Tentative Rulings for October 22, 2026
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, the remote appearance will be conducted through Zoom. 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.

24CECG05578 ***Core v. Ford Motor Company*** **is continued to Thursday, December 10, 2026, at 3:30 p.m. in Department 403.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

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(20) **Tentative Ruling**

Re: ***Rudolph v. Walmart, Inc., et al.***
Superior Court Case No. 24CECG01928

Hearing Date: October 22, 2026 (Dept. 403)

Motion: By Plaintiff to Compel Responses to Form Interrogatories—General, Special Interrogatories, Set One, and Request for Production of Documents, Set One, and Deemed Admissions Order re Requests for Admission, Set One

Tentative Ruling:

To deny inasmuch as further verified responses have been served. (Code Civ. Proc., §§ 2030.290, 2031.300.) To impose $750 in monetary sanctions on all four motions in favor of plaintiff and against Pathways national Paving Associates, Inc. ("PNPA"), to be paid to plaintiff's within 20 days of service of the order by the clerk.

Explanation:

On 6/16/2026 plaintiff served on PNPA Requests for Admission, Set One, Form Interrogatories—General, Special Interrogatories, Set One, and Request for Production of Documents, Set One. Plaintiff's counsel granted extensions of time to serve responses to 8/28/2026. PNPA served timely responses with objections on the agreed-upon date of 8/28/2026. Though substantive responses were provided, every one of the four sets of responses PNPA served concludes with the notation "VERIFICATION TO FOLLOW." Because PNPA did not serve verifications, plaintiff filed the instant motions to compel, and for deemed admissions order regarding the Requests for Admission.[1] For reasons not explained defendant did not file oppositions until 10/20/2026, well after the opposition deadline.

The opposition shows that amended verified responses have been served as to each set of discovery. Because verified responses have been served, the motions are moot inasmuch as they seek to compel verifications and further responses.

[1] Responses containing answers must be verified by the responding party. (Code Civ. Proc., §§ 2030.250, 2031.250.) Where a verification is required, an unverified response is ineffective; it is the equivalent of no response at all. (See *Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636.) Where a party fails to serve a timely response to requests for admission, the requesting party may move for an order that the truth of the matters specified in the requests be deemed admitted. (Code Civ. Proc., § 2033.280, subd. (b).) The court "shall" make that order unless it finds that, before the hearing, the responding party has served a proposed response in substantial compliance with section 2033.220. (*Ibid*., subd. (c).) An unverified response is not in substantial compliance and does not avoid the order. (St. Mary v. Superior Court (2014) 223 Cal.App.4th 762, 778-779, citing *Allen–Pacific, Ltd. v. Superior Court* (1997) 57 Cal.App.4th 1546, 1551.)

In addition to the verifications, plaintiff requests that the court order PNPA to serve *objection-free* responses to the discovery. However, where the response contains both substantive responses *and* objections, the portion containing the objections need not be under oath. The response is effective to *preserve* the objections stated therein even though unverified. (*Food 4 Less Supermarkets, Inc. v. Superior Court* (1995) 40 Cal.App.4th 651, 657.) The other portion of the response (answers and agreements to comply) should be verified, and the lack of verification renders the response untimely. But that only creates a right to move for orders and sanctions; there is no waiver of the objections asserted. (*Id.* at p. 657.) Accordingly, objection-free responses will not be ordered. PNPA simply must provide the verifications, and that has been done.

In light of PNPA's failure to timely provide verifications, sanctions shall be imposed pursuant to Code of Civil Procedure section 2023.030, subdivision (d), for failure to respond or submit discovery. Counsel says he spent 1.5 hours preparing each motion at $500 per hour, and anticipates spending an additional 1.5 hours per motion reviewing any opposition, preparing a reply, and appearing at the hearing. Since the motions are unopposed, the extra 1.5 hours per motion are unnecessary and un-incurred. Because the motions directed at the form and special interrogatories are substantively identical but for a couple minor edits, and both sets of discovery could have been addressed in a single motion, the court will award 1.5 hours motions, for a total of $750 in sanctions on all motions.

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: SMC on October 21, 2026 .
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Catherine Millan v. Saint Agnes Medical Center***
Superior Court Case No. 22CECG03778

Hearing Date: October 22, 2026 (Dept. 403)

Motion: By Defendant Saint Agnes Medical Center for Summary Judgment or Summary Adjudication

Tentative Ruling:

To deny defendant's motion for summary judgment, and the alternative motion for summary adjudication. (Code Civ. Proc., § 437c.)

Explanation:

The plaintiff, Catherine M. Millan, individually, and as successor-in-interest to the Estate of Roy E. Millan, (Plaintiff)), sued defendant Saint Agnes Medical Center (Saint Agnes), alleging medical malpractice arising out of the admission to Saint Agnes of Plaintiff's husband, Roy E. Millan (Mr. Millan). Plaintiff alleges Mr. Millan passed away at the age of 68 years old, while a patient at Saint Agnes. Plaintiff sues for wrongful death, pre-death pain and suffering, and loss of consortium based on professional negligence. Saint Agnes now moves for summary judgment, or in the alternative, summary adjudication, contending Saint Agnes and other medical staff complied with the standard of care at all times, and did not contribute to Plaintiff's injuries.

Grounds for Summary Judgment

A motion for summary judgment is generally directed toward an entire action or pleading. (Code Civ. Proc., §437c, subd. (a).) By comparison "[a] party may move for summary adjudication as to one or more causes of action within an action …." (Code Civ. Proc., § 437c, subd. (f)(1).) "A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (*Ibid*.) "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." (Code Civ. Proc., § 437c, subd. (f)(2).)

A defendant moving for summary judgment has the initial burden of presenting evidence that a cause of action lacks merit because the plaintiff cannot establish an element of the cause of action or there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853 (*Aguilar*).) If the defendant satisfies this initial burden, the burden shifts to the plaintiff to present evidence demonstrating there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at p. 850.)

In a medical malpractice case, expert testimony is required unless the challenged conduct is within the common knowledge of laymen. (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001.)

> California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence. [Citations.]

(*Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 984-985, internal quotation marks omitted (*Munro*).)

Saint Agnes Meets Its Initial Burden of Production for Summary Judgment

"'Negligence on the part of a physician or surgeon will not be presumed; it must be affirmatively proved.' [Citations.]" (*Huffman v. Lindquist* (1951) 37 Cal.2d 465, 474.) Physicians and surgeons must possess and exercise "that reasonable degree of skill, knowledge, and care ordinarily possessed and exercised by members of the medical profession under similar circumstances." (*Mann v. Cracchiolo* (1985) 38 Cal.3d 18, 36.) In a medical malpractice action, the plaintiff must establish the following elements:

> (1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence. [Citations.]

(*Hanson v. Grode* (1999) 76 Cal.App.4th 601, 606, internal quotation marks omitted (*Hanson*).)

The parties agree on the need for expert testimony on summary judgment, as explained in *Hanson*:

> " 'California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence.' [Citations.]" ([*Munro, supra,*] 215 Cal.App.3d [at pp.] 984–985.) "[E]xpert opinions ... are worth no more than the reasons and factual data upon which they are based." [Citation.]

(*Hanson, supra,* 76 Cal.App.4th at p. 607.)

The court finds Saint Agnes meets its initial burden of proof to show it is entitled summary judgment. It offers the expert opinion of a competent physician, Glenn M. Chertow, M.D., who is board certified in internal medicine and nephrology, to establish the nonexistence of any triable issue of material fact as to both the standard of care and causation. In his declaration, Dr. Chertow summarizes the documents he reviewed and the salient factual chronology underlying Mr. Millan's care and treatment. (Chertow decl., ¶¶ 6, 7.) He also explains his reasoning (*id.* at ¶¶ 10-14) and opines:

> Accordingly, it is my opinion to a medical probability, that no act or omission on the part of St. Agnes Medical Center, its nurses and personnel, during Mr. Millan's admission in August and September 2021, caused, contributed to, or was a substantial factor in Mr. Millan's death.

(*Id.* at ¶ 15.)

Saint Agnes also submits the declaration of Pam Clark, BSN, RN, VA-BC, who explains the documents she reviewed and her reasoning, then opines: "that Saint Agnes, its nurses and staff, complied with the standard of care at all times during the care and treatment of [Mr. Millan] throughout the course of his admission to Saint Agnes in August/September 2021." (Clark decl., ¶ 9.)

After a defendant in a medical malpractice action presents expert testimony in support of a summary judgment motion showing that the defendant's care and treatment did not fall below the standard of care, the burden shifts to the plaintiff to offer contrary expert testimony demonstrating that the defendant's care and treatment did not fall below the standard of care. (*Munro, supra,* 215 Cal.App.3d at p. 985; *Jambazian v. Borden* (1994) 25 Cal.App.4th 836, 844 [affirming summary judgment in favor of treating physician where plaintiff failed to offer opinion evidence to contradict defendant's expert declarations on standard of care].)

Based on its evidence, Saint Agnes meets its initial burden of production on summary judgment to disprove two essential elements of the claim for medical negligence—breach and causation. The burden then shifts to Plaintiff to show the existence of a triable issue of material fact.

Plaintiff Raises a Triable Issue of Material Fact

The moving papers in favor of summary judgment are strictly construed, while the opposing papers are liberally construed, "and doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion." (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 20; *Aguilar, supra,* 25 Cal.4th at pp. 850, 856.) "Because of the severity of the consequences of summary judgment, we carefully scrutinize the moving party's papers and resolve all doubts regarding the existence of material, triable issues of fact in favor of the party opposing the motion. [Citation.]" (*Connelly v. County of Fresno* (2006) 146 Cal.App.4th 29, 36.)

Thus, on summary judgment, opposing declarations are liberally construed, while the moving party's evidence is strictly construed. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) "The rule that a trial court must liberally construe the evidence

submitted in opposition to a summary judgment motion applies in ruling on both the admissibility of expert testimony and its sufficiency to create a triable issue of fact." (*Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, 189.)

In her opposition to the summary judgment motion, Plaintiff submits the expert declarations of Hugo H. Barrera, M.D., Shawn Kaku, M.D., and Jason C. Goodwin, R.N. Dr. Barrera is a licensed physician and board-certified general surgeon with experience treating perforated viscus, peritonitis, septic shock, intra-abdominal contamination, and operative source control. (Barrera decl., ¶¶ 1–8.) Dr. Kaku is a licensed physician who is board-certified in emergency medicine and critical-care medicine and has extensive experience treating septic shock, intra-abdominal sepsis, and critically ill surgical patients. (Kaku decl., ¶¶ 1–7.) Nurse Goodwin has degrees from the University of Southern California (B.S., nursing) and the University of Massachusetts Amherst (masters, science and public health) and is a Certified Perioperative Nurse. Nurse Goodwin addresses the nursing standard of care, patient monitoring, escalation, competency, sepsis response, patient safety, physician communication, chain-of-command escalation, and nursing-system issues. (Goodwin decl., ¶¶ 1–63.)

Plaintiff's experts describe the documents they reviewed, including the papers filed by Saint Agnes in support of its motion for summary judgment. Fact number three in the separate statement submitted by Saint Agnes states: "No act or omission on the part of Saint Agnes, its nurses and personnel, caused or contributed, or was a substantial factor, in causing Mr. Millan's death." Fact number six states: "Saint Agnes, and other medical staff, complied with the standard of care and treatment" for Mr. Millan at all relevant times during his admission.

Dr. Barrera expressly "disagree[s] with Dr. Chertow's opinion, to the extent he attributes the outcome solely or principally to a preexisting marginal ulcer and concludes that no delay in source control contributed to death." (Barrera decl., ¶ 56.) Dr. Barrera also "disagree[s] with the contention that no act or omission by [Saint Agnes], its personnel, or its hospital-based systems caused or contributed to Mr. Millan's death." (*Id.* at ¶ 60.) Dr. Kaku opines that "the delay in surgery and source control worsened Mr. Millan's prognosis and chances of surviving his illness." (Kaku decl., ¶ 20.) Nurse Goodwin opines that cumulative nursing failures contributed to Mr. Millan's death. (Ex. 3, Goodwin Decl., ¶¶ 56–63.) For example, Nurse Goodwin opines that the charting of Saint Agnes's nurses fell below the nursing standard of care. (Goodwin decl., ¶¶ 25–29.)

Liberally construing the complaint and the declarations submitted by Plaintiff, the court finds fact numbers three (no act or omission by the staff of Saint Agnes contributed to Mr. Millan's death) and six (Saint Agnes complied with the standard of care at all times) are material and disputed. Therefore, the court finds Plaintiff raises at least one triable issue of material fact as to standard of care and causation.

In its reply, Saint Agnes argues Plaintiff fails to meet her burden to raise a triable issue of material fact because her experts do not explicitly opine that some action on the part of Saint Agnes, to a medical probability, caused Mr. Millan's death.

Saint Agnes fails to cite *Powell v. Kleinman* (2007) 151 Cal.App.4th 112, where the Court of Appeal, Fifth District, on summary judgment, stated that while a defendant's

expert's declaration has to be detailed and with foundation in order *to obtain* a summary judgment, a plaintiff's expert's declaration in *opposition* to a summary judgment motion does not have to be detailed and is entitled to all favorable inferences. (*Id.* at p. 125.) The *Powell* court found that when the opposing expert doctor's declaration was given all favorable inferences, it contained an explanation as to causation. Since it disclosed the existence of a triable issue of fact, the expert opinion precluded summary judgment based on the issues of breach of the duty of care and causation, and the appellate court reversed the summary judgment. (*Powell, supra,* 151 Cal.App.4th at pp. 130-131.) The appellate court found even "obtuse" declarations are sufficient to oppose a summary judgment motion:

> However obtuse [the expert's] declaration may appear, as a party opposing summary judgment, [the plaintiff] is entitled to *all favorable inferences* that reasonably may be derived from it, which includes a reading of the declaration to state that [the plaintiff's] injuries were caused by [the defendant doctor's] conduct, which conduct fell below the applicable standard of care.

(*Id.* at p. 129, italics original.)

Furthermore, by including fact numbers three and six its separate statement, Saint Agnes concedes the facts are material, as the court explained in *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, cautioning moving parties to follow this advice from the leading practice treatise:

> "**PRACTICE POINTER:** [¶] ... [¶] Include only those facts which are *truly material* to the claims or defenses involved because the separate statement effectively *concedes* the materiality of whatever facts are included. Thus, if a triable issue is raised as to any of the facts in your separate statement, the motion must be denied!" (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2009) § 10:95.1, p. 10–35, bold and italics in original.)

(*Id.* at p. 252.)

On balance, the court finds the expert declarations submitted by Plaintiff raise a triable issue of material fact as to standard of care and causation. Therefore, the court denies the motion by Saint Agnes for summary judgment.

Summary Adjudication as to the Issue of Vicarious Liability

Saint Agnes also contends it is entitled to summary adjudication for each cause of action on the issue of vicarious liability based on the fact that Mr. Millan's treating physicians "were neither employees nor agents of Saint Agnes." (Fact no. 12.) Fact number 12 is incomplete, because it makes no mention of the acts or omissions of the nursing staff and personnel, who also treated Mr. Millan.

Saint Agnes correctly cites the rule that an independent contractor's negligence may not be imputed to the employer. But it also admits that it may be liable for a patient's

injuries caused by the improper medical treatment rendered by one of its employee acting within the scope of employment. "A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c, subd. (f)(1).) Saint Agnes fails to explain how fact number 12 completely disposes of a cause of action. Therefore, the court denies the alternative motion for summary adjudication as to each cause of action.

Evidentiary Objections

An expert's declaration is sufficient *to survive summary judgment* if it "establishes the matters relied upon in expressing the opinion, that the opinion rests on matters of a type reasonably relied upon, and the bases for the opinion." (*Sanchez v. Hillerich & Bradsby Co.* (2002) 104 Cal.App.4th 703, 718 [reversing summary judgment in favor of defendant].) It is an abuse of discretion to exclude a declaration that satisfies these requirements. (*Garrett v. Howmedica Osteonics Corp., supra,* 214 Cal.App.4th at p. 189 [trial court abused discretion when it sustained objections to opposing expert's declaration based on Evid Code, §§ 801, 802].)

Saint Agnes objects to Plaintiff's three expert declarations on the grounds that the opinions do not establish proximate causation. As noted above, to defeat summary judgment, Plaintiff need not establish proximate causation. If is enough for Plaintiff to raise a triable issue of material fact on the issue of causation. Therefore, the court overrules the objections to the declarations of Plaintiff's expert, which go to the weight of the evidence, rather than the admissibility.

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: SMC on October 21, 2026.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Marcos Mejia Juarez v. Rey Garcia Diaz***
Superior Court Case No. 23CECG04588

Hearing Date: October 22, 2026 (Dept. 403)

Motion: for Judgment on the Pleadings

Tentative Ruling:

To deny.

Explanation:

Defendant Harvest Kings LLC ("defendant") brings this motion for judgment on the pleadings as to the complaint[2] filed by plaintiffs Marcos Mejia Juarez and Yolanda Ruiz Noyola ("plaintiffs"). The court intends to deny the motion.

The motion for judgment on the pleadings is brought "pursuant to California Code of Civil Procedure § 438." (Notice, 1:24, 25; parentheses omitted.) It is not brought as a common law motion. "No motion may be made pursuant to this section if a pretrial conference order has been entered pursuant to Section 575, or within 30 days of the date the action is initially set for trial, whichever is later, unless the court otherwise permits." (Code Civ. Proc., § 438, subd. (e), emphasis added.) Trial was initially set for July 14, 2025. The motion was filed on September 28, 2026. Thus, the motion was untimely filed. The court exercises its discretion to not permit the motion to be filed late.

The court declines to reach the evidentiary objections, as the challenged evidence is not considered in determining the timeliness of the moving papers.

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: SMC on October 21, 2026.
(Judge's initials) (Date)

[2] Defendant's request for judicial notice no. 1 is granted as to the complaint. Defendant's request for judicial notice nos. 2-13 are denied.

(41)

Tentative Ruling

Re: ***Destini Lust v. FCA US, LLC***
Superior Court Case No. 24CECG04458

Hearing Date: October 22, 2026 (Dept. 403)

Motion: By Defendants Demurring to Second Amended Complaint

Tentative Ruling:

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

Explanation:

In her original complaint, plaintiff Destini Lust (Plaintiff) alleged she entered into a warranty contract with defendant FCA US, LLC (Defendant or FCA) on May 4, 2019, regarding a 2019 Jeep Cherokee (Vehicle), "which was manufactured and/or distributed by Defendant FCA." Problems with the Vehicle ensued, specifically with the transmission, which Plaintiff alleged may result in hesitation on acceleration, loss of power, hard or harsh shifts, and/or jerking. 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 sixth cause of action of the original complaint with leave to amend.

Thereafter Plaintiff filed a first amended complaint (FAC). In the FAC, Plaintiff added a new paragraph identifying the seller as "Defendant FCA's authorized retail dealership Alpha Empire Auto Group Inc. [Alpha]." (FAC, ¶ 9.) Plaintiff did not name Alpha as a defendant, nor did Plaintiff allege Alpha is FCA's agent.

After the court sustained the demurrer to the sixth cause of action against FCA for fraudulent concealment, Plaintiff filed her second amended complaint (SAC). The defendants in the SAC remain as FCA and Clovis Chrysler Dodge Jeep Ram (Clovis), identified as a business that services and repairs automobiles. In the SAC, Plaintiff has added a new paragraph 11 to allege agency as follows: "[Alpha] acted as the agent for FCA for purposes of communicating with Plaintiff about all aspects of the Vehicle. [Alpha] was under the direction and control of FCA, as described above."

Defendants now demur again to the sixth cause of action for fraudulent inducement and concealment against FCA and also demur to the fifth cause of action for negligent repair against Clovis.

Meet and Confer

Defendants' counsel submits a declaration to establish that counsel made several attempts to meet and confer telephonically regarding this case but counsel was unable to reach Plaintiff's counsel. The meet-and-confer declaration fails to establish the requirement to meet and confer in person, by telephone or by video conference. However, Code of Civil Procedure section 430.41, subdivision (a)(4) provides that this "shall not be grounds to overrule or sustain the demurrer." In light of the parties' previous meet-and-confer efforts and their conclusions that no resolution would be reached informally, the court has considered the merits of the demurrer. However, in the future, counsel for Plaintiff is advised to meet and confer in person, by telephone, or by video conference, as required by the statute. (See also, Code Civ. Proc., § 435.5, subd. (a)(4) [same for motion to strike].)

Demurrer

Sixth Cause of Action - Fraudulent Inducement and Concealment

FCA again demurs to the sixth 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 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 her. (*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] (*Bigler*).)

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*.)

FCA cites the recent case of *Bjoin v. J-M Manufacturing Co., Inc.* (2025) 113 Cal.App.5th 884 (*Bjoin*), where the plaintiff brought a fraudulent concealment claim against a pipe manufacturer and argued for a broader duty to disclose, contending the manufacturer owed him a duty to disclose the risk of cancer from cutting its pipes with a power saw. (*Id*. at p. 890.) The plaintiff suggested that a duty-to-disclose relationship is created under *Bigler* **"**between a manufacturer and a consumer when a manufacturer advertises its products to consumers or profits from the sale of its products to consumers." (*Id*. at p. 902.) The appellate court disagreed, explaining that imposing a duty to disclose under such circumstances would greatly expand the well-settled law on fraudulent concealment, which the California Supreme Court recently summarized in *Rattagan*. (*Id.* at pp. 901–903.) As the appellate court explained:

> We do not believe the *Bigler* court intended to greatly expand the well settled law on fraudulent concealment, which it had just summarized, solely by its description of evidence that had not been offered in the case, without any supporting legal analysis or citation to legal authority, indeed without any acknowledgement that it was expanding the law. Further, in

> many factual circumstances, such an expansion would create the exact duty-to-disclose relationship which the *Bigler* court has expressly disavowed: a relationship between the defendant and the public at large.

(*Bjoin, supra,* 113 Cal.App.5th at p. 903.)

The court notes *Bjoin* was decided after a jury trial. Here, as in *Dhital*, the court must rule on a demurrer based on allegations that the Transmission 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 had she known of the defect; and Plaintiff was unknowingly exposed to the risk of liability, accident and injury caused by FCA's concealment of the Transmission Defect. (SAC, ¶¶ 93-101.) Also, Plaintiff alleges she 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 the purchase, and Plaintiff relied upon statements made during the sales process. (SAC, ¶¶7- 12, 22, 98.) And, like the allegations in *Dhital*, Plaintiff alleges the existence of an agency relationship between the dealer (Alpha) and the manufacturer (FCA). (SAC, ¶ 11.) The *Dhital* court found similar allegations sufficient for purposes of pleading a claim for fraudulent concealment. Therefore, Plaintiff has pleaded adequate, specific facts to establish a duty of disclosure to support her claim for fraudulent concealment and inducement.

Economic Loss Rule

FCA demurs on the additional ground that the economic loss rule bars Plaintiff's recovery. As it ruled on the demurrer to the FAC, the court overrules the demurrer to the SAC based on the economic loss rule for the same reasons, restated below.

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, italics added.) 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.) Here, as in *Dhital,* Plaintiff alleges FCA fraudulently induced her to buy her defective Vehicle by concealing information about safety defects. Plaintiff has added allegations about FCA's presale conduct 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 her fraudulent concealment claim. The tortious presale concealment is independent of the warranty agreement and Plaintiff would not have reasonably contemplated such concealment when she 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 sixth cause of action for fraudulent inducement and concealment.

Fifth Cause of Action – Negligent Repair

Clovis demurs to the fifth cause of action for negligent repair. Clovis cites *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, where the California Supreme Court explained: "[n]ot 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." (*Id.* at p. 923.)

Plaintiff cites *Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1072, for the well-settled rule that the elements of any tort based on negligence are: duty, breach of duty, causation, and damages. Plaintiff also cites a federal district court case, where the plaintiff alleged the defendant repaired the plaintiff's vehicle on numerous occasions and that the repairs failed to comply with relevant industry standards, causing plaintiff damage. In ruling that the plaintiff sufficiently alleged a cause of action for negligent repair, the district court noted the plaintiff's complaint included allegations about the

circumstances of each repair. (*Lytle v. Ford Motor Company* (E.D. Cal., Oct. 2, 2018) 2018 WL 4793800, at p. 2.)

Here, Plaintiff uses boilerplate conclusory language to allege "Plaintiff delivered the Subject Vehicle to [Clovis] for substantial repair on at least one occasion." (SAC, ¶ 89.) Under the economic loss rule, the type of damages Plaintiff alleges determine whether Clovis can be held liable in tort in addition to breach of contract. In a lemon law case for negligent repair, the economic loss rule requires allegations of personal injury or physical property damage, apart from the defective vehicle (a duty independent of the contract), to justify recovery in tort, rather than in contract. Thus, Plaintiff must allege facts to show Clovis committed a tort by violating an independent legal duty not based on the duties arising from the repair contract between the parties.

In its reply, Clovis summarizes how the economic loss rule applies to negligent repair to limit a plaintiff's remedies to contractual damages:

> Here, Plaintiff alleges only that the dealership failed to properly diagnose and repair the vehicle. But any duty to perform those repairs arises from the service and warranty relationship—not from an independent tort duty. Plaintiff does not allege that Defendants owed any duty separate and apart from the obligation to inspect and repair the vehicle, nor does Plaintiff allege any specific injury beyond seemingly economic losses.
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> Plaintiff's reliance on *Jimenez v. Superior Court* (2002) 29 Cal.4th 473 [*Jiminez*]does not save the claim. *Jimenez* addressed whether the economic loss rule permits recovery in strict products liability where a defective product causes damage to "other property." (*Id*. at 483–84.) It did not involve a negligent repair claim arising from a service relationship, and it did not hold that a negligence claim may proceed any time a plaintiff alleges damage to some portion of the product itself. Here, Plaintiff does not allege damage to "other property" at all. The alleged harm is to the vehicle itself—the very product Defendants were allegedly obligated to repair. Under California law, that is economic loss recoverable, if at all, in contract rather than tort. (*Id*. at 483.)

(Rpy., p. 6:16-28.)[3]

[3] Plaintiff cites *Jiminez* and federal cases for the rule that "California law does not bar recovery in tort for damage that a negligently repaired component causes to the vehicle as a whole." (Opp., pp. 2:26-3:2.) In *Sonneveldt v. Mazda Motor of America, Inc.* (C.D. Cal., Jan. 4, 2021, No. 819CV01298JLSKES) 2021 WL 62502, at *9, the court disagreed, explaining:

> However, "[i]n the context of defective vehicles, courts have consistently found that the economic loss rule applies where the sole damage alleged is to the vehicle itself." *McCarthy*, 2018 WL 6318841 at *11 (citing *Sharma v. BMW of N. Am., LLC*, No. C-13-2274 MMC, 2014 WL 2795512, at *6 (N.D. Cal. June 19, 2014); *Callaghan v. BMW of N. Am.*, LLC, No. 13-CV-4794-RS, 2014 WL 1340085, at *6 (N.D. Cal. Apr. 2, 2014)). [Fn.]

In the omitted footnote, the federal district court in *Sonneveldt* explained:

Plaintiff alleges she presented the Vehicle to unidentified FCA authorized repair facilities with specific, unresolved complaints on at least six occasions over a period exceeding five years. (SAC, ¶¶ 14-19.) Plaintiff fails to identify Clovis as the facility where she presented the Vehicle, nor does she include 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 also fails to allege how the negligent repair or repairs caused Plaintiff to suffer such damages.

In conclusion, unlike the fraudulent inducement and concealment claims alleged against FCA, Plaintiff fails to allege an intentional tort against Clovis, nor does she allege any claim of 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. (*Sheen v. Wells Fargo Bank, N.A., supra,* 12 Cal.5th at pp. 923-925.) Therefore, the court sustains the demurrer to the fifth cause of action for negligent repair.

Plaintiff seeks leave to amend, but fails to show how she can amend the fifth cause of action to cure its defects. Nevertheless, out of an abundance of caution given the court's liberal policy of amendment, the court grants leave 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

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> Plaintiffs cite to only one case in support of their argument. In *Sater v. Chrysler Group*, the court concluded that a truck's steering assembly was a part separate from the truck in which it was installed. No. EDCV 14-00700-VAP, 2015 WL 736273, at *13 (C.D. Cal. Feb. 20, 2015). In so holding, the court relied on the California Supreme Court's decision in *Jimenez v. Superior Ct.*, 29 Cal. 4th 473, 484 (2002), which held that "the economic loss rule does not bar a homeowner's recovery in tort for damage that a defective window causes to other parts of the home in which it has been installed." *However, the Court is unpersuaded that Jiminez's reasoning should extend to defective parts in automobiles, and as cited above, courts have consistently refused to find that a defective automotive part is "separate" from the vehicle for purposes of applying the economic loss doctrine.*
>
> (*Id.*)

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: SMC on October 21, 2026.
(Judge's initials) (Date)