

1 the purchase, Plaintiffs received a bumper-to-bumper warranty, a powertrain warranty, and
2 an emission warranty. (*Id.* ¶ 9.) Plaintiffs allege that “[d]efects and nonconformities to
3 warranty manifested themselves within the applicable express warranty period, including
4 defects of the electrical system, including the stop/start feature; defects of the transmission
5 system, including the 10R80 10 Speed Transmission [(“Transmission Defect”)]; defects of
6 the infotainment system, including the navigation system and APIM” (*Id.* ¶ 14.)
7 Plaintiffs further allege the Transmission Defect can lead to issues including “hesitation,
8 loss of power, and other shifting issues while driving at highway speeds.” (*Id.* ¶ 47.)

9 After experiencing issues with the Vehicle, Plaintiffs filed suit alleging five causes
10 of action: (1) Violation of the Song-Beverly Consumer Warranty Act (“SBA”) – Failure to
11 Repair Defect(s) within Reasonable Number of Attempts (Cal. Civ. Code § 1793.2(d));
12 (2) Violation of SBA – Failure to Commence Repairs or Repair Defect(s) within 30 Days
13 (Cal. Civ. Code § 1793.2(b)); (3) Violation of SBA – Failure to Provide Literature and
14 Replacement Parts (Cal. Civ. Code § 1793(a)(3)); (4) Breach of Implied Warranty of
15 Merchantability, (Cal. Civ. Code § 1791.1); and (5) Fraudulent Inducement –
16 Concealment. (*Id.* ¶¶ 57–92.)

17 **II. LEGAL STANDARDS**

18 **A. Federal Rule of Civil Procedure 12(b)(6)**

19 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the pleadings
20 and allows a court to dismiss a complaint upon a finding that the plaintiff has failed to state
21 a claim upon which relief may be granted. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.
22 2001). The court may dismiss a complaint as a matter of law for: “(1) lack of cognizable
23 legal theory or (2) insufficient facts under a cognizable legal claim.” *SmileCare Dental*
24 *Grp. v. Delta Dental Plan of Cal.*, 88 F.3d 780, 783 (9th Cir. 1996) (citation omitted).
25 However, a complaint survives a motion to dismiss if it contains “enough facts to state a
26 claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
27 (2007).

28 Notwithstanding this deference, the reviewing court need not accept legal

1 conclusions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for the
2 court to assume “the [plaintiff] can prove facts that [he or she] has not alleged” *Assoc.*
3 *Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526
4 (1983). On the other hand, “[w]hen there are well-pleaded factual allegations, a court
5 should assume their veracity and then determine whether they plausibly give rise to an
6 entitlement to relief.” *Iqbal*, 556 U.S. at 679. The court only reviews the contents of the
7 complaint accepting all factual allegations as true and drawing all reasonable inferences in
8 favor of the nonmoving party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002).

9 **B. Federal Rule of Civil Procedure 9(b)**

10 A party alleging fraud must “state with particularity the circumstances constituting
11 fraud.” Fed. R. Civ. P. 9(b). Rule 9(b) requires a plaintiff to make more specific allegations
12 so a defendant “can defend against the charge and not just deny that they have done
13 anything wrong.” *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1024 (9th Cir. 2009) (quoting
14 *Bly-Magee v. California*, 236 F.3d 1014, 1019 (9th Cir. 2001)) (internal quotation marks
15 omitted); *see also Neubronner v. Milken*, 6 F.3d 666, 671–72 (9th Cir. 1993).

16 **III. DISCUSSION**

17 **A. Second Claim – Violation of California Civil Code § 1793.2(b)**

18 Under California Civil Code section 1793.2(b), if “service and repair facilities are
19 maintained in this state and service or repair of the goods is necessary because they do not
20 conform with the applicable express warranties, service and repair shall be commenced
21 within a reasonable time by the manufacturer or its representative in this state.” Cal. Civ.
22 Code § 1793.2(b). Unless the buyer and manufacturer agree otherwise, “the goods shall be
23 serviced or repaired so as to conform to the applicable warranties within 30 days.” *Id.*;
24 *Watson v. CarMax Auto Superstores W. Coast, Inc.*, No. 2:16-cv-09006, 2017 WL
25 3081824, at *2 (C.D. Cal. May 4, 2017) (“[Section 1793.2(b)] provides that, absent a
26 written agreement to the contrary, a warrantor must repair or service a defective vehicle
27 within 30 days.”).

28 Plaintiffs allege three theories under section 1793.2(b). Specifically, Plaintiffs allege

1 Ford failed to serve or repair the vehicle in conformity with the warranty within 30 days,
2 Ford failed to commence the service or repairs within a reasonable time, and that Plaintiffs
3 have rejected and/or justifiably revoked acceptance of the Vehicle and as exercised a right
4 to request a buyback. (FAC ¶¶ 64, 66; Doc. No. 16 at 6–7.)

5 Plaintiffs’ first theory that “repair days are accumulated across repair visits, and so
6 long as the total number of repair days across visits equals or exceeds 30 days, section
7 1793.2(b) is violated” is unsupported by law. Indeed, Plaintiffs’ reliance on *Milicevic v.*
8 *Fletcher Jones Imports, Ltd.*, 402 F.3d 912 (9th Cir. 2005), is misplaced. In *Milicevic*, the
9 Ninth Circuit analyzed Nevada’s lemon law, which allows for aggregation of repair visits
10 to show a violation of that law. *Id.* at 916–17 (“[t]he motor vehicle is out of service for
11 repairs for a *cumulative* total of 30 or more calendar days”) (citing Nev. Rev. Stat.
12 § 597.630(2)(b) (emphasis added)). However, relevant to this case, the Ninth Circuit has
13 found that “under any reasonable reading of the statute, § 1793.2(b) requires only that
14 [defendant] complete any *single* repair attempt within 30 days.” *Schick v. BMW of N. Am.,*
15 *LLC*, 801 F. App’x 519, 521 (9th Cir. 2020); *see also Hernandez v. Mercedes-Benz USA,*
16 *LLC*, No. 3:22-cv-00824, 2023 WL 2593935, at *3 (S.D. Cal. Mar. 20, 2023) (finding that
17 *Schick’s* reading of Cal. Civ. Code section 1793.2 was persuasive and, accordingly,
18 granting defendant’s motion to dismiss because the plaintiff did not plead that any single
19 repair attempt lasted more than 30 days). Moreover, Plaintiffs’ argument that the California
20 Legislature’s failure to sufficiently clarify a requirement of 30 days of repair evidences an
21 intent to allow aggregation is unconvincing. (*See* Doc. No. 16 at 7.) As compared to
22 California Civil Code section 1793.22(b)(3), which expressly provides for a cumulation of
23 days out of service, section 1793.2(b), which governs Plaintiffs’ claims, does not.
24 Therefore, the Legislature’s choice not to include language as to aggregation in section
25 1793.2(b) should be respected. *See, e.g., Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335,
26 341 (2005) (“we do not lightly assume Congress has omitted from its adopted text
27 requirements that it nonetheless intends to apply, and our reluctance is even greater where
28 Congress has shown elsewhere in the same statute that it knows how to make such a

1 requirement manifest”). Because Plaintiffs have not alleged that any single repair attempt
2 took more than 30 days, the Court finds Plaintiffs have not sufficiently pled a violation of
3 section 1793.2(b) under this theory.

4 Next, Plaintiffs assert Ford failed to commence the service or repairs within a
5 reasonable time.² However, Plaintiffs merely state in a conclusory fashion that “Defendant
6 and its representative failed to commence the service or repairs within a reasonable time .
7 . . .” (FAC ¶ 64.) Thus, Plaintiffs’ second claim under this theory fails. *See Kodjanian v.*
8 *Mercedes-Benz USA, LLC*, CV-21-8836 DSF (MAAx), 2022 WL 1515683, at *3 (C.D.
9 Cal. Mar. 17, 2022) (finding that alleging only non-conclusory facts pertaining to the
10 duration of repair attempts constitutes a failure to plausibly allege a violation of Section
11 1793.2(b)).

12 Lastly, Plaintiffs argue they have alleged a viable theory under section 1793.2(b)
13 because they “rightfully rejected and/or justifiably revoked acceptance of the Vehicle, and
14 has exercised a right to request a buyback.” (*Id.* ¶ 66.) First, Plaintiffs do not plead facts
15 establishing they justifiably revoked acceptance of the vehicle. (*See* FAC ¶¶ 12, 66.)
16 Moreover, Plaintiffs fail to offer any support for their contention that this theory of liability
17 constitutes a ground for liability under section 1793.2(b). Plaintiffs cite to *Ramos v.*
18 *Mercedes-Benz USA, LLC*, 55 Cal. App. 5th 220, 225 (2020) in support but, as noted by
19 Ford, this case does not support their contention. (*See* Doc. Nos. 16 at 8–9, 17 at 6.) Rather,
20 the court in *Ramos* discussed the measure of buyer’s damages under section 1794(b), which
21 “shall include the rights of replacement or reimbursement *as set forth in subdivision (d) of*
22 *Section 1793.2 . . .*” 55 Cal. App. 5th at 225 (quoting Cal. Civil Code § 1794(b)). Thus,
23 the Court finds Plaintiffs’ theory inapplicable here.

24 Based on the foregoing, the Court **GRANTS** Ford’s motion to dismiss Plaintiffs’
25

26
27 ² Plaintiffs allege Ford has failed to dispute this theory. (Doc. No. 16 at 8.) Ford disagrees and points to
28 its Motion to Dismiss, where it recognized Plaintiffs’ claim that Ford violated § 1793.2(b) for “an alleged
failure to commence repairs within a reasonable time. . . .” (Doc. No. 17 at 5.) Thus, the Court finds Ford
has not waived this argument.

1 second claim **WITH LEAVE TO AMEND.**

2 **B. Third Claim - Violation of California Civil Code § 1793.2(a)(3)**

3 Plaintiffs again argue Ford violated section 1793.2(a)(3) of the Song-Beverly Act by
4 failing to “make available to authorized service and repair facilities service literature and
5 replacement parts sufficient to effect repair.” Ford argues the third cause of action should
6 be dismissed because the FAC again fails to a single factual allegation to support this claim.
7 (Doc. No. 14-1 at 11–12.) The Court agrees. Here, Plaintiffs provide no details regarding
8 Ford’s alleged failure to provide the necessary service literature and replacement parts to
9 Ford’s repair facilities. Plaintiffs simply repeat the applicable statutory language and allege
10 “Defendant failed to make available to its authorized service and repair facilities sufficient
11 service literature and replacement parts to effect repairs during the express warranty
12 period.” (FAC ¶ 69.) Mere “conclusory allegations of law . . . are insufficient to defeat a
13 motion to dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004). As such, the
14 Court **GRANTS** Ford’s motion to dismiss Plaintiffs’ third claim **WITHOUT LEAVE TO**
15 **AMEND.**

16 **C. Fifth Claim – Fraudulent Concealment**

17 **1. Statute of Limitations**

18 Ford first argues the statute of limitation bars Plaintiffs’ fraudulent concealment
19 claim. (Doc. No. 14-1 at 12–13.) Plaintiffs do not meaningfully counter Ford’s assertion
20 that the statute has run for each of their claims; instead, they rely on the delayed discovery
21 rule to argue they are not barred from pursuing their claims. (Doc. No. 16 at 19–21.)

22 “A claim may be dismissed under Rule 12(b)(6) on the ground that it is barred by
23 the applicable statute of limitations only when ‘the running of the statute is apparent on the
24 face of the complaint.’” *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d
25 954, 969 (9th Cir. 2010) (quoting *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th
26 Cir. 2006)). “[A] complaint cannot be dismissed unless it appears beyond doubt that the
27 plaintiff can prove no set of facts that would establish the timeliness of the claim.” *Id.*
28 (alteration in original) (quoting *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206

1 (9th Cir. 1995)).

2 The statute of limitations is three years for Plaintiffs' fraud claim. "An action for
3 relief on the grounds of fraud or mistake must be commenced within three years." *Kline v.*
4 *Turner*, 87 Cal. App. 4th 1369, 1373 (2001); Cal. Civ. Proc. Code § 338(c)(3)(A); *see also*
5 *Finney v. Ford Motor Co.*, No. 17-CV-06183-JST, 2018 WL 2552266, at *3 (N.D. Cal.
6 June 4, 2018) (noting that a common law fraud claim was subject to three-year statute of
7 limitations). Plaintiffs allege Ford committed fraud "by allowing to be sold to Plaintiff the
8 Vehicle without disclosing that the Subject Vehicle and its transmission was defective and
9 susceptible to sudden and premature failure." (FAC ¶ 78.) Accordingly, the statute ran three
10 years after purchase on June 17, 2020. *See Perez v. Gen. Motors LLC*, No. 19-cv-00038,
11 2019 WL 3766613, at *2 (S.D. Cal. Aug. 9, 2019) (concluding that the running of the
12 statute was "apparent on the face of the complaint" where the plaintiff had alleged fraud at
13 the time of purchase); *Yetter v. Ford Motor Co.*, No. 19-cv-00877-LHK, 2019 WL
14 3254249, at *4 (N.D. Cal. July 19, 2019) (noting that the fraud claim "appear[ed] to have
15 expired" three years after the vehicle's purchase).

16 According to their own pleadings, Plaintiffs' claim is barred unless they can
17 plausibly plead that a tolling or delayed accrual doctrine applies.

18 **2. Discovery Rule Tolling**

19 Plaintiffs assert the delayed discovery rule applies and delays their claim because
20 they could not reasonably have discovered the transmission defect until shortly before they
21 initiated this case. (FAC ¶¶ 35–39; Doc. No. 16 at 19–21.) Specifically, they argue they
22 could not have discovered Ford's wrongful conduct until after Ford failed to fix the defects
23 after a reasonable number of repair attempts. (Doc. No. 16 at 19.)

24 "California's discovery rule delays the accrual of a cause of action until a plaintiff
25 either became aware of the injury and its cause or could have discovered the injury and
26 cause through reasonable diligence." *Rhynes v. Stryker Corp.*, No. 10-cv-5619 SC, 2011
27 WL 5117168, at *3 (N.D. Cal. Oct. 27, 2011) (citing *Fox v. Ethicon Endo-Surgery, Inc.*,
28 35 Cal. 4th 797, 808 (2005)). To rely on this rule, a plaintiff must plead: "(1) the time and

1 manner of discovery and (2) the inability to have made earlier discovery despite reasonable
2 diligence.” *Id.* (quoting *Fox*, 35 Cal. 4th at 808).

3 As an initial matter, Plaintiffs could not have been on notice of the defects
4 immediately after they purchased the Vehicle. *See Hastings v. Ford Motor Co.*, No. 19-cv-
5 02217-BAS-MDD, 2020 WL 12688367, at *4 (S.D. Cal. Oct. 2, 2020) (finding it possible
6 that the plaintiff did not discover the alleged fraud until he exhausted his repair attempts).
7 Plaintiffs assert they discovered the alleged defects “in or about July 2021, when Plaintiffs
8 requested a buyback and/or restitution of the Vehicle from Defendant FMC as the Vehicle
9 continued to exhibit symptoms of defects following Defendant FMC’s unsuccessful
10 attempts to repair them.” (FAC ¶ 39.) However, they allege no facts showing they exercised
11 diligence in attempting to understand the source of the various problems they experienced
12 with their Vehicle. Without more facts to identify when Plaintiffs first discovered the issue,
13 their FAC fails to allege facts that this theory of tolling could salvage their claims. *See*
14 *Vanella v. Ford Motor Co.*, No. 3:19-cv-07956-WHO, 2020 WL 887975, at *4–5 (N.D.
15 Cal. Feb. 24, 2020) (finding the delayed discovery rule did not apply where the plaintiff
16 failed to allege facts showing she exercised diligence in attempting to understand the cause
17 of the problems with her vehicle).

18 Additionally, Plaintiffs do not address Defendants’ arguments regarding class action
19 tolling, the repair doctrine, or equitable estoppel. (*See generally* Doc. No. 16; Doc. No. 17
20 at 8); *see Walsh v. Nev. Dep’t of Hum. Res.*, 471 F.3d 1033, 1037 (9th Cir. 2006) (finding
21 a plaintiff has “effectively abandoned” a claim when he fails to respond to arguments in
22 motion to dismiss, and therefore the claim could not be raised on appeal); *Allen v. Dollar*
23 *Tree Stores, Inc.*, 475 Fed. App’x 159, 159 (9th Cir. 2012) (affirming district court’s
24 dismissal of plaintiff’s claims in which plaintiff’s “opposition to the motion to dismiss
25 failed to respond to [the defendant’s] argument”). As such, the Court finds Plaintiffs have
26 waived this argument.

27 **3. Sufficiency of the Pleadings**

28 Although dismissal of this claim is appropriate on statute of limitations grounds, the

1 Court next addresses whether Plaintiffs have adequately pled their fraud claim based on
2 state law. Plaintiffs concede their theory for their fraud-based claims is not based on
3 affirmative statements, but instead on an omissions-based theory. (Doc. No. 16 at 10–11.)
4 Specifically, Plaintiffs assert: (1) Ford failed to disclose that the transmission installed in
5 the Vehicle was defective; and (2) Ford concealed the defect in failing to disclose the
6 defects. (FAC ¶¶ 78, 79, 82.)

7 As a preliminary matter, to survive a motion to dismiss under Federal Rule of Civil
8 Procedure 12(b)(6), allegations of fraud must meet the heightened pleading requirements
9 of Federal Rule of Civil Procedure 9(b). As applied to Plaintiffs’ claim for fraud, a fraud
10 by omission or fraud by concealment claim “can succeed without the same level of
11 specificity required by a normal fraud claim.” *Baggett v. Hewlett-Packard Co.*, 582 F.
12 Supp. 2d 1261, 1267 (C.D. Cal. 2007) (quoting *Falk v. Gen. Motors Corp.*, 496 F. Supp.
13 2d 1088, 1098–99 (N.D. Cal. 2007)). When a claim rests on allegations of fraudulent
14 omission, the Rule 9(b) standard is somewhat relaxed because “a plaintiff cannot plead
15 either the specific time of [an] omission or the place, as he is not alleging an act, but a
16 failure to act.” *Asghari v. Volkswagen Grp. of Am., Inc.*, 42 F. Supp. 3d 1306, 1325 (C.D.
17 Cal. 2013) (internal citations omitted). Nonetheless, a plaintiff alleging fraudulent
18 omission or concealment must still plead the claim with particularity. *See Bias v. Wells*
19 *Fargo & Co.*, 942 F. Supp. 2d 915, 935 (N.D. Cal. 2013); *Marolda v. Symantec Corp.*, 672
20 F. Supp. 2d 992, 1002 (N.D. Cal. 2009) (“The Ninth Circuit has recently clarified that
21 claims of nondisclosure and omission, as varieties of misrepresentations, are subject to the
22 pleading standards of Rule 9(b).”). As such Plaintiffs are still required to plead the “what,”
23 “why,” and “how” to establish a claim based on fraud. *See In re Toyota Motor Corp.*
24 *Unintended Acceleration Mktg., Sales Practices, & Prod. Liab. Litig.*, 754 F. Supp. 2d
25 1145, 1190 (C.D. Cal. 2010).

26 The elements of a claim for fraudulent concealment are:

- 27 (1) the defendant must have concealed or suppressed a material fact; (2) the
28 defendant must have been under a duty to disclose the fact to the plaintiff;
(3) the defendant must have intentionally concealed or suppressed the fact

1 with intent to defraud the plaintiff; (4) the plaintiff must have been unaware
2 of the fact and would have acted otherwise if he had known of the concealed
3 or suppressed fact; and (5) as a result of the concealment or suppression of the
4 fact, the plaintiff sustained damage.

5 *In re Ford Co. DPS6 Powershift Transmission Prod. Liab. Litig.*, No. 17-cv-06656, 2019
6 WL 3000646, at *5 (C.D. Cal. May 22, 2019).

7 **a. Ford’s Knowledge Prior to Plaintiffs’ Purchase**

8 “[W]hile circumstances constituting fraud must be alleged with particularity,
9 knowledge may be alleged generally.” *McCarthy v. Toyota Motor Corp.*, No.: 8:18-cv-
10 00201-JLS-KES, 2019 WL 3220579, at *4 (C.D. Cal. Apr. 9, 2019) (alteration in original)
11 (quoting *Parenteau v. Gen. Motors, LLC*, No. CV 14-04961-RGK (MANx), 2015 WL
12 1020499, at *6 (C.D. Cal. Mar. 5, 2015)). “In cases where the plaintiffs fail to allege how
13 ‘pre-release testing data’ or ‘aggregate data’ could have alerted the manufacturer to the
14 alleged defect, courts have treated generalized allegations regarding the existence of such
15 testing or information as insufficient to establish knowledge.” *Hardt v. Chrysler Grp. LLC*,
16 SACV 14-01375 SJO (VBKx), 2015 WL 12683963, at *4 (C.D. Cal. Mar. 16, 2015). “By
17 contrast, where plaintiffs have ‘provided additional information,’ including allegations
18 pertaining to service bulletins for the allegedly defective vehicle components, courts have
19 concluded that knowledge was adequately pleaded.” *Id.*; *Mui Ho v. Toyota Motor Co.*, 931
20 F. Supp. 2d 987 (N.D. Cal. 2013) (finding the plaintiffs adequately pled knowledge “by
21 citing to multiple other consumers’ similar complaints, as well as Defendants’ decisions to
22 repair Class Vehicles’ headlamps only temporarily”).

23 Here, Plaintiffs fail to plead any specific sources where Ford may have been alerted
24 to the alleged defect *prior* to Plaintiffs’ purchase of the Vehicle, and do not plead that any
25 sources disclosed information about a defect in Plaintiffs’ Vehicle prior to Plaintiffs’
26 purchase. *See Pelayo v. Hyundai Motor Am., Inc.*, No.: 8:20-cv-01503-JLS-ADS, 2021 WL
27 1808628, at *6 (C.D. Cal. May 5, 2021) (holding the plaintiffs failed to plausibly plead
28 pre-sale knowledge of the defect where the plaintiffs “fail[ed] to plead any connection

1 between the generalized complaints about cars equipped with Gamma Engines and
2 Defendants’ knowledge that the Gamma Engines at issue here were prone to fires”); *Miller*
3 *v. Ford Motor Co.*, No. 2:20-cv-01796-TLN-CKD, 2022 WL 3229503, at *15 (E.D. Cal.
4 Aug. 10, 2022) (finding the plaintiffs’ generalized allegations about testing and analysis
5 conducted by defendant failed to sufficiently plead that defendant had knowledge of the
6 defect prior to the sale of the plaintiffs’ vehicles). Although Plaintiffs plead the existence
7 of several technical service bulletins (“TSBs”) concerning the Transmission Defect issued
8 by Ford, each of these TSBs were issued *after* Plaintiffs purchased the Vehicle on June 18,
9 2017. For example, Plaintiffs point to TSBs issued on March 2, 2018, (FAC ¶ 50), and
10 September 7, 2018, (*id.* ¶ 53), but fail to plead Ford’s knowledge of the defect prior to the
11 sale of Plaintiffs’ Vehicle. As such, Plaintiffs fail to plead that Ford had knowledge of the
12 alleged defect prior to Plaintiffs’ purchase of the Vehicle.

13 **b. Duty to Disclose**

14 Additionally, Plaintiffs fail to allege a duty to disclose. *See In re Ford*, 2019 WL
15 3000646, at *6 (finding allegations “thin” but sufficient where the plaintiffs alleged that
16 Ford “directly market[ed] is [sic] vehicles to consumers and communicate[d] with
17 consumers through the authorized dealerships from whom Plaintiffs did purchase their
18 vehicles”). As in their Complaint, Plaintiffs’ FAC does not plead the existence of a
19 fiduciary relationship with Ford and merely concludes “Defendants were under a
20 continuous duty to disclose” (FAC ¶ 38.)

21 **c. Omission or Concealment of Defect**

22 Plaintiffs further fail to plead the circumstances of any alleged omission(s) with
23 particularity. *See In re Ford*, 2019 WL 3000646, at *7 (“To plead the existence of an
24 omission sufficient to support a fraudulent concealment claim, a plaintiff must describe the
25 content of the omission and where the omitted information should or could have been
26 revealed.”) (internal quotation marks omitted).

27 **d. Reliance**

28 Ford also argues Plaintiffs cannot plead justifiable reliance. (Doc. No. 14-1 at 22.)

1 Plaintiffs argue reliance may be inferred because had they known the Vehicle suffered from
2 the Transmission Defect, they would not have purchased the Vehicle. (Doc. No. 16 at 18.)

3 “[T]o plead the circumstances of omission with specificity, plaintiff must describe
4 the content of the omission and where the omitted information should or could have been
5 revealed, as well as provide representative samples of advertisements, offers, or other
6 representations that plaintiff relied on to make her purchase and that failed to include the
7 allegedly omitted information.” *Marolda v. Symantec Corp.*, 672 F. Supp. 2d 992, 1002
8 (N.D. Cal. 2009). Nowhere in the complaint do Plaintiffs adequately allege their reliance.
9 Rather, Plaintiffs merely argue they

10 interacted with Defendant’s sales representatives and reviewed Defendant’s
11 marketing materials during the sales process. Plaintiffs did not expect their
12 transmission to fail and not work properly. Plaintiffs further expect and
13 assume that Defendant will not sell or lease vehicles with known material
14 defects, including but not limited to those involving the vehicle’s transmission
and will disclose any such defect to its consumers before selling such vehicles
(including the Transmission Defect).

15 (FAC ¶ 87.) This is not enough to satisfy the specificity requirement of Rule 9(b).

16 Based on the foregoing, the Court **GRANTS** Ford’s motion to dismiss Plaintiffs’
17 fifth claim **WITH LEAVE TO AMEND**.

18 **D. Punitive Damages**

19 Finally, Ford seeks to dismiss Plaintiffs’ claim for punitive damages. (Doc. No. 14-
20 1 at 22.) Ford argues the FAC’s factual allegations are insufficient to give rise to punitive
21 damages. (*Id.*) In their opposition, Plaintiffs make no argument that their punitive damages
22 claim can survive if their fraudulent concealment claim does not. Accordingly, any such
23 argument is waived. Because the fraudulent concealment claim is dismissed, Plaintiffs’
24 prayer for punitive damages related to the fraudulent concealment claim is dismissed as
25 well.


26 **IV. CONCLUSION**

27 For the reasons set forth above, the Court **GRANTS** Ford’s motion to dismiss claims
28 2, 3, and 5 of Plaintiffs’ FAC. (Doc. No. 14.) Should Plaintiffs choose to do so, where leave

1 is granted, they must file an amended complaint curing the deficiencies noted herein no
2 later than Monday, May 1, 2023. Ford must file a responsive pleading no later than May
3 15, 2023.

4
5 **IT IS SO ORDERED.**

6 Dated: April 17, 2023

7 
8 Hon. Anthony J. Battaglia
9 United States District Judge

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