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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRANK L. CHOY,
Plaintiff,
v.
GENERAL MOTORS LLC,
Defendant.

Case No. 24-cv-00262-MMC

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS; DISMISSING
FOURTH AND FIFTH CAUSES OF
ACTION, WITH LEAVE TO AMEND;
VACATING HEARING**

Before the Court is defendant General Motors LLC's "Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim," filed January 22, 2024, whereby defendant seeks dismissal of plaintiff Frank L. Choy's Fourth and Fifth Causes of Action. Plaintiff has not filed opposition.¹

Having read and considered the papers filed in support of the motion, the Court deems the matter appropriate for determination thereon, VACATES the hearing scheduled for March 1, 2024, and hereby GRANTS the motion, as follows:

1. The Fourth Cause of Action, by which plaintiff asserts a claim of fraud, based on the theory that defendant made false statements to plaintiff or, alternatively, made statements as to which it omitted material information, is hereby DISMISSED. Rule 9(b) of the Federal Rules of Civil Procedure requires a party alleging fraud to "state with particularity the circumstances constituting fraud," see Fed. R. Civ. P. 9(b), including "the time, place, and specific content of the false representations," see Swartz v. KPMG LLP,

¹ Under the Local Rules of this District, any opposition was due no later than February 5, 2024. See Civil L.R. 7-3(a) (providing opposition to motion "must be filed and served not more than 14 days after the motion was filed").

1 476 F.3d 756, 764 (9th Cir. 2007). Plaintiff, however, fails to allege when and where he
2 heard any of the statements on which he relied, and, with the exception of one statement
3 (see Compl. ¶ 24), plaintiff does not allege the specific content of the statements on
4 which he assertedly relied, and, at best, alleges paraphrased statements, see Wenger v.
5 Lumisys, Inc., 2 Fed. Supp. 2nd 1231, 1246-47 (N.D. Cal. 1998) (holding allegations
6 "paraphras[ing]" statements asserted to be fraudulent "lack[] the specificity required by
7 Rule 9(b)" (citing cases)).

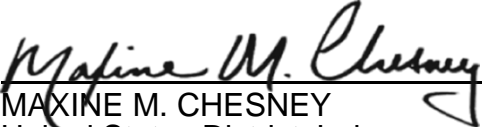
8 2. The Fifth Cause of Action, by which plaintiff asserts violations of § 17200 of the
9 Business & Professions Code, is hereby DISMISSED. The Fifth Cause of Action is
10 based on the alleged false statements and omissions on which the Fourth Cause of
11 Action is based (see Compl. ¶¶ 106-07, 117, 120, 124, 131), and, for the reasons stated
12 above with respect to the Fourth Cause of Action, is not pleaded in conformity with Rule
13 9(b).

14 3. Should plaintiff wish to amend for purposes of curing the deficiencies identified
15 above, plaintiff shall file a First Amended Complaint no later than March 9, 2024. If
16 plaintiff does not file a First Amended Complaint by said deadline, the above-titled action
17 will proceed on the First, Second, and Third Causes of Action asserted in the initial
18 complaint.

19 **IT IS SO ORDERED.**

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Dated: February 22, 2024


MAXINE M. CHESNEY
United States District Judge