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Hearing Date: February 10, 2010
Opposition Due By January 28, 2010

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
MOTORS LIQUIDATION COMPANY f/k/a GENERAL MOTORS CORPORATION	:	Case No. 09-50026 (REG)
Defendant.	:	Jointly Administered

NOTICE OF MOTION OF PLAINTIFFS IN THE ACTION ENTITLED *SIDNER et al. v. GENERAL MOTORS CORPORATION*, FOR ENTRY OF AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1)

PLEASE TAKE NOTICE that, pursuant to his Motion submitted herewith, the authorities cited therein, and the referenced Exhibit(s) attached thereto, Movant, David Sidner ("**Movant**"), will move this Court, before the Honorable Robert E. Gerber, United States Bankruptcy Judge, in Courtroom 621 at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004, on **February 10, 2010, at 9:45 a.m.**, for an order modifying the automatic stay pursuant to Section 362(a) of Title 11 of the United States Code and Rule 4001 of the Federal Rules of Bankruptcy to enable **Movant** to proceed with his action, brought on behalf of himself and all others similarly

situated, captioned *Sidner et al. v. General Motors Corporation,* 2:07-cv-0892-FCD-GGH, and pending in the United States District Court for the Eastern District of California, for breach of express warranty and related claims against General Motors Corporation ("GM" or the "Debtor").

Dated: January 11, 2010

By: */s/Patrick A. Klingman*

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CERTIFICATE OF SERVICE

I hereby certify that, on this 11th day of January, 2010, the foregoing Notice of Motion, together with supporting Motion and referenced Exhibit(s), attached thereto, were filed electronically with the United States Bankruptcy Court for the Southern District of New York via the ECF system. Courtesy copies of the foregoing were also sent to:

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/s/ *Patrick A. Klingman*
Patrick A. Klingman (PK-3658)

Hearing Date: February 10, 2010
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In re:	:	Chapter 11
MOTORS LIQUIDATION COMPANY f/k/a GENERAL MOTORS CORPORATION	:	Case No. 09-50026 (REG)
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MOTION OF PLAINTIFFS IN THE ACTION ENTITLED *SIDNER et al. v. GENERAL MOTORS CORPORATION*, FOR ENTRY OF AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1)

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CERTIFICATION OF COUNSEL

On Friday, January 8, 2010, counsel for Movant, David Sidner, conferred with Evan Lederman of Weil, Gotshal & Manges, LLP, counsel for Debtor, General Motors Corporation, regarding Movant's request that he be granted relief from the automatic stay resulting from General Motors Corporation's Bankruptcy filing. Mr. Lederman indicated that his client was unwilling to agree to lift the stay in order to allow Movant to pursue his actions against General Motors Corporation. As a result, Movant files the instant motion. The parties agreed that General Motors Corporation would respond to the instant motion seventeen days after its filing, or by Thursday, January 28, 2010.

INTRODUCTION

David Sidner ("**Movant**" or "**Sidner**"), plaintiff in the action captioned *Sidner et al. v. General Motors Corporation,* 2:07-cv-0892-FCD-GGH, and pending in the United States District Court for the Eastern District of California*,* on behalf of himself and all other similarly situated, by his undersigned attorneys, seeks an order modifying the automatic stay pursuant to Section 362(a) of Title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 4001 of the Federal Rules of Bankruptcy (the "**Bankruptcy Rules**") to enable him to proceed with his action for breach of express warranty and related claims against General Motors Corporation ("**GM**" or the "**Debtor**"). In support of this motion, Movant respectfully alleges as follows:

BACKGROUND

1. The initial Complaint in this matter was filed by Movant, on October 23, 2008, and asserted claims under the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.* ("**MMWA**"), the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 *et seq.*

("**OCSPA**") and for breach of express warranty and unjust enrichment. On February 23, 2009, Movant clarified his allegations in a First Amended Complaint ("**FAC**"). Debtor filed its Answer on March 30, 2009.

2. The FAC is attached hereto as **Exhibit "A"** and its allegations are incorporated as if set forth fully herein.

3. The FAC alleges claims, on behalf of a nationwide Class of GTO owners and lessees in the United States, excluding owners and lessees in the states of California and Florida, that Pontiac's GTO automobiles, which were marketed and sold in the United States by Debtor, contain a uniformly defective suspension and alignment system that substantially affects their use, value, and safety.[1] (FAC, ¶¶ 1-3.) As a result, GTO purchasers and lessees are being deprived of the normal and reasonable use of the Vehicles. (FAC, ¶ 2.)

4. Debtor provided Movant and each owner and lessee of the Vehicles with the same uniform 3 year, 36,000 mile bumper-to-bumper factory warranty. Debtor's express warranty, in pertinent part, provides:

> The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period.
>
> * * * * * * *
>
> Warranty repairs, including towing, parts, and labor, will be made at no charge.
>
> * * * * * * *
>
> The tires supplied with your vehicle are covered against defects in material or workmanship under the Bumper-to-Bumper coverage. Any tire replaced will continue to be warranted for the remaining portion of the Bumper-to-Bumper coverage period.

[1]The GTO was manufactured for just three model years, 2004-2006, all of which are part of this action. (FAC, ¶¶ 1).

Under this warranty, Debtor was obligated, *inter alia*, (1) to replace Plaintiff's prematurely worn tires at no charge; (2) to repair and adjust the improper suspension and alignment settings, which was necessitated by the defect, at no charge; and (3) to repair the defect at no charge. Debtor has these same obligations with respect to Movant and all Class members, but has failed to satisfy these obligations. (FAC, ¶ 20.)

5. Debtor also included misleading and deceptive information in the warranty information provided to Movant and Class members, by its (false) promise that the factory alignment was sufficient for the vehicle. According to the GTO owner manual: "The wheels on your vehicle were aligned and balanced carefully at the factory to give you the longest tire life and best overall performance. Scheduled wheel alignment and wheel balancing are not needed. However, if you notice unusual tire wear or your vehicle pulling one way or the other, the alignment may need to be reset. If you notice your vehicle vibrating when driving on a smooth road, your wheels may need to be rebalanced." Despite these promises and obligations, GM denied warranty coverage to Movant and Class members.

6. As set forth fully in the FAC, the Debtor's breach of warranty resulted in substantial economic losses to Movant and Class members.

7. On June 1, 2009 (the "**Petition Date**"), the Debtor filed a voluntary Chapter 11 petition (the "**Petition**") in this Court.

8. On June 9, 2009, the United States District Court for the Eastern District of California stayed Movant's action against Debtor as a result of the bankruptcy filing.

ARGUMENT

Movant is entitled to relief from the automatic stay because the Debtor is unable to provide adequate protection and because his action is the type of action for which this Court found relief to be appropriate and available in its July 5, 2009 Order (the "**Order**").

Section 362(d) of the Bankruptcy Code provides, in relevant part:

> (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay ...
>
> > (1) for cause, including the lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. § 362 (d).

If a movant can demonstrate that any of the grounds set forth in § 362(d) are met, a court must grant relief from the automatic stay. *See In re Elmira Litho Inc.*, 174 B.R. 892, 900 (Bankr. S.D.N.Y. 1994) (*citing In re Touloumis*, 170 B.R. 825, 827 (Bankr. S.D.N.Y. 1994); *In re de Kleinman*, 156 B.R. 131, 136 (Bankr. S.D.N.Y. 1993); *In re Diplomat Elecs. Corp.*, 82 B.R. 688, 692 (Bankr. S.D.N.Y. 1988)).

Here, Movant respectfully submits that unless the automatic stay is lifted, Movant, and Class members, will be completely deprived of their ability to pursue their meritorious claims for breach of warranty, MMWA and OCSPA violations against Debtor. Without relief from the automatic stay, Movant stands to forfeit those claims and there is no adequate, substitute relief available to Movant. As a result, under § 362(d)(1), Movant should be granted relief from the

automatic stay.

Further, the Court, in its Order, specifically protected the types of claims being asserted by Movant. In paragraph 56 of the Order, the Court ordered that "[t]he Purchaser is assuming the obligations of the Seller pursuant to and subject to conditions and limitations contained in their express written warranties ..." Movant seeks to pursue his claims against Debtor arising from Debtor's failure to conform his vehicle to the warranty he received. Because the claims of Movant, and the Class, fall within the rubric of claims protected by Court's Order, Movant should be granted relief from the stay.

The Bankruptcy Code does not define what constitutes "cause" for relief from the automatic stay; rather, the bankruptcy court has discretion to decide on a case-by-case basis whether cause for relief from the automatic stay exists. *Sonnax Industries, Inc. v. Tri Component Products Corp. (In re Sonnax Industries, Inc.)*, 907 F.2d 1280, 1285-86 (2d Cir. 1990); *In re Balco Equities Ltd., Inc.*, 312 B.R. 734, 748 (Bankr. S.D.N.Y. 2004).

The court in *Sonnax Industries, Inc. v. Tri Component Products Corp. (In re Sonnax Industries, Inc.)*, 907 F.2d 1280 (2d Cir. 1990), listed a dozen factors which may be considered in deciding whether litigation should be permitted to continue in another forum. *Id.* at 1286 (*citing In re Curtis*, 40 B.R. 795 (Bankr.D.Utah 1984)). These factors are: (1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in

another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms. *Id.* Courts have recognized that only those factors relevant to a particular case need be considered and the court need not assign them equal weight. *See In re Touloumis,* 170 B.R. 825, 828 (Bankr. S.D.N.Y. 1994).

Here, there are at least two factors which weigh heavily in favor of lifting the stay and permitting the Movant to pursue his claims: (1) the interests of judicial economy and the expeditious and economical resolution of litigation; and (2) the impact of the stay on the parties and the balance of harms. With regard to the interests of judicial economy, relief from the stay will allow Movant to move forward with his action against Debtor. Relief will greatly aid the resolution of that action and will in no way hinder the bankruptcy action. As such, this factor dictates that the stay be lifted. The balance of harms on the parties weighs even more heavily in favor of lifting the stay. Without relief from the stay, thousands of potential Class members will lose their ability to pursue legitimate, well-founded claims against Debtor. In contrast, granting Movant the requested relief would have little or no impact on the bankruptcy proceeding and would cause Debtor and other creditors limit or no harm. Because of the unique nature of Movant's action - he is seeking redress for himself and potential Class members as a result of an alleged defect in a specific type of vehicle - granting him relief from the stay would not result in "the flood gates" being opened for other litigants to seek relief from the stay. The harm caused to

Movant and potential Class members greatly outweighs whatever harm Debtor might incur in defending the claims against it. This factor alone mandates that the stay be lifted and that Movant be permitted to pursue his claims.

CONCLUSION

Here, there are multiple reasons why the Court should determine that "cause" exists and that the automatic stay should be lifted in order to allow Movant to adequately and appropriately protect his interests by pursuing his claims against Debtor in the Eastern District of California.

Dated: January 11, 2010

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EXHIBIT A

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID B. SIDNER, on behalf of himself, and all others similarly situated,	Case No. 2:07-cv-892-FCD-GGH
	FIRST AMENDED COMPLAINT
Plaintiff,	Class Action
v.	
GENERAL MOTORS CORPORATION,	JURY TRIAL DEMANDED
Defendant.	

Plaintiff, David B. Sidner, on behalf of himself and all others similarly situated, alleges, upon information and belief, except as to his own actions, the investigation of counsel, and the facts that are a matter of public record, as follows:

INTRODUCTION AND FACTUAL BACKGROUND

1. This class action is brought against Defendant, General Motors Corporation ("GM" or "Defendant"), for the benefit and protection of all current and former owners and lessees of model year 2004, 2005, and 2006 Pontiac GTOs ("Vehicles" or "GTOs") purchased or leased in the United States, excluding the States of Florida and California, to obtain damages and restitution and injunctive and other relief.

2. The tires on each of the Vehicles wear unevenly and prematurely and are prone to failure because the suspension system and alignment settings (and specifically the camber settings) are improperly designed, assembled, and/or installed, causing, inter alia, uneven and premature tire wear and tire failure, as well as causing the inside front tires to graze the

struts during normal operation and use.

3. The Vehicles are built on the same platform as their Australian counterpart, the Holden Monaro ("Monaro"), which was manufactured and sold in Australia by GM Holden Limited ("Holden"), a manufacturer and GM subsidiary based in Melbourne, Australia. When GM, through its subsidiary, Holden, sold the Monaro vehicles in Australia, the vehicles were equipped with 17" wheels and 235 mm wide tires. When GM marketed and sold the GTOs in the United States, however, GM distributed the Vehicles with 17" wheels and 245 mm wide tires, which were larger than the tires that had been placed on the Monaro vehicles.

4. As set forth below, GM: (1) marketed and sold expensive automobiles to Plaintiff and thousands of other consumers when it knew that a critical component in the automobiles, the suspension system and alignment setting (and specifically the camber settings), was defective and would cause premature and uneven wear of the Vehicles' tires; (2) never disclosed the fact that the Vehicles had this critical problem despite its knowledge of the issue prior to the sale of the first GTO; (3) actively concealed the fact that the suspension system and alignment setting (and specifically the camber settings) was defective and would cause premature and uneven wear of the vehicle's tires; (4) refused to honor its warranty to repair the defect or provide full reimbursement for damages caused by the defect; and (5) continued to sell the Vehicles despite that it received, and continues to receive, numerous complaints from Vehicle owners and lessees.

5. GM further concealed material facts regarding the GTO alignment problems by affirmatively misrepresenting the purported attributes of the GTO. As a result of GM's conduct, including its omissions, acts of concealment and misrepresentations, Plaintiff and Class members have been and will continue to be harmed and subjected to premature tire wear, and unnecessary repair and replacement costs. If these material facts had been disclosed by GM, Plaintiff and Class members would not have purchased or leased, or would have paid significantly less, for their GTO Vehicles.

6. Defendant has or should have the capability of fixing the suspension system and alignment settings on the Vehicles so that they can operate safely with proper suspension and alignment settings and tires that have a normal useful life. Instead of taking this responsible

action to remedy its unlawful actions and misconduct, Defendant has chosen to disclaim responsibility for its misconduct and, instead, has sought to shift the economic burden of its development, manufacturing, marketing, distribution and/or sale of the Vehicles with the inherently defective suspension system and alignment settings to Plaintiff and Class members.

PARTIES

7. Plaintiff is a citizen of the State of Ohio, and resides and has resided in Grove City, Ohio at all pertinent times. On or about April 4, 2006, Sidner purchased a new 2006 Pontiac GTO for his personal and family use from H & K Motor Sales, Inc., an authorized GM dealership located in Continental, Ohio. Sidner paid $29,200 for the Vehicle, including tax and license fees.

8. GM, is a Delaware corporation that does business throughout this judicial district.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy, upon information and belief, exceeds $5,000,000, exclusive of interest and costs, and this is a class action in which the Class members and Defendant are citizens of different states.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, because Defendant engages in business activities throughout this judicial district, and there are two related and consolidated actions, *O'Connor v. General Motors Corporation*, Case No. 2:07-cv-00892-FCD-GGH ("*O'Connor*") and *Paikai v. General Motors Corporation*, Case No. 2:07-cv-02469-FCD-GGH ("Paikai"), pending in this District.

11. By this action, Plaintiff seeks relief under the Magnuson-Moss Warranty Act ("MMWA"), 15 U.S.C. §§ 2301 *et seq*, and in particular 15 U.S.C. § 2310(d)(1) and (3) and under Ohio law, which is the state in which Plaintiff resides, contracted, purchased, and attempted to service his vehicle, for violations of the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 *et seq*. ("OCSPA"), breach of express warranty and unjust enrichment.

12. All jurisdictional prerequisites to suit have been satisfied.

FACTS

13. This class action is brought on behalf of all current and former owners and lessees of Pontiac GTO Vehicles manufactured by GM (with the exception of those sold or leased in California and Florida) with respect to the claims asserted in this action.

14. The Vehicles at issue, which had a suggested retail price of approximately $30,000, were manufactured, marketed and sold by GM (and its Holden division), through its established network of licensed dealers and distributors throughout the United States, including throughout Ohio.

15. The GTO was engineered and assembled in Australia, by engineers that did not have expertise equivalent to GM's engineers in North America. The Vehicles were to be built on the same platform as their Australian counterpart, the Holden Monaro, although the GTO was a heavier vehicle and used a different, larger tire and wheel combination than was used on the Monaro.

16. According to GM press releases, changes in tire and wheel components necessitate changes in suspension system and alignment settings.

17. However, the design and engineering work for the GTO was done on a shortened and extremely aggressive schedule, which proved to be too optimistic and did not allow for time to correct all problems and make the necessary changes with respect to the suspension system and alignment settings in the Vehicle.

18. Before the Vehicle was sold to the public, GM was aware of the problems with the suspension and alignment settings in the GTO Vehicles. Several modifications were made to the camber (a component of the suspension/alignment) setting fixture to try to (unsuccessfully) correct the faulty alignment settings from the factory.

19. Defendant had exclusive knowledge of the fact that the suspension and alignment settings were improper and that these defects could lead to premature tire wear. Defendant was further made aware of this fact as a result of the numerous complaints it received about problems with the GTO tires from their customers (as described below) and dealers.

20. Defendant provided Plaintiff and each owner and lessee of the Vehicles with the

same uniform 3 year, 36,000 mile bumper-to-bumper factory warranty. Defendant's express warranty, in pertinent part, provides:

> The warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period.
>
> * * * * * * *
>
> Warranty repairs, including towing, parts, and labor, will be made at no charge.
>
> * * * * * * *
>
> The tires supplied with your vehicle are covered against defects in material or workmanship under the Bumper-to-Bumper coverage. Any tire replaced will continue to be warranted for the remaining portion of the Bumper-to-Bumper coverage period.

Under this warranty, Defendant was obligated, *inter alia*, (1) to replace Plaintiff's prematurely worn tires at no charge; (2) to repair and adjust the improper suspension and alignment settings which was necessitated by the defect at no charge; and (3) to repair the defect at no charge. Defendant has these same obligations with respect to Plaintiff and all Class members, but has failed to satisfy these obligations.

21. GM also included misleading and deceptive information in the warranty information provided to Plaintiff and Class members, by its (false) promise that the factory alignment was sufficient for the vehicle. According to the 2004 GTO owner manual: "The wheels on your vehicle were aligned and balanced carefully at the factory to give you the longest tire life and best overall performance. Scheduled wheel alignment and wheel balancing are not needed. However, if you notice unusual tire wear or your vehicle pulling one way or the other, the alignment may need to be reset. If you notice your vehicle vibrating when driving on a smooth road, your wheels may need to be rebalanced." Despite these obligations, GM denied warranty coverage to Plaintiff and Class members.

22. Throughout the period during which GM offered GTO Vehicles, GM engaged in a uniform marketing and sales campaign, in which it consistently misrepresented and/or concealed material facts in its advertisements, sales and marketing materials, warranties, and through its sales representatives and dealers, by concealing from, failing to disclose and/or misrepresenting to Plaintiffs and the Class material information regarding the Vehicles, including, but not limited to the fact that: (1) a critical component in the automobiles, the

suspension system and alignment setting (and specifically the camber settings), was defective; (2) the defect in the suspension system and alignment setting (and specifically the camber settings) would cause premature and uneven wear of the Vehicle's tires; (3) GM would not honor its warranty to repair the defect or provide full reimbursement for damages caused by the defect. GM's misrepresentations and omissions regarding the Vehicles are consistent and uniform.

23. The fact that a critical component in the automobiles, the suspension system and alignment setting (and specifically the camber settings), was defective and that the defect in the suspension system and alignment setting (and specifically the camber settings) would cause premature and uneven wear of the Vehicle's tires, rendering the GTO tires with a markedly reduced useful life is a material fact, which a reasonable person would consider important in deciding whether or not to purchase (or to pay the same price for) a GTO Vehicle. Plaintiff and Class members would not have purchased, or would have paid substantially less for, their Vehicles had they been informed that the suspension system and alignment setting (and specifically the camber settings), was defective and that the defect in the suspension system and alignment setting (and specifically the camber settings) would cause premature and uneven wear of the Vehicle's tires. Furthermore, Plaintiff and Class members reasonably expected that GM would not sell them Vehicles containing a known defect.

24. Defendant had exclusive knowledge of the defect and the reduced useful life of the tires that resulted. In fact, Defendant had access to relevant data regarding the defect, and had knowledge as a result of the numerous complaints it received from consumers regarding their need to replace these tires much sooner than they expected or is reasonable.

25. Defendant has been on notice of the defect in the Vehicles and that it did not comport with the representations made in the advertising, marketing and sale of the Vehicles from, *inter alia*, customer complaints, warranty claims and field technicians. However, Defendant concealed this knowledge from Plaintiff and the Class.

26. Defendant knew or should have known of the defect at the time of the marketing, sale and distribution of the Vehicles. In light of Defendant's knowledge regarding the defect and

problems detailed above, including the reduced expected life of the tires, the provision of a limited warranty with respect to the Vehicles under all of these circumstances, constitutes an unlawful, unfair and fraudulent business practice, and, under all of the circumstances, the limited warranties accompanying the Vehicles are unconscionable.

Plaintiff's Experiences With His GTO

27. On April 4, 2006, Plaintiff purchased a new 2006 Pontiac GTO, VIN 6G2VX12495L425978 from H & K Motor Sales, Inc., Continental Ohio, an authorized Pontiac GTO dealer. The Vehicle was purchased pursuant to a written contract of sale, under which Sidner paid $29,200 including tax and license. Plaintiff purchased the vehicle for his personal and family use.

28. On February 10, 2007, Haydocy Pontiac GMC Buick ("Haydocy"), an authorized Pontiac dealer located in Columbus, Ohio, rotated the tires on Plaintiff's Vehicle at odometer reading 6,549.

29. On December 20, 2007, with the odometer reading 12,166 miles, Plaintiff noticed the left front tire on his GTO had picked up nail. Plaintiff took the GTO to National Tire and Battery in Columbus, Ohio where, upon inspection, a technician found the nail. During the inspection, the technician also saw that the inside of the left front tire was shredded. Plaintiff paid the tire retailer $260.61 to replace the tire, which was in immediate need of replacement.

30. Within a month of having to replace the left front tire, Plaintiff noticed that the right rear tire, which had been on the front of the Vehicle prior to the tires being rotated, was worn on the outside edge of the tire. Prior to rotation, the outside edge had previously been on the inside edge when the tire was on the left front of the Vehicle.

31. In early January 2008, Plaintiff telephoned Haydocy's service department and explained that he had a tire that was damaged, having apparently hit the front struts of the Vehicle. Although Plaintiff presented the issue to Haydocy, at a time which Defendant was clearly aware of the defect, Plaintiff was told by the Haydocy representative that he should not bring his Vehicle in because the tire wear would not be covered by any warranty. In denying warranty coverage, the representative incorrectly stated that the tire problem was likely due to

road hazard (as opposed to the known defect).

32. Plaintiff next called GM's customer service number and complained about the Haydocy's refusal to replace the tire under warranty. The GM representative told Plaintiff return to the dealer and failed to disclose the fact that the know defect was responsible for the type of wear described by the Plaintiff. Plaintiff complied with the directive and took the car back to Haydocy, at which time the service writer again reaffirmed that the tire would not be covered by warranty. Rather than acknowledging that the tire wear was caused by the known defect, the service writer incorrectly stated that the wear could have been caused "by anything."

33. Having presented the Vehicle for warranty coverage, and having wrongly been denied such coverage by GM, Plaintiff took his Vehicle to a Firestone store in Columbus, Ohio on or about January 26, 2008. After examining the Bridgestone/Firestone Potenza tires on Plaintiff's Vehicle, the technician wrote on the repair order that the tire was not eligible for the Firestone warranty because the tire was "rubbing on the strut." Plaintiff was required to pay Firestone $304 for a replacement tire.

Class Members' Experiences with the GTO

34. Plaintiff's experience with his GTO mirrors those of the thousands of other Vehicle owners and lessees. The Internet is replete with thousands of references to the common and profound problems that consumers have experienced with the GTO's suspension and alignment, all leading to severely premature tire wear, including, but not limited to, the following small sample of representative complaints appearing at gtoforum.com (as monitored and collected by GM), LS1GTO.com/forums, and LS2GTO.com/forums:

> I had strut rub and chewed up the factory tires within 16,000 miles. I tried going through GM and was ready to get an attorney. I threw in the towel and bought some 18 inch stock rims on eBay. Plenty of clearance now. The dealerships act like they have never heard of such a problem but off the record my service rep told me GM is well aware of the problem. I just didn't have the energy to bicker back and forth with them. Now that I don't have to worry about strut rub I can have some fun with my car!
>
> * * * * * * *
>
> Strut rub should be covered under warranty. I was told by a GM rep (who owns a GTO) that there is, in his words a "hidden recall" on this issue, since it is safety related. He told me to go directly to

the service manager. If you have no luck there, ask to contact the zone rep. They are supposed to correct the camber problem but that's all they will do.

* * * * * * *

It's about damn time a report like this has been made. I know of a couple of GTOs with this problem that have been taken to dealers near me and they won't do crap saying that all it needs is a new alignment and is not covered under warranty, even though one of the tires I saw was down to the belts and only had like 8,000 miles on it.

* * * * * * *

You ever figured that out (why the huge range of coverage from total to zero); make sure you buy a lottery ticket too....

I'm $360 out of pocket for a new tire and a 4-wheel alignment to crank the camber out from the struts so they'll stop rubbing. Awesome. I always wanted to know what it would be like to have a GTO that corners like a Malibu or Taurus - now I know.

Tip of the iceberg for me. Mileage 11,300. Right front tire: replaced. Radius rod bushes: shot. Upper strut bushes: shot. Number of dealers involved: two. Number of parts replaced under warranty: ZERO Thanks GM - you've made my next car purchase decision crystal-clear, and it does not involve buying any of your crap cars.

* * * * * * *

Been hearing about this issue here. Didn't think I had it until I just checked my front tires. Wow, wore down to the belts! It has 21,000 miles and the tires are wore out anyway, but I don't want to get new tires and have this problem!

Just talked to the dealer, he heard of it on one other car and said an alignment will solve it. Said he knows it is a tight fit but it should never rub unless there are other problems. He seemed cool about it and said he will make sure GM has no bulletins on it. Guess that is where I am at for now.

* * * * * * *

GM is ignoring the problem because they probably think that this is something they inherited from Holden [even though they own it]. By sending out notices to all GTO owners advising them of the potential problem and offering free alignments they would be admitting fault. They're also dealing with only 40,000 or so units that are not even in production anymore. If these were ford pintos with exploding gas tanks and a million sold there would be a national crisis. They are just weathering the storm now knowing that a big chunk of the GTOs have 18" 235 tires and are not a problem and the rest of the 17" owners will take care of their own situation. A couple of owners who are oblivious will have fatal

accidents and they'll just settle the lawsuits. A lot cheaper than retrofitting 40,000 out of production cars with a new suspension.

* * * * * * *

I bought mine in January and my dealer replaced my struts (March build date) before the car was even delivered to me. Apparently, GM sent out a bulletin to all dealers authorizing replacement of correct struts for existing inventory still on the lots.

GM is aware of this problem, trust me. Don't let the dealer give you any mumbo jumbo. If your car is affected, they owe you new struts.

Happy motoring.

* * * * * * *

I have a blue 2004 and my left front wheel is rubbing on the strut. You can visibly see on the tire where it is wearing. I only have 19,000 miles on the car. I can't believe it. Thanks for all your research...I am taking it in A.S.A.P.

* * * * * * *

I just followed up on this discussion because I lost 1 tire on the freeway - tread peeled off but did not deflate. After getting home I find the other front tire is peeling - just no fully separated yet!!!!

Damage both on the inner tire edge and I had been checking periodically for damage - I had notice uneven wear but I did not thing it was strut rub - now I think it was.

Should I still complain to GM dealer about this with the NHTSA investigation closed.

* * * * * * *

Ok, here's my story, I'd appreciate any advice as to what to talk with the dealer about. I have an 05 A4, with stock 17" rims and tires, that just turned 28K miles. I do not drive my car hard. I guess an old age has calmed me down. I've done maybe 10 full power launches.

I've gone through 2 sets of tires. Each time the inside of the rear tires wear MUCH faster than the rest of the tire. The last time the rears went, the outside of the tire had 50% tread left while the inside edge of the tire separated from the sidewall. Of course, the dealer said this was normal, but recommended I have the car aligned (which I did 3 weeks ago). I have some strut rub up front on both sides. Not enough to wear through the pain on the struts but enough to leave very noticeable marks. Also have marks on the front on the right fender well were the tire has rubbed during turns.

* * * * * * *

> I submitted the form on-line & was contacted by an investigator (Derek Rinehardt). I supplied him with pictures and a short write upper his request
>
> It is/was the dealer arrogance (on top of the money & time I had to spend to fix it myself) that really bothered me. I tried to give him information off this board and he would not even look @ it. I asked him about checking the strut bushings & ride height, neither of which he did. His answer was an alignment & selling me 4 tires and "see what happens". I explained I felt that was a band-aid approach and I was not going to pay for an $80 alignment when I was fairly sure there were failed suspension components. Ultimately, he stated I did not want to participate in the repair process.
>
> If I can get the proper dimensions on a new GM bushing I can take that info long with my old ones and pursue reimbursement. Additionally when I repaired the front with the new bushings it became obvious the rear springs were also shot. I replaced them with King's. I had worse tire wear on the rear that the front when all was said and done!!

* * * * * * *

35. Having received numerous complaints, on February 16, 2007, The United States Department of Transportation, National Highway Traffic Safety Administration ("NHTSA") opened an investigation into complaints of front tire failures due to front strut to tire interference on the 2004-2006 model year Pontiac GTOs, possibly causing a loss of vehicle control. In connection with that investigation, GM provided documents and information to NHTSA. Although NHTSA did not identify a safety-related defect trend, the NHTSA Failure Report Summary stated that "excessive negative camber is an apparent issue." Also according to the NHTSA investigation, "approximately 90% of the final factory camber settings available for complaint and warranty claim vehicles GM provided ... had right wheel camber settings that were out of specifications."

36. Indeed, GM was aware (and had exclusive knowledge) of the defect and has acknowledged (although not to Plaintiff and Class members) that premature front tire wear in the Vehicles was caused by improper alignment, specifically by out of specification negative camber, and that out of specification negative camber could be caused by improper factory alignment settings.

CLASS ACTION ALLEGATIONS

37. Plaintiff requests that this Court certify the following classes pursuant to Rule 23 of the Federal Rules of Civil Procedure:

a. **48 State Class**: All current and former owners and lessees of model year 2004, 2005 and 2006 Pontiac GTOs purchased or leased in the United States, excluding California and Florida, who sought warranty coverage for or otherwise presented a claim for repair or reimbursement under the terms of the Pontiac GTO warranty in connection with premature or uneven inner should tire wear or for struts hitting the tires (the "48 State Class").

b. **Ohio Sub-Class**: All current and former owners and lessees of model year 2004, 2005 and 2006 Pontiac GTOs purchased or leased in the State of Ohio (the "Ohio Sub-Class").

c. **Ohio Warranty Class**: Ohio Sub-Class members who sought warranty coverage for or otherwise presented a claim for repair or reimbursement under the terms of the Pontiac GTO warranty in connection with premature or uneven inner should tire wear or for struts hitting the tires (the "Ohio Warranty Class")(collectively "Class").

Excluded from the Class and Sub-Class definitions are officers and employees of GM, its subsidiaries and its dealers, anyone sustaining personal injuries as a result of the defect alleged herein, as well as any judge to whom this action is assigned. Plaintiff reserves the right to amend these class definitions if discovery and further investigation reveals that the proposed classes should be expanded or otherwise modified.

38. This action is brought and may properly be maintained as a class action pursuant to Rule 23 of the Rules of Civil Procedure. This action satisfies the requirements of numerosity, typicality, adequacy, predominance and superiority.

39. Numerosity. On information and belief, the members of the 48 State Class number in at least the thousands and the members of the Sub-Classes number in at least the hundreds. As a result, the 48 State Class and Sub-Classes are so numerous that joinder of all members in a single action is impracticable. The members of the Class are readily identifiable from information and records in Defendant's possession, custody or control. The disposition of these claims will provide substantial benefits to the Class.

40. Commonality and Predominance. There is a well-defined community of interest among the members of the Class. Common questions of law and fact predominate over any

questions affecting only individual members of the Class. These common legal and factual questions do not vary among members of the Class and may be determined without reference to the individual circumstances of the individual members. These common questions include, but are not limited to, the following:

a. Whether the Vehicles are defective;

b. Whether GM's conduct violated the MMWA;

c. Whether GM's conduct violated the OCSPA;

d. Whether GM breached its express warranty;

e. Whether GM concealed the defect from Plaintiff and Class members;

f. Whether, by its conduct, GM has been unjustly enriched; and

g. Whether, as a result of GM's misconduct, Plaintiff and the Class members are entitled to damages, restitution, and equitable relief, and/or other damages or relief, and, if so, the amount and nature of such relief.

41. Typicality. The representative Plaintiff's claims are typical of the claims of the Class because Plaintiff and all members of the Class were injured by the same wrongful practices in which GM engaged and are based on the same legal theories. The only differences may be the amount of damages sustained by each member of the Class, which can be determined readily, and does not bar class certification.

42. Adequacy of Representation. Plaintiff will fairly and adequately represent the Class. Plaintiff understands the nature of the claims herein, as well as his role in the proceedings, and will vigorously represent the interests of the Class. Plaintiff has retained Class counsel who are experienced and qualified in prosecuting class actions and other forms of complex litigation. Neither Plaintiff nor his attorneys have interests that are contrary to or conflict with those of the Class.

43. Superiority/Manageability. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims of the members of the Class would be economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are likely millions of dollars,

the individual damages incurred by each member resulting from GM's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual members of the Class prosecuting separate claims is remote and, even if every person could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individual members of the Class do not have significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Relief concerning Plaintiff's rights under the laws herein alleged and with respect to the Class would be proper.

44. Defendant has or had access to address information for the Class members, which may be used for the purpose of providing notice of the pendency of this action.

TOLLING OF THE STATUTE OF LIMITATIONS

45. The causes of action alleged herein accrued upon discovery of the latently defective nature of the Vehicles. Because the defect and limitations alleged herein are latent and because Defendant took steps to conceal the true character, nature and quality of the Vehicles, among other reasons, Plaintiff and members of the Class did not discover and could not have discovered the problems and defects alleged herein through the exercise of reasonable diligence.

46. Any applicable statutes of limitations have been tolled by Defendant's knowing and active concealment and denial of the facts as alleged herein. Plaintiff and the Class have been kept ignorant of vital information essential to the pursuit of these claims, without any fault or lack of diligence on their part. Plaintiff and members of the Class could not reasonably have discovered the defects and problems alleged herein because of Defendant's fraudulent concealment. In addition, Defendant continued to sell Vehicles without disclosing the defects and problems.

47. Defendant was and is under a continuous duty to disclose to Plaintiff and the Class the true character, quality, and nature of the Vehicles. Defendant knowingly, affirmatively, and/or actively concealed, and continue to conceal, the true character, quality and

nature of the Vehicles at issue. Defendant also continued to sell Vehicles and replacement tires while concealing the defects and true character, quality and nature of the Vehicles.

48. Defendant knew or should have known that Plaintiff and the Class would reasonably rely upon Defendant's knowing, affirmative, and/or active concealment. Based on the foregoing, Defendant is estopped from relying on any statutes of limitation in defense of this action.

49. Plaintiff has been damaged and suffered injury in fact as a result of Defendant's conduct, including, but not limited to, having to pay for replacement tires and alignments due to the defect in the Vehicle, and by purchasing a Vehicle that has lost value as a result of the defect. The other owners and lessees of the Vehicles have, or will, suffer the same or substantially similar damages as a result of Defendant's conduct.

FIRST CLAIM FOR RELIEF
(Violation Of Magnuson-Moss Warranty Act - Breach Of Written Warranty - On Behalf Of The 48 State Class)

50. Plaintiff realleges and incorporates the above allegations by reference.

51. The Vehicles are "consumer products" as that term is defined by 15 U.S.C. § 2301(1).

52. Plaintiff and members of the 48 State Class are "consumers" as that term is defined by 15 U.S.C. § 2301(3).

53. Defendant is a "warrantor" and "supplier" as those terms are defined by 15 U.S.C. § 2301(4) and (5).

54. Defendant provided Plaintiff and members of the 48 State Class with "written warranties" as that term is defined by 15 U.S.C. § 2301(6).

55. In its capacity as a warrantor, and by the conduct described herein, any attempts by Defendant to limit the express warranties in a manner that would exclude coverage of the defective Vehicles is unconscionable and any such effort to disclaim, or otherwise limit, liability for the defective Vehicles is null and void.

56. All jurisdictional prerequisites have been satisfied.

57. As set forth herein, GM's express warranty covered the Vehicles and, under the

circumstances described herein, its tires, struts, cambers and related systems.

58. The written warranty was provided to Plaintiff and members of the 48 State Class by GM and specifically extends to original purchasers and subsequent owners for the period of warranty coverage.

59. GM warranted all of GTOs against defects in material or workmanship at a time when it knew that these Vehicles suffered from a serious defect and, nevertheless, continued to market and sell the Vehicles with the written warranty to Plaintiff and members of the 48 State Class.

60. GM is obligated under the terms of its written warranty to repair and/or replace the defective suspension and alignment systems, and under the circumstances described herein, its tires, struts, alignment, camber and related systems, sold to Plaintiff and members of the 48 State Class. GM is further obligated to cover the costs of tires that are prematurely worn as a result of the defect, as well as all related an ancillary costs involved in replacing said tires.

61. Based on the conduct described herein, GM breached the written warranty that it provided to Plaintiff and members of the 48 State Class.

62. As set forth above, GM's warranty fails in its essential purpose and, accordingly, Plaintiff and members of the 48 State Class cannot and should not be limited to the remedies set forth in GM's written warranty and, instead, should be permitted to recover other appropriate relief, including damages and injunctive relief.

63. GM knew of its obligations under its warranty to pay to replace the prematurely worn tires and to repair and adjust the improper alignment, which resulted from the defect described herein. GM, however, willfully refused to pay for the new tires or alignment as required under the warranty.

64. GM knew of its obligations under its warranty to repair the defective Vehicles as described herein. GM, however, has refused to remedy the defect.

65. Plaintiff and members of the 48 State Class have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of Defendant or by operation of law in light of Defendant's

unconscionable conduct.

66. GM has received sufficient and timely notice of the breaches of warranty alleged herein. Despite this notice and GM's knowledge of the defect in the suspension and alignment systems, which in turn cause premature tire wear, GM has failed and refused to honor its warranty, even though it knows of the inherent defect.

67. GM has received, upon information and belief, thousands of complaints and other notices from its customers nationwide advising it of the defects in suspension and alignment systems.

68. Plaintiff has given GM a reasonable opportunity to cure its failures with respect to its warranty, and Defendant has failed to do so.

69. GM has failed to provide to Plaintiff or the members of the 48 State Class, as a warranty replacement, a product that conforms to the qualities and characteristics that GM expressly warranted when it sold the Vehicles to Plaintiff and members of the 48 State Class.

70. As a result of GM's breach of warranty, Plaintiff and the 48 State Class have suffered damages in an amount to be determined at trial and are entitled to, and seek, all relief available under the MMWA.

SECOND CLAIM FOR RELIEF
(Violation Of The Ohio Consumer Sales Practices Act -
On Behalf Of The Ohio Sub-Class)

71. Plaintiff realleges and incorporates the above allegations by reference.

72. Plaintiff and the members of the Ohio Sub-Class are consumers within the meaning of the OCSPA, and the Vehicles are consumer goods within the meaning of the OCSPA Ohio Rev. Code § 1345.01(A).

73. The purchase and lease of the Vehicles by Plaintiff and members of the Ohio Sub-class as described herein constitute "consumer transactions" within the meaning of § 1345.01(A) of the OCSPA.

74. The OCSPA prohibits unfair, deceptive and unconsionable practices in consumer sales transactions and provides consumers with private rights to action to redress such conduct. Ohio Rev. Code §§ 1345.02, 1345.09

75. GM's business acts and practices alleged herein constitute unfair methods of competition, unconscionable acts or practices and/or deceptive acts or practices under the OCSPA.

76. Defendant acted in the face of prior notice that its conduct was deceptive, unfair and unconscionable. It is well established in OCSPA jurisprudence that material omissions and misrepresentations regarding a product constitute violations of the OCSPA. *Delahunt* v. *Cytodyne Technologies, et al.*, 241 F. Supp.2d 827, 838 (2003) (plaintiff stated claim for violation of OCSPA where label affixed to products sold by defendant contained misstatements and omitted material information); *Amato v. General Motors Corp.*, 463 N.E.2d 625, 633-33 (Ohio Ct. App. 1982) (plaintiff's claims fell within the OCSPA in a suit involving misrepresentations and omissions in advertising relating to the sale of motor vehicles); *Andrews v. Scott Pontiac Cadillac GMC, Inc.*, 594 N.E.2d 1127, 1130, 1132 (Ohio Ct. App. 1991) (holding that "a supplier commits an unfair or deceptive act or practice when it has actual knowledge of the previous defect and/or damage to a new motor vehicle and fails to disclose the defect and/or extent of the previous damage" and violates the CSPA by failing to disclose); *Fisher v. Rose Chevrolet, Inc.*, 612 N.E.2d 782, 786 (Ohio Ct. App. 1992) (holding that omission that induced sale of vehicle was actionable under the CSPA); *Howard v. Norman's Auto Sales,* No. 02AP-1001, 2003 WL 21267261, *5 (Ohio App. 10th Dist. Jun. 3, 2003) (OCSPA violation where car salesman falsely represented that vehicle was in good condition and would not require repair for six to eight months). These decisions existed at the time of the wrongful conduct by GM, such that GM was on sufficient notice because each of the decisions cited above were publicly available when the alleged violation by GM occurred. *See e.g., Nessle v. Whirlpool Corp.*, 2008 WL 2967703 No. 1:07CV3009 (N.D. Ohio, July 25, 2008) (holding that list of enumerated wrongful acts under the OCSPA was by "no means exclusive," and plaintiff's citation to several published cases with similar facts was more than sufficient to support a finding that Whirlpool was on notice that its conduct was wrongful).

77. It also is a deceptive act or practice for a supplier to make representations, claims or assertions of fact in the absence of a reasonable basis in fact. Ohio Admin. Code §§

109.4-3-10(A).

78. GM's practices violate the OCSPA for, *inter alia*, one or more of the following reasons: (a) GM represented that its services (specifically, its warranty and related services) have characteristics, uses and benefits that they do not have; (b) GM failed to disclose material facts concerning the defect(s) in the Vehicles and omitted material facts relating to the defect(s) in its marketing and sale of the Vehicles, (c) GM acted in the face of prior notice regarding the defect(s), thereby rendering its conduct unconscionable under all the circumstances; and (d) GM (by and through its dealers) and by its acts and omissions misrepresented and omitted material facts regarding the Vehicles and tires on the Vehicles, its warranty obligations to consumers, and other rights, remedies or obligations.

79. The representations and omissions by Defendant were likely to deceive reasonable consumers and a reasonable consumer would have relied on these representations and omissions.

80. Had Defendant disclosed all material information regarding the Vehicles to Plaintiff and other members of the Ohio Sub-Class, they would not have purchased or leased the Vehicles.

81. As a direct and proximate result of Defendant's violations of the OCSPA, Plaintiff and members of the Ohio Sub-Class have suffered injury in fact and/or actual damage, in that they purchased or leased Vehicles with suspension and alignment defects that cause premature tire failure. Had Defendant disclosed the true quality, nature and drawbacks of the Vehicles, Plaintiff and members of the Ohio Sub-Class would not have purchased, or would have paid significantly less, for the Vehicles. Plaintiff and the members of the Ohio Sub-Class have suffered further harm in that: the tires wear prematurely from the time the Vehicles are first driven; they have paid or will be required to pay to repair or replace the tires more than has been reasonably anticipated and represented as well as to pay for related services (such as alignments); and they have lost use of their Vehicles and have suffered diminution of value, and the Plaintiff and the other members of the Class are entitled to recover such damages, together with appropriate exemplary damages, attorneys' fees and costs of suit.

THIRD CLAIM FOR RELIEF
(Breach Of Written Warranty, Ohio Rev. Code § 1302.26 -
On Behalf Of The Ohio Warranty Class)

82. Plaintiff realleges and incorporates the above allegations by reference.

83. Plaintiff seeks to recover for GM's breach of its written warranty, which was breached by Sears as a result of the conduct described herein.

84. As set forth herein, GM uniformly warranted all of GTOs against defects in material or workmanship at a time when it knew that these Vehicles suffered from a serious defect and, nevertheless, continued to market and sell the Vehicles with the written warranty to Plaintiff and members of the Ohio Warranty Class.

85. GM is obligated under the terms of its written warranty to repair and/or replace the defective suspension and alignment systems, and under the circumstances described herein, its tires, struts, alignment, camber and related systems, sold to Plaintiff and members of the Ohio Warranty Class. GM is further obligated to cover the costs of tires that are prematurely worn as a result of the defect, as well as all related an ancillary costs involved in replacing said tires.

86. GM, by the conduct described herein, has breached its written warranty obligations by supplying the Vehicles in a condition which does not meet the warranty obligations undertaken by GM, and by failing to repair or replace the defect and/or defective parts, including the tires that wore unevenly and prematurely as a result of the defect.

87. As set forth above, GM's warranty fails in its essential purpose and, accordingly, Plaintiff and members of the Ohio Warrant Class can not and should not be limited to the remedies set forth in GM's written warranty and, instead, should be permitted to recover all measure of appropriate relief.

88. Plaintiff and members of the Ohio Warranty Class have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of Defendant or by operation of law in light of Defendant's unconscionable conduct.

89. GM has received sufficient and timely notice of the breaches of warranty alleged herein. Despite this notice and GM's knowledge of the defect in the suspension and alignment

systems, which in turn cause premature tire wear, GM has failed and refused to honor its warranty, even though it knows of the inherent defect.

90. GM has received, upon information and belief, thousands of complaints and other notices from its customers nationwide advising it of the defects in suspension and alignment systems.

91. Plaintiff has given GM a reasonable opportunity to cure its failures with respect to its warranty, and Defendant has failed to do so.

92. GM has failed to provide to Plaintiff or the members of the class, as a warranty replacement, a product that conforms to the qualities and characteristics that GM expressly warranted when it sold the Vehicles to Plaintiff and members of the Ohio Warranty Class.

93. As a result of GM's breach of warranty, Plaintiff and the members of the Ohio Warranty Class have suffered damages in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF
(Unjust Enrichment On Behalf Of The Ohio Sub-Class)

94. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint to the extent not inconsistent with the claims asserted in this Court.

95. This claim is asserted in the alternative on behalf of Plaintiff and the members of the Ohio Sub-Class, to the extent that any contracts do not govern the entirety of the subject matter of the disputes with the Defendant.

96. Plaintiff and the Ohio Sub-Class conferred a benefit on GM, of which benefit GM had knowledge. By its wrongful acts and omissions described herein, including selling the Vehicles, GM was unjustly enriched at the expense of Plaintiff and the Ohio Sub-Class. It would be inequitable for GM to retain the profits, benefits, and other compensation obtained from its wrongful conduct as described herein in connection with selling the Vehicles.

97. Plaintiff, on behalf of himself and the Ohio Sub-Class, seeks restitution from GM and an order of this Court proportionally disgorging all profits, benefits, and other compensation obtained by GM from its wrongful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for judgment against Defendant providing the following relief:

A. An order certifying this case as a class action and appointing Plaintiff and his counsel to represent the Class;

B. Restitution and disgorgement to the extent permitted by applicable law, together with interest thereon from the date of payment, to the victims of such violations;

C. Actual damages for injuries suffered by Plaintiff, the Class;

D. Civil penalties to the extent permitted by applicable law;

E. To the extent that GM has continued to market and sell the Vehicles in the manner challenged in this action, an order requiring GM to immediately cease its wrongful conduct as set forth above, as well as enjoining GM from continuing to conduct business via the unlawful and unfair business acts and practices complained of herein; an order requiring GM to engage in a corrective notice campaign; and an order requiring GM to refund to Plaintiffs and all members of the Class the funds paid to GM for the defective product;

F. Reasonable attorneys' fees and the costs of prosecuting this action;

G. Statutory pre-judgment and post-judgment interest; and

H. Such other and additional relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: February 20, 2009

By: */s/Mark F. Anderson*

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