

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

BRADLEY K. ZIERKE, on behalf of
himself and all others similarly
situated,

Plaintiff,

Case No.
Hon.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

vs.

**GENERAL MOTORS LLC,
GENERAL MOTORS COMPANY,
GENERAL MOTORS HOLDINGS LLC, AND
GM LLC**

Defendants.

Plaintiff, Bradley K. Zierke, individually and on behalf of the other members of the below-defined nationwide and statewide classes he seeks to represent (collectively, the “Class”) hereby alleges against Defendants GENERAL MOTORS LLC, GENERAL MOTORS COMPANY, GENERAL MOTORS HOLDINGS LLC, and GM, LLC (referred to collectively as “GENERAL MOTORS”), states as follows:

INTRODUCTION

1. The 2010-2013 General Motors vehicles equipped with Generation IV 5.3 Liter V8 Vortec 5300 engines (the “Class Vehicles”) suffer from a systematic defect that enables oil to enter the engine’s combustion chamber. Specifically, the piston rings, PVC system, and Active Fuel Management (“AFM”) System used in the Class Vehicle’s engines were defective causing excessive oil consumption, premature spark plug degradation, and engine malfunction. These defects were present when the vehicles were manufactured and sold and its issues can

unpredictably manifest itself at any time.

2. While oil lubrication of moving engine parts is necessary, there are certain parts of the engine—notably the combustion cylinder—where the oil’s presence can result in damage to the engine and excessive oil consumption. Keeping oil out of the combustion cylinder is so important that manufacturers design and build valve guide seals and piston rings to keep oil from contaminating the combustion cylinder. If those seals fail, it results in a loss of lubrication throughout the engine which, in addition to destroying the engine, may cause loss of power during acceleration, white or other colored smoke to be emitted from the exhaust, and the vehicle entering a “safe mode” where the engine may suddenly shut-off or run improperly until the issue can be addressed by a mechanic.

3. For model years 2010-2013, General Motors continued manufacturing Class Vehicles with these defects that General Motors knew or should have reasonably known about because these defects were present when these engines were first manufactured in 2006 and after General Motors acquired the assets of its previous company via the 2009 General Motors Corp.’s bankruptcy.

4. These three defective components allowed oil to enter the engine’s combustion process. More specifically: (1) the defective piston rings within the engines failed to stop engine oil from making its way into the engine’s combustion chamber, allowing it to burn as part of the combustion process; (2) the defective PCV system’s location allowed oil to migrate from the intake manifold into the combustion chambers, allowing it to burn as part of the combustion process; and (3) the AFM system allowed oil to accumulate in the combustion chamber of cylinders that were shut-off by the system employed to improve mileage performance, resulting in accumulated oil to burn as part of the combustion process.

5. This was further compounded by General Motors' use of its "Oil Life Monitoring System" that lulled drivers into driving for thousands of miles without knowledge of low engine oil levels because it only served as a device to let drivers know when to change oil.

6. For 2014 models, General Motors took steps to correct these defects but that was too late for the people that owned or leased Class Vehicles.

7. Because of General Motor's practices, Plaintiff and the other members of the putative class have suffered injuries, including economic damages relating to having their engines fixed or replaced. As a result, Plaintiff sues General Motors alleging the following causes of action:

- a. Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301 *et seq.*;
- b. Fraud by Concealment;
- c. Violation of Minnesota Consumer Fraud and Deceptive Business Practices Act (Minn. Stat. §§ 325D.13 and 325F.69);
- d. Negligence;
- e. Strict Liability; and
- f. Breach of Express Warranty.

PARTIES

8. Plaintiff Bradley K. Zierke is a citizen and resident of Elmore, Minnesota.

9. Defendant General Motors, LLC is registered in Minnesota as a foreign limited liability company with a registered agent located at 2345 Rice Street, Suite 230, Roseville, Minnesota, 55113. It is organized as a Delaware limited liability company with its principal place of business located at or near 300 Renaissance Center, Detroit, Michigan. It is a citizen of the States of Delaware and Michigan and it regularly conducts business in this District.

10. The sole member and owner of General Motors LLC is General Motors Holdings LLC. General Motors Holdings LLC is a Delaware limited liability company with its principal

place of business in the State of Michigan. General Motors Holdings LLC is a citizen of the states of Delaware and Michigan.

11. The sole member and owner of General Motor Holdings LLC is General Motors Company, which is a Delaware Corporation with its principal place of business in the State of Michigan, and is a citizen of the States of Delaware and Michigan.

12. Defendant GM LLC is a Delaware limited liability company with its principal place of business located at or near 300 Renaissance Center, Detroit, Michigan, and is a citizen of the States of Delaware and Michigan.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action under the Class Action Fairness Act, the relevant portion of which is codified at 28 U.S.C. §§ 1332 (a) and (d) because the amount in controversy for the Class exceeds \$5,000,000 and Plaintiff and other Class members are citizens of a different state than General Motors.

14. This Court has jurisdiction over General Motors because it has sufficient minimum contacts in Minnesota; or otherwise intentionally avails itself to the markets within Minnesota through the manufacturing, promotion, sale, marketing, and distribution of its vehicles to render the existence of jurisdiction by this Court proper and necessary. Moreover, General Motors' wrongful conduct as described below occurred in Minnesota.

15. Venue is proper in the District under 28 U.S.C. §1391(a)(2) because all or part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

GENERAL ALLEGATIONS

16. Plaintiff re-alleges and incorporates all previous and succeeding paragraphs herein.

17. General Motors markets, distributes, and warrants its vehicles throughout the

United States.

18. In 2007, General Motors Corp. made changes to its 5300 engines in hopes of improving performance. This resulted in the manufacture of Generation IV Vortec 5300 engines from 2007 through 2009. After General Motors, Corp. filed bankruptcy in 2009, General Motors acquired its assets and continued manufacturing and selling truck and SUVs with the General IV Vortec 5300 engines.

19. The 2007 changes, that continued through at least 2013, included:

- a. the introduction of new piston rings meant to increase horsepower but resulted in oil being allowed to migrate into the combustion process where it was burned.
- b. the introduction of a new PCV system that allowed oil to be sucked through the intake and into the combustion chamber instead of acting to capture excess gas.
- c. the introduction of the AFM system that allowed a computer system to shut-off cylinders as a fuel saving measure. Unfortunately, this resulted in oil accumulating in those cylinders until they were fired and the accumulated oil was burned off.

20. Since they were first introduced, these engines suffered from defects that resulted in excessive oil consumption and General Motors was or should have been aware of these defects. These defects outweighed any advantage the engines provided.

21. General Motors widely advertises that its trucks and SUVs are “Chevy Tough,” “Professional Grade,” and safe and reliable.

22. The Class vehicles at issue in this litigation include:

- a. 2010-2013 Chevrolet Avalanche;
- b. 2010-2013 Chevrolet Express 1500;
- c. 2010-2013 Chevrolet Silverado 1500;
- d. 2010-2013 Chevrolet Suburban;
- e. 2010-2013 Chevrolet Tahoe;

- f.* 2010-2013 Chevrolet Colorado;
- g.* 2010-2013 GMC Yukon;
- h.* 2010-2013 GMC Yukon XL;
- i.* 2010-2013 GMC Sierra 1500;
- j.* 2010-2013 GMC Savana 1500; and
- k.* 2010-2013 GMC Canyon;

23. General Motors provides owners and lessees of Class Vehicles with 5 Years/60,000

Miles Powertrain Warranties.

Its engine warranty covers:

All internally lubricated parts, engine oil, cooling hoses and lines. Also included are all actuators and electrical components internal to the engine, cylinder head, block, timing gears, timing chain, timing cover, oil pump/oil pump housing, OHC carriers, valve covers, oil pan, seals, gaskets, turbocharger, supercharger and all internal lubricated parts as well as manifolds, flywheel, water pump, harmonic balancer and engine mount. Timing belts are covered until the first scheduled maintenance interval.

24. This warranty is for repairs which are required as a result of defects due to material and/or workmanship to the Powertrain components.

25. Additionally, federal law, 42 U.S.C. § 7541, requires General Motors to provide to owners and lessees of Class Vehicles a Federal Emissions-related Defects warranty, which among other things, requires General Motors to meet all state and federal emissions standards.

26. The defect in the Class Vehicles is in the design and/or manufacture of the engine piston rings, PCV system, and AFM system which failed to limit the entry of oil into the engine's combustion cylinders.

27. The defect causes oil to seep into the combustion cylinder of their engines as a higher rate and/or in greater quantities than intended. This causes the oil to be burned, along with

fuel, as part of the truck's combustion process. Engines are not designed to burn oil in such amounts and/or at such rates because doing so chokes others parts of the engine of the oils lubricating properties. Additionally, the presence of oil in the combustion cylinder causes damage to other engine parts and components, including the spark plugs. This causes the consumer to continuously monitor oil levels in their Class Vehicles. Worse, they are forced to replace the oil at higher rates than reasonably expected and will eventually incur bills for repairs of damaged components due to the oil's presence in the combustion cylinder.

28. To date, General Motors has failed to correct this defect in Class Vehicles.

29. Because the defective engines require repairs within the Powertrain Warranty period, General Motors refusal to repair the problem free of charge or even acknowledge that the problem exists harms Plaintiff because it requires them to repair or replace their engines at their expense.

30. Furthermore, General Motor's refusal to permanently repair the defect harms Plaintiff by diminishing the Class Vehicle's reputation for reliability, thereby decreasing the Class Vehicle's resale value.

31. Based upon information and belief, numerous consumers have lodged complaints at dealerships and on websites about this defect. Specifically, in October 2010, a General Motors Truck owner posted a complaint stating that General Motor's response that consuming a quart of oil every 1,000 miles was acceptable.¹ On September 28, 2010, in response to numerous complaints, General Motors issued Technical Service Bulletin # 10-06-01-008A addressing engine oil consumption in its 2007-2008 models. These complaints followed the Class Vehicles and on January 3, 2013, General Motors issued another Technical Service Bulletin #10-06-01-008G

¹ See <http://www.gm-trucks.com/forums/topic/120292-531-consuming-oil/>

addressing oil consumption issues with 2007-2011 models. This means General Motors issued at least seven Technical Service Bulletins from 2010-2013 to address Class Vehicles' excessive oil consumption. Despite this, General Motor failed to contact Class members and inform them about this issue.

32. While General Motors recommends that its customers should check the Class Vehicle's oil level every time they fill up their truck, consumers are still required to purchase oil at a higher rate than they would have to if the defect did not exist.

33. General Motors, while knowing of this defect, actively concealed it from consumers. When owners and lessees of Class Vehicles ask whether their truck suffers from a known defect, General Motor's policy is to deny that there is a known problem and assert that losing more than 1 quart of oil per 1,000 miles driven is normal.

34. General Motors directed service departments at its dealerships to conceal this known defect, resulting in misleading and false information to its consumers.

35. Based upon information and belief, General Motors directed its dealerships' service departments to maintain its campaign of concealment through service bulletins, software updates, and a technician's telephone line.

36. General Motors authorized its dealerships' service departments to evaluate any mechanical issues that its vehicles may present. As a result, General Motors' dealerships spoke with as an agent of General Motors when they refused to admit any defect in the Class Vehicles. This ensured that all Class Vehicles were serviced under General Motor's control and direction and the warranty coverage was uniformly denied.

37. General Motors knew that potential consumers would deem the defect to be material such that they would have paid less or avoid buying Class Vehicles.

38. Because of General Motor's practices, Plaintiff and Class members purchased Class Vehicles they otherwise would not have purchased, paid more for those vehicles than they would have paid, unnecessarily paid, and will continue to pay, repair costs and oil replacement costs as a result of the defect, and suffered diminution of those vehicles' resale value.

PLAINTIFF'S EXPERIENCE

39. Plaintiff, Bradley Zierke, purchased a new 2012 Chevrolet Avalanche with General Motor's Generation IV Vortec 5300 in it from a Chevrolet dealership in Spirit Lake, Iowa. He decided to purchase the vehicle because of its price, because he thought it was a safe and reliable vehicle, and from owning similar 2005 model. General Motors failed to inform him that the engine was defective when the vehicle was purchased. Additionally, General Motors failed to inform him that he would have to add as much as one quart of oil for every 1,000 to 1,500 miles driven or that some of the engine's spark plugs would prematurely foul, requiring replacement of oil, and the engine itself, sooner than customary. Mr. Zierke would not have purchased this vehicle had he known about these defects.

40. Instead, he was required to use more oil than would have been reasonably expected for a new vehicle and has continued to frequently add needed oil.

41. In addition to frequently adding oil, Mr. Zierke had to replace spark plugs three times, at his expense, during the ownership of his truck. At 87,780 miles, his engine had to be replaced

42. This resulted in out-of-pocket expenses.

CLASS ACTION ALLEGATIONS

43. Plaintiff re-alleges and incorporates all previous and succeeding paragraphs herein.

44. Plaintiff brings this action on behalf of himself and a class of persons initially

defined as follows:

Nationwide Class:

All (i) current owners or lessees in the United States of 2010-2013 General Motors truck or SUV equipped with the Generation IV Vortec 5300 engine; and (ii) former owners or lessees in the United States of 2010-2013 General Motors truck or SUV with the Generation IV Vortec 5300 engine, who paid for a repair maintenance related to the defect or for oil replacements beyond what a reasonable consumer would expect.

Minnesota Class:

All Minnesota (i) current owners or lessees in the United States of 2010-2013 General Motors truck or SUV equipped with the Generation IV Vortec 5300 engine; and (ii) former owners or lessees in the United States of 2010-2013 General Motors truck or SUV with the Generation IV Vortec 5300 engine, who paid for a repair maintenance related to the defect or for oil replacements beyond what a reasonable consumer would expect.

45. Excluded from the Class are General Motors; any affiliate, parent, or subsidiary of General Motors; any entity in which General Motors has a controlling interest; any officer, director, or employee of General Motors; any successor or assign of General Motors; anyone employed by or for Plaintiff's counsel in this action; any Judge to whom this case is assigned, as well as his or her immediate family, staff, and anyone who purchased a Class Vehicle specifically for resale.

46. Numerosity. Members of the Class are so numerous that their individual joinder in this case is impracticable. Hundreds of thousands of Class Vehicles have been sold or leased in the United States, with a substantial portion of those occurring in Minnesota.

47. Predominance of Common Questions. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual members.

These common questions include:

- a. Whether General Motors provided Plaintiff and Class members with a vehicle

inherently defective in its ability to keep oil from burning in the engine's combustion chambers;

- b. Whether the fact that the engine is defective and required frequent oil replacement and early corrosion or failure of engine components would be considered material to reasonable consumers;
- c. Whether General Motors has a duty to disclose the defect to Plaintiff and Class members;
- d. Whether General Motors violated the Magnuson-Moss Warranty Act, 15 U.S.C. §2301 *et seq.*;
- e. Whether General Motors engaged in fraudulent activities when selling Class Vehicles;
- f. Whether General Motors violated the Minnesota Consumer Fraud Act (Minn. Stat. §§ 325D.13 and 325F.69) (Minnesota Class only);
- g. Whether General Motor committed negligence in the design, manufacture, or sale of Class Vehicle (Minnesota Class only);
- h. Whether General Motors is strictly liable to Plaintiff and the Class (Minnesota Class only);
- i. Whether General Motors breached its express warranty to Plaintiff and the Class by it refusing to repair the defect while the vehicle was under warranty (Minnesota Class members only);
- j. Whether Plaintiff and the Class members are entitled to equitable relief, including, but not limited to restitution or a preliminary and/or permanent injunction; and
- k. Whether Plaintiff and the other Class members are entitled to damages and other monetary relief.

48. Typicality. Plaintiff's claims are typical of the claims of the Class, because, among things, Plaintiff purchased Class Vehicles, which contain the same defect found in all other Class Vehicles.

49. Adequacy. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the Class members he seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation, and Plaintiff intends to

vigorously prosecute this action. Plaintiff and Plaintiff's counsel will fairly and adequately protect the interests of the Class members.

50. Superiority. The class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each Class member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against General Motors economically feasible. Even if Class members themselves could afford such individual litigation, the court system could not. In addition to the burden and expense of managing myriad actions arising from the defect, individualized litigation would increase the delay and expense to all parties and the court system presented by the legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

51. In the alternative, the Class may be certified because:

- a. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual Class members which would establish incompatible standards of conduct for General Motors;
- b. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and
- c. General Motors has acted or refused to act on grounds generally applicable to the Class thereby making appropriate final and injunctive relief with respect to the members of the Class as a whole.

FIRST CAUSE OF ACTION

**(Violation of the Magnuson-Moss Warranty Act 15 U.S.C. §§ 2301 *et seq.*)
(Nationwide Class)**

52. Plaintiff re-alleges and incorporates all previous and succeeding paragraphs herein.

53. Plaintiff brings this class on behalf of himself and a Nationwide Class, as defined above, against General Motors.

54. The Class Vehicles are “consumer products” under 15 U.S.C. § 2301(1).

55. Plaintiff and Class members are “consumers” under 15 U.S.C. § 2301(3).

56. General Motors are “suppliers” and “warrantors” within the meaning of 15 U.S.C. § 2301(4)-(5).

57. General Motors provided purchasers and lessees of Class Vehicles multiple written warranties as defined by 15 U.S.C. § 2301(6).

58. ***Manufacturer’s Warranty.*** General Motors provided Plaintiff and Class members who purchased a new Class Vehicle with a manufacturer’s Warranty, which covers defective engine related repairs. This warranty is applicable to Class Vehicles.

59. General Motors breached this warranty by selling Class Vehicles with defective engine parts.

60. General Motors’ breach of warranty has deprived Plaintiff and Class members the benefit of their bargain. The amount in controversy of the Plaintiff’s and Class member’s claims meets or exceeds \$25. In addition, the amount in controversy meets or excess the sum of \$50,000 (exclusive of interests and costs) computed based on all claims to be determined in this suit.

61. General Motors had multiple opportunities to disclose information concerning Class Vehicle’s inability to perform as warranted, and to cure its breach of warranties for years.

62. As a direct and proximate result of General Motors’ conduct, Plaintiff and Class members have suffered and continue to suffer damages, including economic damages at the point of sale or lease, that is, the difference between the value of the vehicle as promised and the value of the vehicle delivered. Plaintiff and Class members are entitled to legal and equitable relief against General Motors, including damages, specific performance, attorneys’ fees, costs and other relief as appropriate.

SECOND CAUSE OF ACTION
(Fraud by Concealment)
(Nationwide Class)

63. Plaintiff re-alleges and incorporates all previous and succeeding paragraphs herein.

64. Plaintiff brings this class on behalf of himself and a Nationwide Class, as defined above, against General Motors.

65. Since 2010 and potentially earlier, General Motors intentionally concealed and suppressed the material fact that the piston rings, PCV system, and AFM System used in the Class Vehicles' engines were defective and allowed oil to enter the combustion cylinder resulting damage to the engine, poorer emissions, and higher costs due to oil replacement.

66. General Motors had a duty to disclose the above facts because it had exclusive knowledge of the pleaded material facts and those facts were not known or reasonably discoverable by Plaintiff and Class members; because it actively concealed these material facts from Plaintiff and Class members; because it made representations about selling reliable Class Vehicles.

67. These facts were material because they directly impact the reliability, costs of ownership, and value of the Class Vehicles.

68. Plaintiff and Class members had no idea of and no way to discover General Motors' suppressed or concealed material facts. Plaintiff and Class members would not have purchased the Class Vehicles, or would have paid substantially less for them had General Motors not concealed or suppressed these material facts. Additionally, General Motors concealed these material facts when Plaintiff and Class members asked its dealers to find the cause and repair the Class Vehicles' defects.

69. Because of General Motors' fraudulent concealment, Plaintiff and Class members have lost significant value, entitling them to damages in an amount to be proven at trial.

70. Because General Motors' conduct was wanton, deliberate, oppressive, and malicious, or in reckless disregard of Plaintiff's and Class members' consumer and contractual rights, they are entitled to an award of punitive or exemplary damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(Violation of Minnesota Consumer Fraud Act, Minn. Stat. §§ 325 *et seq.*)
(Minnesota Class)

71. Plaintiff re-alleges and incorporates all previous and succeeding paragraphs herein.

72. This claim is brought on behalf of the Minnesota Class as defined above.

73. General Motors is a "person" as defined in Minn. Stat § 325D.10.

74. The Minnesota Consumer Fraud Act ("Minn. CFA") prohibits unlawful trade practices, including, but not limited to, misleading "consumers as to the quality, ingredients and origin of merchandise purchased..." Minn. Stat. § 325D.09. Specifically, "[n]o person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of such merchandise." Minn. Stat § 325D.13.

75. General Motors used or employed fraud, false pretense, false promise, misrepresentation, misleading statements or deceptive practices, as described above, with the intent that others rely thereon in connection with the sale of the Class Vehicles in violation of Minn. Stat. § 325F.69

76. General Motors participated in misleading, false, or deceptive acts that violated the Minn. CFA. By concealing the known defects in Class Vehicles, General Motors engaged in deceptive business practices prohibited by the Minn. CFA. The defects in each vehicle include not only the specific defect (e.g., bad piston rings, PCV system, and AFM system), but also include the defective process through which General Motors built cars, a process that included cost-cutting,

minimizing the importance of safety and lubrication issues, and the failure to follow acceptable engineering and inventory processes concerning parts management. These defective processes would be material to a reasonable consumer.

77. General Motors' actions, as set forth above, occurred in the conduct of trade or commerce.

78. During its business, General Motors concealed the defects in Class Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. General Motors also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, about the sale or lease of the Class Vehicles.

79. At all relevant times, General Motors knew of serious defects affecting Class Vehicles, but concealed that information from consumers.

80. By failing to disclose and by actively concealing the defects in the Class Vehicles, General Motors engaged in unfair and deceptive business practices in violation of the Minn. CFA.

81. In the course of General Motors' business, it willfully failed to disclose and actively concealed the dangerous risks posed by defects in the Class Vehicles.

82. General Motors' unfair or deceptive acts or practices were likely and did in fact deceive reasonable consumer, including Plaintiff and Class members, about the true safety and reliability of their vehicles.

83. General Motors intentionally and knowingly misrepresented material facts regarding the Class Vehicles with intent to mislead Plaintiff and Class members.

84. General Motors knew or should have known that its conduct violated the Minn. CFA.

85. As stated herein, General Motors made material statements about the safety and reliability of the Class Vehicles and General Motors' brand that were false or misleading.

86. General Motors owed Plaintiff and Class members a duty to disclose the true safety and reliability of the Class Vehicles because General Motors:

- a.* Possessed exclusive knowledge about the defects in the Class Vehicles;
- b.* Intentionally concealed the foregoing from Plaintiff and Class members;
- c.* Made incomplete representations about the safety and reliability of the Class Vehicles; and/or
- d.* Had duties under various laws and regulations to disclose and remedy the defects.

87. Because General Motors GM fraudulently concealed the defects in Class Vehicles, their owners were deprived of the benefit of their bargain since the vehicles they purchased were worth less than they would have been if they were free from defects. Further, Plaintiff and Class members had to spend their time and money to bring their Class Vehicles in for repair or by replacing lost oil. Had Class Vehicle owners been aware of the defects in their vehicles, they would have either not have bought their trucks or would have paid less for them.

88. General Motors' concealment of the defects in Class Vehicles was material to Plaintiff and Class members.

89. Plaintiff and Class members suffered ascertainable loss by General Motors' misrepresentations and its concealment of and failure to disclose the defects in its Class Vehicles. Plaintiff and Class members who purchased Class Vehicles would have paid less for their vehicles or not purchased or leased them at all.

90. General Motors had and has an ongoing duty to all Class Vehicle owners to refrain from unfair and deceptive acts or practices under the Minn. CFA.

91. General Motors' violations present a continuing risk to Plaintiff and Class members as well as to the public. In particular, and as alleged, Class Vehicles may run out of oil and stop working without notice, thereby affecting the public interest in less traffic congestion, less accidents and by the release of oil pollutants into the atmosphere.

92. As a direct and proximate result of General Motors' violations of the Minn. CFA, Plaintiff and Class members have suffered injury-in-fact and/or actual damages as alleged. As a direct result of General Motors' misconduct, Plaintiff and Class members incurred damages in at least the form of lost time required to repair their vehicles or refill the oil in their Class Vehicles.

93. Under Minn. CFA, Plaintiff and Class members seek monetary relief against General Motors in the amount of actual damages, as well as treble damages because General Motors acted with willful and wanton disregard for the rights or safety of another.

94. Plaintiff and Class members also seek and order enjoining General Motors unfair and/or deceptive acts or practices, treble damages, and attorneys' fees, and any other just and proper relief available under the Minn. CFA (*see* Minn. Stat. § 8.31, Subd. 3a).

FOURTH CAUSE OF ACTION

(Negligence)

(Minnesota Class)

95. Plaintiff re-alleges and incorporates all previous and succeeding paragraphs herein.

96. This claim is brought on behalf of the Minnesota Class.

97. General Motors had a duty to exercise reasonable care in the designing, manufacturing, advertising, warranting, and selling of Class Vehicles to ensure that its Class Vehicles were defect free.

98. General Motors failed to exercise reasonable care by selling Class Vehicles with defects.

99. Plaintiff and Class members suffered monetary damages as a direct and proximate result of General Motors selling defective Class Vehicles.

100. General Motors knew of should have known that consumers such as Plaintiff and Class members would foreseeably suffer injury because of its failure to exercise reasonable care set forth above.

FIFTH CAUSE OF ACTION
(Strict Liability)
(Minnesota Class)

101. Plaintiff re-alleges and incorporates all previous and succeeding paragraphs herein.

102. This claim is brought on behalf of the Minnesota Class.

103. At the time of the injuries Plaintiff and Class members suffered, General Motors' Class Vehicles were defective and unreasonably dangerous, in terms of cost and unpredictable break-down, to foreseeable consumers.

104. General Motors' Class Vehicles, used by Plaintiff and Class members are in the same or substantially similar condition as when they left dealer lots. In fact, consumers had to keep the Class Vehicles in the same or substantially similar condition when they left dealer lots as part of the terms of General Motors' warranty requirements.

105. General Motors knew or should have known, that its Class Vehicles were defective and would cause damages to Plaintiff and Class members.

106. Plaintiff and Class members did not misuse or materially alter the Class Vehicles.

107. General Motors knew or should have known that its defective Class Vehicles were defective and that it would cause damage to Plaintiff and Class members.

108. General Motors is strictly liable to Plaintiff and Class members in the following

ways:

- a.* It failed to design, manufacture and sell a defect-free vehicle;
- b.* It failed to disclose these defects to consumers; and
- c.* It failed to repair the defects.

109. Plaintiff and Class members could not, have discovered these defects.

110. General Motors actions and omissions were the direct and proximate cause of Plaintiff's and Class members' injuries and damages.

111. Thus, Plaintiff and Class members suffered the alleged damages.

**SIXTH CAUSE OF ACTION
(Breach of Express Warranty)
(Minnesota Class)**

112. Plaintiff re-alleges and incorporates all previous and succeeding paragraphs herein.

113. This claim is brought on behalf of the Minnesota Class.

114. General Motors expressly warranted the Class Vehicles with the warranties described herein, which became part of the basis of the bargain.

115. The engines and their component parts were manufactures and/or installed by General Motors and are covered by the express warranties.

116. General Motors breached the express warranties by:

- a.* Extending a New Vehicle Limited Warranty with the purchase or lease of Class Vehicles, thereby warranting to repair or replace any part defective in material or workmanship at no cost to the owner or lessee;
- b.* Extending a Powertrain Warranty with the with the purchase or lease of Class Vehicles, thereby warranting to repair or replace any part defective in material or workmanship at no cost to the owner or lessee;
- c.* Extending, by legal obligation, the Federal Emissions-related Defects Warranty, thereby warranting to repair or replace any part defective in material or workmanship at no cost to the owner or lessee;
- d.* Selling and leasing Class Vehicles with engines that were defective in material or

workmanship, requiring repair or replacement within the warranty periods; and

- e. Refusing to honor the express warranties by repairing or replacing, free of charge, the defective engine or any of its component parts.

117. Plaintiff and Class members notified General Motors of the breach within a reasonable amount of time and/or were not required to do so because affording General Motors a reasonable opportunity to cure its breach of written warranty would have been futile. General Motors was also on notice of the defect from the complaints and service requests it received from Class members, from repairs and/or replacement of the defective engine or components, and through its own maintenance records.

118. As a direct and proximate cause of General Motors' breach, Plaintiff and Class members have suffered damages and continue to suffer damages, including economic damages at the point of sale or lease that is the difference between the value of the vehicle promised and the value of the vehicle delivered. Additionally, Plaintiff and Class members either have incurred or will incur economic damages at the point of repair in form the of the cost of repair and replacement oil.

119. Plaintiff and Class members are entitled to legal and equitable relief against General Motors, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs, and other relief as appropriate.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

- a. For an order certifying this matter a class action and appointing Plaintiff and his counsel to represent the Class;
- b. For an order awarding Plaintiff and Class members damages, consequential damages, specific performance, and/or rescission;
- e. For an order awarding Plaintiff and Class members restitution, or other equitable relief as the Court deems proper;

- f. For an order enjoining General Motors from continuing to engage in unlawful conduct and business practices as alleged;
- g. For an order awarding Plaintiff and Class members pre- and post-judgment;
- h. For an order awarding Plaintiff and Class members reasonable attorneys' fees and costs; and
- i. For an order awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

Date: December 14, 2016

Respectfully Submitted,

/s David H. Grounds
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