DENIED.

The Court will prepare the Order.

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22CV408303
THERESA FOSTER vs RLJ LODGING TRUST, L.P. et al

Defendant's Motion for Sanctions Based on Failure to provide any responses to discovery (filed and served 9/26/2024) is GRANTED.

Based on the Court's review of the records it appears that Plaintiff has not proceeded diligently in the prosecution of her case. Plaintiff commenced this action for damages on 12/8/2022, based on an alleged slip and fall occurring on 12/11/2020. She did not proceed with service of the Complaint on any defendants until August 2023, on the eve of a hearing on the Court's OSC re: dismissal for failure to serve. Plaintiff was represented by counsel at the time, however, counsel had already moved to withdraw from her representation in June 2023, citing a breakdown in communications with Plaintiff.

The underlying discovery request (form interrogatories) was served on December 5, 2023. No response was served either before or after Plaintiff's attorney was permitted to withdraw in February 2024, despite meet and confer letters sent directly to Plaintiff.

Plaintiff was present and had already been representing herself for almost six months, on August 6, 2024 when this Court granted Defendant's motion to compel code-compliant responses to the Form Interrogatories (free of any objection). The order was explained to her. Counsel for Defendant spoke with Plaintiff after the hearing to confirm that she must respond before September 6, 2024. At no time after did she seek additional time to respond, or serve any response – however cursory or partial.

Defendants' discovery requests have been pending for over a year. During the entirety of that time, Plaintiff has known either that her original attorney intended to withdraw or had already withdrawn, and that if she could not retain new counsel, she would be self-represented. A self-represented litigant is responsible for complying with orders of the Court, such as the Order made on August 6, 2024.

It appears from the review of the Court file that on December 5, 2024, Plaintiff filed a written request for "extension" with the Court based on the need to obtain counsel, which request was not considered as there was no notice given to the Defendant's attorney. Even if notice had been given, the Court finds no good cause to grant an extension for compliance with a Court order to answer interrogatories which order was made on August 6, 2024.

Plaintiff has had more than ample opportunity to respond to the requested discovery before the present motion was filed, and could have even filed discovery responses at any time in the over 90 days this motion has been pending. She has not done so.

Plaintiff filed no written opposition to the present motion.

Accordingly, the Court finds that Plaintiff has failed to respond to an authorized method of discovery in violation of CCP section 2023.010(d) and failed to obey an order compelling answers to interrogatories (CCP section 2030.290). Sanctions are therefore ordered as follows:

1) As the interrogatories to which Plaintiff did not respond sought the identification of any damages that Plaintiff may claim were caused by the alleged incident, any witnesses (or witness statements), or documents that support her claim, the Court orders that Plaintiff is barred from introducing any such evidence in opposition to any motion for summary judgment or adjudication or subsequent evidentiary proceeding.

2) Defendant is entitled to an award of attorneys' fees in the amount of $1,020., which amount shall be paid by Plaintiff to Defendants' counsel in 30 days, and if not paid shall accrue interest at the rate of 10% until paid.

Order to be prepared by Moving Party.

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