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United States District Court  
Central District of California

JAMES BETTLES,  
  
Plaintiff,  
  
v.  
  
TOYOTA MOTOR CORPORATION et  
al.,  
  
Defendants.

Case No. 2:21-cv-07560-ODW (AFMx)

**ORDER GRANTING DEFENDANTS’  
MOTION TO DISMISS PLAINTIFF’S  
FIRST AMENDED COMPLAINT [54]**

**I. INTRODUCTION**

Plaintiff James Bettles brings this putative class action against Defendants Toyota Motor Corporation (“TMC”) and Toyota Motor Sales, U.S.A., Inc. (“TMS”) arising from an alleged defect in the heating, ventilation, and air conditioning (“HVAC”) systems of certain vehicle models. (First Am. Compl. (“FAC”), ECF No. 53.) Toyota now moves to dismiss Bettles’s First Amended Complaint pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(6). (Mot. Dismiss FAC (“Mot.” or

1 “Motion”), ECF No. 54-1.) The Motion is fully briefed. (Opp’n, ECF No. 55; Reply,  
2 ECF No. 56.) For the following reasons, the Court **GRANTS** Toyota’s Motion.<sup>1</sup>

## 3 **II. BACKGROUND**

4 TMS manufactures, distributes, and sells vehicles throughout the United States.  
5 (FAC ¶ 36.) TMC is the parent company of TMS (collectively, “Toyota”). (*Id.* ¶ 35.)

6 On December 3, 2016, Bettles purchased a new Toyota Prius (“Vehicle”) from a  
7 non-party authorized dealer (“Dealership”). (*Id.* ¶ 17.) In the Spring of 2017, Bettles  
8 noticed a foul odor emanating from the air-conditioning vents of the Vehicle. (*Id.* ¶ 20.)  
9 At first, Bettles thought the odor originated from his socks or shoes. (*Id.*) As a result,  
10 Bettles purchased new shoes and washed his socks. (*Id.*) However, as Summer 2017  
11 approached, the foul odor persisted and became worse. (*Id.*)

12 Approximately six months after Bettles purchased the Vehicle, he brought the  
13 Vehicle to the Dealership for service and “advised the service representative of the foul  
14 odor that had been emanating from the A/C vents, as well as his attempts to figure out  
15 its cause.” (*Id.* ¶ 21.) After the service, “[Bettles] was told that the . . . Vehicle  
16 exhibited no abnormalities and there was nothing wrong with the . . . Vehicle’s HVAC  
17 System.” (*Id.*) In the following months, “the odor emanating from the . . . Vehicle’s  
18 A/C vents became increasingly more-foul.” (*Id.* ¶ 22.) Further, Bettles noticed that  
19 “the smell would intensify when he switched from A/C mode to regular fan mode” and  
20 was immediately noticeable upon a cold start. (*Id.*)

21 On December 1, 2017, Bettles again brought the Vehicle to the Dealership due  
22 to “continued and worsening odors” emanating from the Vehicle’s HVAC system. (*Id.*  
23 ¶ 23.) During this visit, Bettles informed the Dealership “of his belief that a  
24 defect . . . was causing the foul odor to emanate from the Vehicle’s HVAC System.”  
25 (*Id.* ¶ 24.) A supervisor at the Dealership subsequently stated there have been  
26 “thousands of similar complaints about smells from these kinds of cars.” (*Id.* ¶ 26.)

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28 <sup>1</sup> After carefully considering the papers filed in support of the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 Bettles alleges that “[he] had no way to know of the existence of the defect in  
2 his . . . Vehicle . . . until the moment that the Dealership’s supervisor explicitly  
3 admitted the defect.” (*Id.* ¶ 28.) Bettles alleges that, although Toyota knew of the defect  
4 in the HVAC system, Toyota “fraudulently, intentionally, negligently and/or recklessly  
5 omitted and concealed from [him]” information about the defective HVAC system. (*Id.*  
6 ¶ 46.)

7 On September 22, 2021, Bettles filed the Complaint. (Compl., ECF No. 1.) After  
8 Toyota moved to dismiss the Complaint and Bettles voluntarily dismissed two of his  
9 claims, the Court found that Bettles’s remaining claims were time-barred. (Order  
10 Granting Mot. Dismiss (“Order”) 5, ECF No. 52.) However, the Court provided Bettles  
11 with leave to amend to allege facts supporting the application of the discovery rule.  
12 (*Id.*) Bettles then filed the First Amended Complaint, asserting four causes of action on  
13 behalf of himself and members of a putative class: (1) violations of California’s Unfair  
14 Competition Law; (2) breach of express warranty; (3) violation of the Song-Beverly  
15 Consumer Warranty Act for breach of express warranties; and (4) violations of the  
16 Song-Beverly Warranty Act for breach of implied warranties. (*See* FAC ¶¶ 110–63.)  
17 With his amended allegations, Bettles seeks to toll the statute of limitations by invoking  
18 the discovery rule and the fraudulent concealment doctrine. (*Id.* ¶¶ 95–99.) Toyota  
19 again moves to dismiss Bettles’s claims on the basis that they are time-barred and  
20 Bettles fails to allege an applicable tolling doctrine. (*See generally* Mot.)

### 21 III. LEGAL STANDARD

22 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable  
23 legal theory or insufficient facts pleaded to support an otherwise cognizable legal  
24 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). To  
25 survive a dismissal motion, a complaint need only satisfy “the minimal notice pleading  
26 requirements of Rule 8(a)(2)” — “a short and plain statement of the claim.” *Porter v.*  
27 *Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The “[f]actual allegations must be enough to  
28 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S.

1 544, 555 (2007). Pursuant to this standard, the complaint must “contain sufficient  
2 factual matter, accepted as true, to state a claim to relief that is plausible on its face.”  
3 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

4 The determination of whether a complaint satisfies the plausibility standard is a  
5 “context-specific task that requires the reviewing court to draw on its judicial  
6 experience and common sense.” *Id.* at 679. A court is generally limited to the pleadings  
7 and must construe “[a]ll factual allegations set forth in the complaint . . . as true and . . .  
8 in the light most favorable” to the plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668,  
9 688 (9th Cir. 2001) (internal quotation marks omitted). However, a court need not  
10 blindly accept “allegations that are merely conclusory, unwarranted deductions of fact,  
11 or unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988  
12 (9th Cir. 2001). Ultimately, there must be sufficient factual allegations “to give fair  
13 notice and to enable the opposing party to defend itself effectively,” and “the factual  
14 allegations that are taken as true must plausibly suggest an entitlement to relief, such  
15 that it is not unfair to require the opposing party to be subjected to the expense of  
16 discovery and continued litigation.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

17 Where a district court grants a motion to dismiss, it should generally provide  
18 leave to amend unless it is clear the complaint could not be saved by any amendment.  
19 *See* Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025,  
20 1031 (9th Cir. 2008). Thus, leave to amend “is properly denied . . . if amendment would  
21 be futile.” *Carrico v. City & Cnty. of San Francisco*, 656 F.3d 1002, 1008 (9th Cir.  
22 2011).

#### 23 IV. DISCUSSION

24 The parties agree that each of Bettles’s claims is subject to a four-year statute of  
25 limitations. (Mot. 7; Opp’n 1.) In California, “a cause of action [generally] accrues at  
26 the time when the cause of action is complete with all of its elements.” *Fox v. Ethicon*  
27 *Endo-Surgery, Inc.*, 35 Cal. 4th 797, 806 (2005) (internal quotation marks omitted).  
28 Thus, here, because Bettles took possession of the allegedly defective Vehicle on

1 December 3, 2016, (FAC ¶ 17), the statute of limitations expired on Bettles’s claims in  
2 December 2020 unless a tolling doctrine applies.

3 Bettles argues that the delayed discovery rule and fraudulent concealment  
4 doctrine tolled the statute of limitations. Because Bettles’s claims are subject to a  
5 four-year statute of limitations and he filed the Complaint on September 22, 2021,  
6 (Compl.), he must show that the statute of limitations was tolled until at least September  
7 2017.

8 **A. Discovery Rule**

9 “[T]he discovery rule postpones accrual of a claim until ‘the plaintiff discovers,  
10 or has reason to discover, the cause of action.’” *Clemens v. DaimlerChrysler Corp.*,  
11 534 F.3d 1017, 1024 (9th Cir. 2008) (quoting *Norgart v. Upjohn Co.*, 21 Cal. 4th 383,  
12 389 (1999)). To employ the discovery rule, the plaintiff “must specifically plead facts  
13 to show (1) the time and manner of discovery *and* (2) the inability to have made earlier  
14 discovery despite reasonable diligence.” *Fox*, 35 Cal. 4th at 808. Thus, the plaintiff  
15 must plead facts demonstrating that, “despite diligent investigation of the circumstances  
16 of the injury, he or she could not have reasonably discovered facts supporting the cause  
17 of action within the applicable statute of limitations period.” *Id.* at 809.

18 *1. Time and Manner of Discovery*

19 “The discovery rule only delays accrual until the plaintiff has, or should have,  
20 inquiry notice of the cause of action.” *Id.* at 807. “[P]laintiffs are charged with  
21 presumptive knowledge of an injury if they have information of circumstances to put  
22 [them] on inquiry or if they have the opportunity to obtain knowledge from sources  
23 open to [their] investigation.” *Id.* at 808 (alterations in original; internal quotation  
24 marks and emphases omitted).

25 Here, Bettles alleges that he could not have discovered that the Vehicle’s HVAC  
26 System was defective “until the moment that the Dealership’s supervisor explicitly  
27 admitted the defect” during Bettles’s second visit to the Dealership on December 1,  
28 2017. (FAC ¶ 28.) At the same time, however, Bettles alleges facts that show he had,

1 or should have had, inquiry notice prior to that moment. *See Sprewell*, 266 F.3d at 988  
2 (“[A] plaintiff can . . . plead himself out of a claim by including unnecessary details  
3 contrary to his claims.”).

4 Bettles alleges that, as early as “the Spring of 2017,” he observed a persistent foul  
5 odor emanating from the air-conditioning vents of the Vehicle. (FAC ¶ 20.) This  
6 prompted Bettles to take the Vehicle to the Dealership in approximately May 2017,  
7 where he advised a service representative “of the foul odor that had been emanating  
8 from the A/C vents.” (*Id.* ¶ 21.) Despite the Dealership’s representation that “there was  
9 nothing wrong with the . . . Vehicle’s HVAC system,” the problem persisted and  
10 worsened. (*Id.* ¶¶ 21–23.) Bettles further alleges that he returned to the Dealership for  
11 a second visit on December 1, 2017. (*Id.* ¶ 23.) Prior to the Dealership supervisor’s  
12 explicit admission of the defect, Bettles advised the supervisor of his preexisting “belief  
13 that a defect in the . . . Vehicle was causing the foul odor to emanate from the Vehicle’s  
14 HVAC System” and that the warranty required Toyota to repair “the defect.” (*Id.* ¶ 24.)  
15 These facts indicate that Bettles was on inquiry notice of the alleged defect before the  
16 moment that the supervisor explicitly admitted the defect. *See Durkee v. Ford Motor*  
17 *Co.*, No. C 14-0617-PJH, 2014 WL 7336672, at \*7 (N.D. Cal. Dec. 24, 2014) (finding  
18 that “first or second repair” of car within the same category of repair would “put a  
19 reasonable person on inquiry notice that there had been a breach”).

20 Moreover, in the First Amended Complaint, Bettles identifies numerous  
21 complaints made to the National Highway Traffic Safety Administration (“NHTSA”),  
22 posts on Internet forums, and litigation concerning the alleged defect. (FAC ¶¶ 58–67.)  
23 The cited complaints and posts are dated as early as 2002. (*Id.* ¶ 61.) Thus, this  
24 information was available to Bettles more than four years before he brought this action,  
25 and Bettles is charged with presumptive knowledge of information that he could have  
26 obtained from sources open to his investigation. *Fox*, 35 Cal. 4th at 807–08.

27 Together, Bettles’s allegations establish that he “ha[d], or should have [had],  
28 inquiry notice of the cause of action” prior to September 2017. *Fox*, 35 Cal. 4th at 807.

1                                    2. *Inability to Make an Earlier Discovery Despite Diligent Investigation*

2                    Moreover, Bettles fails to allege that he diligently investigated the defect. *See*  
3 *Fox*, 35 Cal. 4th at 808. For the discovery rule to apply, a plaintiff “must specifically  
4 plead facts to show . . . the inability to have made earlier discovery despite reasonable  
5 diligence.” *Fox*, 35 Cal. 4th at 808. “In other words, plaintiffs are required to conduct  
6 a reasonable investigation after becoming aware of an injury, and are charged with  
7 knowledge of the information that would have been revealed by such an investigation.”  
8 *Id.* Even when a dealership represents that there is nothing wrong with a car, a plaintiff  
9 with inquiry notice of a persistent problem must pursue other available avenues of  
10 inquiry. *See Zimmerman v. Ford Motor Co.*, No. 5:18-cv-02149-JLS (SPx), 2019 WL  
11 6481695, at \*3–4 (C.D. Cal. Sept. 20, 2019) (finding injury could have been diagnosed  
12 by third-party inspection of engine); *Drake v. Toyota Motor Corp.*, No. 2:20-cv-01421-  
13 SB (PLAx), 2021 WL 2024860, at \*2 (C.D. Cal. May 17, 2021) (finding that “[e]ven a  
14 quick internet search could have revealed the defect”); *Madani v. Volkswagen Grp. of*  
15 *Am., Inc.*, No. 17-cv-07287-HSG, 2019 WL 3753433, at \*8 (N.D. Cal. Aug. 8, 2019)  
16 (finding “dealer’s statement does not render meaningless [plaintiff’s] knowledge of his  
17 vehicle’s manifestations of the alleged defect”).

18                    Here, Bettles alleges that the foul odor emanating from the Vehicle’s air  
19 conditioning vents “became increasingly more-foul” even after the Dealership advised  
20 that “there was nothing wrong with the . . . HVAC system” in approximately May 2017.  
21 (FAC ¶¶ 21–22.) However, Bettles fails to allege that he undertook any steps to  
22 investigate the alleged defect beyond returning to the Dealership a second time  
23 approximately six months later. (*Id.* ¶¶ 21–23.) This does not constitute a diligent  
24 investigation when Bettles knew the problem with the Vehicle was ongoing, and he  
25 failed to pursue other available avenues of investigation. *See Drake*, 2021 WL  
26 2024860, at \*3 (finding “[t]he ‘reasonable investigation’ requirement is not satisfied by  
27 pursuing a plainly futile course of action—at least not when other avenues of pursuit  
28 are readily and obviously available”). For example, given the widespread nature of the

1 alleged defect, “a quick internet search could have revealed the defect.” *Id.* at \*2. In  
2 fact, in the First Amended Complaint, Bettles identifies numerous sources of  
3 information concerning the defect that would have been revealed by such a search. *See*  
4 *supra* Part IV.A.1; (*see also* FAC ¶ 64 (alleging “querying the word ‘smell’ in the search  
5 function on Priuschat.com produces dozens of threads dedicated to discussing the  
6 Defective HVAC System in the Class Vehicles”)). Yet Bettles fails to allege that he  
7 conducted such a search or otherwise took steps to investigate the HVAC issue in the  
8 intervening six months between his visits to the Dealership. Because Bettles fails to  
9 allege facts that support that he conducted a diligent investigation, he cannot invoke the  
10 discovery rule.

11 Accordingly, the Court finds that Bettles does not allege sufficient facts to invoke  
12 the discovery rule to toll the statute of limitations.<sup>2</sup>

### 13 **B. Fraudulent Concealment Doctrine**

14 In addition to the discovery rule, Bettles seeks to toll the statute of limitations  
15 with the fraudulent concealment doctrine.

16 When a defendant fraudulently conceals a cause of action, the statute of  
17 limitations “is deemed not to become operative until the aggrieved party discovers the  
18 existence of the cause of action.” *Yumul v. Smart Balance, Inc.*, 733 F. Supp. 2d 1117,  
19 1131 (C.D. Cal. 2010). To invoke the fraudulent concealment doctrine, a plaintiff has  
20 the burden of pleading that: (1) the defendant affirmatively misled the plaintiff; (2) the  
21 plaintiff “had neither actual nor constructive knowledge of the facts giving rise to its  
22 claim”; and (3) the plaintiff was “diligen[t] in trying to uncover those facts.” *Conmar*  
23 *Corp. v. Mitsui & Co. (USA)*, 858 F.2d 499, 502 (9th Cir. 1999). Further, “[a]bsent a  
24 fiduciary relationship, nondisclosure is not fraudulent concealment—affirmative  
25 deceptive conduct is required.” *Yumul*, 733 F. Supp. 2d at 1131 (collecting cases).

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27 <sup>2</sup> Because the Court finds that Bettles fails to plead sufficient facts to invoke the discovery rule, the  
28 Court does not reach Toyota’s argument that the delayed discovery rule does not apply to Bettles’s  
breach of implied warranty claim. (Mot. 7–8.)



1 “Fraudulent concealment tolling must be [pleaded] with particularity under Fed. R. Civ.  
2 P. 9(b).” *Finney v. Ford Motor Co.*, No. 17-CV-06183-JST, 2018 WL 2552266, at \*3  
3 (N.D. Cal. June 4, 2018); *see also Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir.  
4 2007) (holding fraud allegations must be pleaded with “more specificity including an  
5 account of the time, place, and specific content of the false representations as well as  
6 the identities of the parties to the misrepresentations” (internal quotation marks  
7 omitted)).

8 Bettles fails to set forth sufficient factual allegations to support the application of  
9 the fraudulent concealment doctrine. Regardless of whether Bettles must plead  
10 affirmative deceptive conduct—rather than mere nondisclosure—on the part of Toyota,  
11 Bettles fails to plead facts supporting the second and third requirements of the  
12 fraudulent concealment doctrine. For the reasons discussed above, *see supra* Part  
13 IV.A.1, Bettles’s factual allegations indicate that Bettles had or should have had  
14 knowledge of the facts giving rise to his claim more than four years before he brought  
15 this action. Moreover, Bettles fails to plead that he was diligent in trying to uncover  
16 those facts. *See supra* Part IV.A.2.

17 Accordingly, the Court finds that Bettles fails to plead a basis for the application  
18 of the fraudulent concealment doctrine to toll the statute of limitations.

### 19 **C. Leave to Amend**

20 Further, the Court concludes that leave to amend is not warranted. “[W]here the  
21 Plaintiff has previously been granted leave to amend and has subsequently failed to add  
22 the requisite particularity to its claims, the district court’s discretion to deny leave to  
23 amend is particularly broad.” *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981,  
24 1007 (9th Cir. 2009) (internal quotation marks omitted). Here, the Court already  
25 provided Bettles an opportunity to amend his pleadings to “claim the benefit of the  
26 discovery rule.” (Order 4–5.) The Court explained that Bettles must plead specific  
27 facts to show “the time and manner of his discovery of the facts supporting his claims”  
28 and an “inability to have made an earlier discovery.” (*Id.* at 5.) However, as explained

1 above, Bettles fails to do so in the First Amended Complaint. In addition, Bettles does  
2 not plead sufficient facts to toll the statute of limitations pursuant to the fraudulent  
3 concealment doctrine.<sup>3</sup> Given Bettles’s previous opportunity to cure the deficiencies in  
4 his claims to overcome the statute of limitations, Bettles’s failure to plead sufficient  
5 facts in the First Amended Complaint indicates that further amendment would be futile.  
6 *See Zucco Partners*, 552 F.3d at 1007 (finding failure to cure pleading deficiencies is  
7 “strong indication that the plaintiffs have no additional facts to plead”).

8 **V. CONCLUSION**

9 For the foregoing reasons, the Court **GRANTS** Toyota’s Motion to Dismiss  
10 Bettles’s First Amended Complaint **without leave to amend and with prejudice**.  
11 (ECF No. 54.)

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13 **IT IS SO ORDERED.**

14  
15 December 13, 2022

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19 **OTIS D. WRIGHT, II**  
20 **UNITED STATES DISTRICT JUDGE**

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28 <sup>3</sup> Toyota argues that Bettles’s allegations concerning fraudulent concealment exceed the scope of the Court’s grant of leave to amend. (Reply 9 n.5.) The Court need not reach this argument because the Court finds that the fraudulent concealment doctrine does not apply.