Tentative Rulings for August 13, 2025
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(03)

Tentative Ruling

Re: ***Cox v. Doss***
Case No. 24CECG02591

Hearing Date: August 13, 2025 (Dept. 403)

Motion: Defendant Doss's Demurrer to Third Amended Complaint

Tentative Ruling:

To sustain the demurrer to the first and second causes of action, without leave to amend. To overrule the demurrer to the third cause of action. To order defendant Emily Doss to file her answer to the third amended complaint within ten days of the date of service of this order.

Explanation:

First, plaintiffs have stated in their opposition to the demurrer that they "will no longer assert their causes of action for fraudulent transfer and quiet title against defendant Doss in this case." Thus, they have implicitly conceded that they have not stated and cannot state valid claims against defendant Doss for fraudulent transfer or quiet title. However, they have not yet dismissed their first and second causes of action. As a result, the court intends to sustain the demurrer to the first and second causes of action without leave to amend, as plaintiffs have conceded that they cannot state valid claims for fraudulent transfer or quiet title against Doss.

On the other hand, the court intends to overrule the demurrer to the third cause of action for quantum meruit. "Quantum meruit refers to the well-established principle that 'the law implies a promise to pay for services performed under circumstances disclosing that they were not gratuitously rendered.' To recover in quantum meruit, a party need not prove the existence of a contract, but it must show the circumstances were such that 'the services were rendered under some understanding or expectation of both parties that compensation therefor was to be made'." (*Huskinson & Brown v. Wolf* (2004) 32 Cal.4th 453, 458, 9 Cal.Rptr.3d 693, 84 P.3d 379, citations omitted.)

"The requisite elements of quantum meruit are (1) the plaintiff acted pursuant to 'an explicit or implicit request for the services' by the defendant, and (2) the services conferred a benefit on the defendant." (*Port Medical Wellness, Inc. v. Connecticut General Life Insurance Company* (2018) 24 Cal.App.5th 153, 180, citation omitted.)

"The theory of quasi-contractual recovery is that one party has accepted and retained a benefit with full appreciation of the facts, under circumstances making it inequitable for him to retain the benefit without payment of its reasonable value." (*Truestone, Inc. v. Simi West Industrial Park II* (1984) 163 Cal.App.3d 715, 724.)

"The classic formulation concerning the measure of recovery in *quantum meruit* is found in *Palmer v. Gregg* [citation]. Justice Mosk, writing for the court, said: 'The measure of recovery in *quantum meruit* is the reasonable value of the services rendered *provided*

they were of direct benefit to the defendant.' [¶] The underlying idea behind quantum meruit is the law's distaste for unjust enrichment. If one has received a benefit which one may not justly retain, one should 'restore the aggrieved party to his [or her] former position by return of the thing or its equivalent in money.' [¶] The idea that one must be benefited by the goods and services bestowed is thus integral to recovery in quantum meruit; hence courts have always required that the plaintiff have bestowed some benefit on the defendant as a prerequisite to recovery." (*Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 449-450, italics in original, citations omitted.)

"The second prong is that there must be either an explicit or implicit request for the services. As one court framed this requirement: '[A] recipient of services performed either requested or acquiesced in them ....' Indeed, when the services are rendered by the plaintiff to a third person, the courts have required that there be a specific request therefor from the defendant: '[C]ompensation for a party's performance should be paid by the person whose request induced the performance.'" (*Day v. Alta Bates Medical Center* (2002) 98 Cal.App.4th 243, 249, citations omitted.)

However, the request for services does not have to be explicit. Even passive acquiescence to the provision of services that directly benefitted the defendant may meet the requirement for a "request for services." (*Producers Cotton Oil Co. v. Amstar Corp.* (1988) 197 Cal.App.3d 638, 659.) "Where one performs for another, with the other's knowledge, a useful service of a character usually charged for, and the latter expresses no dissent, or avails himself of the service, a promise to pay the reasonable value of the services is implied." (*Young v. Bruere* (1926) 78 Cal.App. 127, 132.)

Also, "unless the parties are near relatives, the recipient of the services has the burden to prove the defense that the services were rendered gratuitously or without obligation on his part to pay." (*Miller v. Campbell, Warburton, Fitzsimmons, Smith, Mendel & Pastore* (2008) 162 Cal.App.4th 1331, 1344, citation omitted.)

In the present case, plaintiffs have alleged that they provided goods, money, and services to improve the subject property. (TAC, p. 4, ¶ 29[1], p. 13, ¶ 51.) Plaintiffs provided the improvements at the behest of Goodner, who owned a one-half interest in the property, and also with the acquiescence of defendant Doss, who owned the other half of the property. (*Ibid*.) Plaintiffs allege that they had entered into an oral agreement with Goodner in which Goodner was going to give plaintiffs his one-half ownership share of the property if they took over his pest control business and its debt. (*Id*. at p. 3, ¶ 29.) Plaintiffs also lived at the subject property and made improvements to it, allegedly in the expectation that they would one day own the property. (*Id*. at p. 4, ¶ 29.) Plaintiffs discussed the improvements with both Goodner and Doss on many occasions, and Doss told them that she appreciated what they were doing to improve the property. (*Ibid*.) Doss was a frequent visitor to the property and knew that plaintiffs were making improvements to it. (*Id*. at p. 13, ¶ 51.) She did not object to the plaintiffs' improvements, and in fact she encouraged plaintiffs and noted that their improvements would benefit them as owners. (*Ibid*.) "She benefitted from Plaintiffs' improvements and encouraged Plaintiffs on." (*Ibid*.) However, after Goodner died, Doss sold the property to Jaber and

[1] Plaintiffs have mis-numbered many of the paragraphs in the TAC, so there are dozens of paragraphs that are labeled "paragraph 29". This makes it difficult and confusing to describe where the relevant allegations are located in the complaint.

did not compensate plaintiffs for the amounts that they spent to improve the property, which plaintiffs estimate to be about $384,000. (*Id*. at p. 13, ¶¶ 51, 52.)

Thus, plaintiffs have adequately alleged facts to support the elements of their claim for quantum meruit. They have alleged that defendant Doss "requested" that they provide services to improve the property by acquiescing to their work with full knowledge that they were making the improvements. They have also alleged that Doss received a direct benefit from the improvements, since she was the one-half owner of the property that they improved. Doss received an unfair and inequitable benefit from plaintiffs' services, as she was able to obtain a 100% ownership interest in the property and its improvements after Goodner died, and she was then able to sell the property to Jaber for over $400,000 without paying plaintiffs for their services, which plaintiffs estimate to be worth about $384,000.

Defendant argues that plaintiffs have not stated a valid claim because there was no understanding between her and plaintiffs that she would pay them for the value of their services, and that any agreement to pay them was between plaintiffs and Goodner, not plaintiffs and Doss. She points out that there is no allegation that she ever promised to pay plaintiffs for their services, or any facts indicating that the parties had any understanding that she would pay for their services.

However, if the court were to accept defendant's argument, it would essentially transform a quantum meruit claim into a breach of contract claim. Quantum meruit does not require plaintiffs to allege the existence of an actual contract with a promise by defendant to pay for plaintiffs' services. It simply requires the defendant to have received a direct benefit from plaintiffs, and an express *or implied* request by defendant for the services. (*Port Medical Wellness, Inc. v. Connecticut General Life Insurance Company*, *supra*, 24 Cal.App.5th at p. 180.) Knowing acquiescence to the provision of services may constitute an implicit "request" for services. (*Producers Cotton Oil Co. v. Amstar Corp.*, *supra*, 197 Cal.App.3d at p. 659; *Young v. Bruere*, *supra*, 78 Cal.App. at p. 132.)

Here, plaintiffs have alleged that Doss knowingly acquiesced to their improvements to the property, as she was fully informed of the improvements on multiple occasions and she told plaintiffs that she approved of them, as well as encouraging them to continue with the improvements. (TAC, ¶¶ 29, 51.) She thus implicitly requested plaintiffs to make the improvements, which directly benefitted her as part owner (and later full owner) of the property. She then went on to sell the property to Jaber without paying plaintiffs for any of the value of the improvements. (*Id*. at ¶¶ 51, 52.) As a result, plaintiffs have adequately alleged their claim for quantum meruit, and the court intends to overrule the demurrer to the third cause of action.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg on 8-12-25.
(Judge's initials) (Date)

(20) **Tentative Ruling**

Re: ***Cruz v. Fresno Ambulatory Surgery Center***
Superior Court Case No. 23CECG01792

Hearing Date: August 13, 2025 (Dept. 403)

Motion: Demurrer to Third Amended Complaint

Tentative Ruling:

To sustain with plaintiff granted 10 days' leave to file a fourth amended complaint. (Code Civ. Proc., § 430.10, subd. (e).) The time in which the complaint may be amended will run from service of the order by the clerk. All new allegations shall be in **boldface** type.

Explanation:

This action arises out of a medical procedure performed by Fresno Ambulatory Surgery Center on decedent Julia de la Cruz on 5/11/2020, mother of Frank Cruz. Plaintiff alleges that decedent passed away on 5/13/2020 as a result of the negligence by defendant Fresno Ambulatory Surgery Center. The second cause of action, the sole cause of action remaining, alleges intentional concealment of the risk of internal bleeding.

To make a claim for "fraud and deceit based on concealment," the plaintiff must assert: (1) the defendant intentionally "concealed or suppressed a material fact"; (2) the defendant had "a duty to disclose" to the plaintiff; (3) the defendant "[intended] to defraud the plaintiff"; (4) the plaintiff was "unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact"; and (5) the plaintiff suffered damages as a result. (*Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 248.)

The cause of action remains deficient in that, while it identifies what material facts were not disclosed (the risk of internal bleeding), plaintiff does not allege facts (other than a bare legal conclusion) that defendant owed a duty of disclosure to plaintiff (who was not the patient), intent to defraud (what was defendant seeking to gain by making the false representations?), plaintiff's reliance (how did he act differently based on the representations?), and damages resulting from the reliance. All these elements of the cause of action are all alleged in conclusory fashion without supporting factual allegations. (See TAC p. 6, ¶¶ 5-8.) Fraud must be alleged with specificity. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) The conclusory allegations of the TAC do not suffice.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg on 8-12-25 .
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Braxton Berkley v. FCA US, LLC.***
Superior Court Case No. 24CECG04232

Hearing Date: August 13, 2025 (Dept. 403)

Motions: Demurrer and Motion to Strike by Defendants

Tentative Ruling:

To overrule the demurrer to the fifth cause of action; to sustain the demurrer to the sixth cause of action with leave to amend; and to deny the defendants' motion to strike. Plaintiff is granted 20 days' leave to file a second amended complaint, which shall run from service by the clerk of the minute order. New language must be set in **boldface** type.

Explanation:

In his original complaint, plaintiff Braxton G. Berkley (Plaintiff) alleged he entered into a warranty contract with FCA US, LLC (FCA) on December 16, 2020, regarding a 2020 Ram 2500 vehicle (Vehicle), "which was manufactured and/or distributed by . . . FCA." (Comp., ¶ 10, p. 2:10-11.) Problems with the Vehicle ensued, specifically "that the 2020 Ram 2500 vehicles equipped with the 6.7L engine have one or more defects that can result [in] loss of power, stalling, engine running rough, engine misfires, failure or replacement of the engine (the 'Engine Defect')." (Comp., ¶ 19, p. 3:11-13.) Plaintiff alleged these safety defects have been known to FCA and concealed to consumers like Plaintiff. The court sustained the demurrer by FCA to Plaintiff's fifth cause of action and the demurrer by defendant Clovis Chrysler Dodge Jeep Ram (Clovis) to the sixth cause of action of the original complaint with leave to amend.

Thereafter Plaintiff filed a first amended complaint (FAC).[2] In the FAC, Plaintiff adds a new paragraph identifying the seller as "Defendant FCA's authorized retail dealership Jeep Chrysler Dodge Ram of Ontario." (FAC, ¶ 12.) (Plaintiff does not name the seller as a defendant.) Plaintiff adds new allegations about his presale experience, such as:

> Prior to purchase, Plaintiff reviewed . . . FCA's marketing and advertising materials, viewed FCA's vehicle-specific window sticker, conferred with sales representatives and took the Vehicle for a test drive. But at no point prior to purchase was Plaintiff advised the Vehicle and its 6.7L engine were defective.

(FAC, ¶ 13.)

[2] Plaintiff fails to include new allegations in boldface type, as the court has directed.

Plaintiff alleges four new paragraphs to describe briefly the Vehicle's repair history. For example, Plaintiff alleges that in November 2022, Plaintiff presented the Vehicle to FCA's authorized repair facility with complaints, including a check-engine light. "Defendant's technician inspected the Vehicle, verified Plaintiff's complaints, and informed Plaintiff that they could not perform repairs at that time." (FAC, ¶ 16, p. 3:7-8.) In the summer of 2024, the Vehicle remained in the shop for two months without being repaired or released to Plaintiff. Plaintiff "had to get another vehicle because the truck does not fulfill its intended purpose." (FAC, ¶ 17, p. 3:12-13.)

As before, Plaintiff repeats his original allegations to describe the Engine Defect. (FAC, ¶ 25.) He alleges these safety defects have been known to FCA and concealed to consumers like Plaintiff. (FAC, ¶¶ 27, 29.) FCA acquired its knowledge of the Engine Defect before Plaintiff purchased the Vehicle through "pre-production and post-production testing data; early consumer complaints about the Engine Defect made directly to FCA and its network of dealers; aggregate warranty data compiled from FCA's network of dealers; testing conducted by FCA in response to these complaints; as well as warranty repair and part replacements data received by FCA from FCA's network of dealers[.]" (FAC, ¶ 28, p. 4:16-20.)

Meet and Confer

Defendants' counsel, Arya Shirani, filed and served a declaration stating counsel met and conferred by telephone with Plaintiff's counsel at least five days before a responsive pleading was due to be filed, but the parties were unable to reach an agreement resolving the matters raised by the demurrer. This satisfies the requirements of Code of Civil Procedure section 430.41 for the demurring party to meet and confer in person, by telephone, or by video conference with the opposing party.

Demurrer

Fifth Cause of Action - Fraudulent Inducement and Concealment

FCA again demurs to the fifth cause of action for fraudulent inducement and concealment on three grounds: (1) Plaintiff fails to plead facts to establish a direct transaction with FCA; (2) Plaintiff's claim is barred by the economic loss doctrine, and (3) Plaintiff's allegations lack the requisite specificity. In particular, FCA argues that Plaintiff fails to plead specific facts identifying the individuals who concealed material facts or made the misrepresentations, their authority to speak, FCA's knowledge of the alleged defects in the Vehicle at the time of purchase, interactions between Plaintiff and FCA, and FCA's intent to induce reliance by Plaintiff to purchase the Vehicle. FCA contends that it cannot be held liable for fraudulent concealment because it had no duty to disclose any facts about the Vehicle to Plaintiff, because it did not sell the Vehicle directly to Plaintiff and it had no "transactional relationship" with him. (*Bigler-Engler v. Breg, Inc*. (2017) 7 Cal.App.5th 276, 311 [for intentional concealment a duty to disclose arises only where sufficient relationship or transaction exists between parties].)

The parties agree, "[f]raud, including concealment, must be pleaded with specificity. [Citation.]" (*Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 843-844 (*Dhital*).) As with all fraud claims, the necessary elements of a claim based on

concealment or suppression are: (1) a misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity; (3) intent to defraud; (4) justifiable reliance; and (5) resulting damage. (*Id.*, at p. 843.)

In addition, a fraud claim based on concealment must involve a defendant with a legal duty to disclose the fact. (*Hoffman v. 162 North Wolfe LLC* (2014) 228 Cal.App.4th 1178, 1186 (*Hoffman*).) For example, "[s]uppression of a material fact is actionable when there is a duty of disclosure, which may arise from a relationship between the parties, such as a buyer-seller relationship." (*Dhital, supra,* 84 Cal.App.5th at p. 843, citing *Hoffman, supra,* 228 Cal.App.4th at pp. 1186-1187.)

More recently, the California Supreme Court clarified that to plead successfully a claim for fraudulent concealment, a plaintiff must plead, with specificity:

> (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) the 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, italics added (*Rattagan*).)

Predating *Rattagan,* the First District Court of Appeal in the *Dhital* lemon-law case determined the plaintiffs there sufficiently pleaded a cause of action for fraudulent concealment arising from the relationship between the parties and the plaintiffs' allegations that:

> [T]he CVT transmissions installed in numerous Nissan vehicles (including the one plaintiffs purchased) were defective; Nissan knew of the defects and the hazards they posed; Nissan had exclusive knowledge of the defects but intentionally concealed and failed to disclose that information; Nissan intended to deceive plaintiffs by concealing known transmission problems; plaintiffs would not have purchased the car if they had known of the defects; and plaintiffs suffered damages in the form of money paid to purchase the car.

(*Id*., at p. 844.) To establish the duty of disclosure, the court held the plaintiffs sufficiently alleged a buyer-seller relationship between the plaintiff and the manufacturer by alleging "they bought the car from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers." (*Ibid*.)

Here, as in *Dhital*, Plaintiff generally alleges the Engine Defect exists in numerous vehicles, including the one Plaintiff purchased; FCA knew of the defect and the hazards it posed; FCA had exclusive knowledge of the defect but intentionally concealed and failed to disclose that information; Plaintiff would not have purchased the Vehicle if he had known of the defect; and Plaintiff suffered damages in the form of money paid to purchase the Vehicle. (FAC. ¶¶ 64-72.) Also, Plaintiff alleges he purchased the Vehicle

from FCA's authorized retail dealership, FCA backed the Vehicle with an express warranty, Plaintiff reviewed FCA's marketing and advertising materials before making his purchase, and he relied upon statements made during the sales process. (FAC, ¶¶ 12, 13, 70.) The *Dhital* court found similar allegations sufficient for purposes of pleading a claim for fraudulent concealment. Therefore, Plaintiff has pleaded adequate facts to support his claim for fraudulent concealment and inducement.

Economic Loss Rule

FCA demurs on the additional ground that the economic loss rule bars Plaintiff's recovery. The economic loss rule provides that where a buyer's expectations in a sale are frustrated because the product the buyer purchased is not working properly, the remedy is in contract alone, because the buyer has suffered only economic losses. (*Robinson Helicopter Co., Inc. v. Dana Corp*. (2004) 34 Cal.4th 979, 988 (*Robinson Helicopter*).) "Quite simply, the economic loss rule prevents the law of contract and the law of tort from dissolving one into the other." (*Id.* at p. 988, internal quotation marks and citation omitted.) For purposes of the rule, the term "[e]conomic loss consists of damages for inadequate value, costs of repair and replacement of the defective product or consequent loss of profits—without any claim of personal injury or damages to other property." (*Ibid*., internal quotation marks and citation omitted.)

In *Robinson Helicopter*, the California Supreme Court explained the narrow and limited exception that allows a party to recover for fraud or deceit in connection with a contract provided the party can establish the defendant's independent tortious conduct apart from a breach of the contract itself. Thus, to recover, the plaintiff must establish that the defendant violated an independent duty arising from tort law. (*Robinson Helicopter, supra,* 34 Cal.4th at p. 990.) This particular ruling was limited to a defendant's affirmative misrepresentations on which a plaintiff relied and which exposed the plaintiff to liability for damages independent of the plaintiff's economic loss. (*Id.* at p. 993.) But the ruling was not preclusive, as the Court specifically cited to several other instances where tort damages were permitted in contract cases. (*Id.* at pp. 989-990.)

In 2024 the California Supreme Court confirmed that the economic loss rule does not bar a contracting party from stating a tort cause of action for fraudulent inducement through concealment under the following circumstances:

> [A] plaintiff may assert a cause of action for fraudulent concealment based on conduct occurring in the course of a contractual relationship, *if the elements of the claim 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 contract.*

(*Rattagan, supra,* 17 Cal.5th at p. 45, italics added.)

Before the Supreme Court ruled in Rattagan, the appellate court in the *Dhital* correctly held that the plaintiff's fraudulent inducement claim by concealment fell within the exception to the economic loss rule as articulated in *Robinson Helicopter*. (*Dhital,*

supra, 84 Cal.App.5th at p. 839.)[3] Here, as in *Dhital,* Plaintiff alleges FCA fraudulently induced him to buy his defective Vehicle by concealing information about safety defects. Plaintiff has added allegations about FCA's presale conduct and knowledge and the unsuccessful post-sale repair attempts.

At the pleading stage, Plaintiff sufficiently alleges facts to establish that the economic loss rule does not bar his fraudulent concealment claim. The tortious presale concealment is independent of the warranty agreement and Plaintiff would not have reasonably contemplated such concealment when he purchased the Vehicle. (See *Rattagan, supra,* 17 Cal.5th at pp. 26-27 [pre-contract fraudulent concealment is outside parties' reasonable expectations when entering into a contractual relationship]; *Robinson Helicopter, supra,* 34 Cal.4th at p. 993 [contracting parties should not be expected to anticipate fraud and dishonesty].) Therefore, the court overrules FCA's demurrer to the fifth cause of action for fraudulent inducement and concealment.

Sixth Cause of Action – Negligent Repair

The court sustained Clovis's demurrer to the original complaint's sixth cause of action for negligent repair with leave to amend. Apart from the new paragraphs incorporated by reference, Plaintiff makes no changes to this cause of action in his FAC, not even to renumber the paragraphs. (The FAC has duplicate paragraphs 67-71.) Plaintiff's new paragraphs include allegations that Plaintiff presented the Vehicle to unidentified FCA authorized repair facilities with specific, unresolved complaints. (FAC, ¶¶ 14-17.) Plaintiff fails to add new allegations against Clovis to allege an intentional tort or economic losses accompanied by "physical or property damage." (*Rattagan, supra,* 17 Cal.5th at p. 38.)

Plaintiff offers one sentence in opposition to Clovis's demurrer, suggesting that based on the holding in *Dhital,* "this Court must overrule Dodge's [FCA's] (and Clovis CDJR's) Demurrer." (Opp., p. 5:18.) In its reply, Clovis refers to a different opposition and a different defendant (Van Nuys CDJR).

Nevertheless, in support of its demurrer, Clovis cites *Rattagan,* where the Supreme Court stated the economic loss doctrine does not apply to bar intentional tort claims, such as fraud, but it does apply "to bar tort recovery for negligently inflicted economic losses unaccompanied by physical or property damage under the limits recognized in *Sheen*. (*Rattagan, supra,* 17 Cal.5th at p. 38, citing *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 922 ["the rule functions to bar claims in negligence for pure economic losses in deference to a contract between litigating parties"; it bars a claim arising from, rather than independent of, a contact].)

Unlike the fraudulent inducement and concealment claims alleged against FCA, Plaintiff fails to allege an intentional tort against Clovis, nor does he allege any claim of

[3] On December 18, 2024, the California Supreme Court dismissed the pending appeal in *Dhital*, which remains good law. (See *Dhital v. Nissan North America* (Dec. 18, 2024, S277568) 327 Cal.Rptr.3d 898, 899 [dismissing pending appeal and citing Cal. Rules of Court, rule 8.528(b)(1), making the opinion final and binding].)

personal injury or damage to other property. Plaintiff's negligent repair claim for "pure economic losses" arises from, and is not independent of, the warranty contract or a separate contract with Clovis to repair the Vehicle. The economic loss doctrine bars tort recovery--Plaintiff's remedies for faulty repair against Clovis are limited to damages for breach of contract. (See *Sheen v. Wells Fargo Bank, N.A., supra,* 12 Cal.5th at pp. 923-925.) Therefore, the court sustains the demurrer to the sixth cause of action for negligent repair.

Plaintiff seeks leave to amend, but fails to show how he can amend the sixth cause of action to cure its defects. Nevertheless, out of an abundance of caution given the court's liberal policy of amendment, and in light of the parties' apparent confusion about their cases, the court grants Plaintiff one final opportunity to amend the sixth cause of action.

Motion to Strike

Defendants move to strike the prayer for punitive damages. The parties agree that Plaintiff's prayer for punitive damages survives if Plaintiff has stated sufficient facts to support his tort claim for fraudulent concealment and inducement. As noted above, the court has overruled the demurrer to the fraudulent concealment claim. Therefore, the court denies the motion to strike the prayer for punitive damages from the FAC.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg on 8-12-25.
(Judge's initials) (Date