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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CALVIN SMITH and JACQUELINE BARGSTEDT, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

GENERAL MOTORS COMPANY,

Defendant.

Case No.

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Calvin Smith and Jacqueline Bargstedt, on behalf of themselves and all others similarly situated, allege the following against Defendant General Motors Company.

SUMMARY OF CASE

1. Diesel trucks command premium prices in the United States. Among the chief reasons is their reliability. Whereas gasoline powered engines might reliably last for up to 200,000 miles, diesel engines typically run well beyond 500,000 miles.

2. Beginning with the 2011 model year, GM began manufacturing and selling trucks with factory-installed "CP4" Bosch-manufactured fuel pumps. The CP4 fuel pump was a cost-saving measure: it uses less fuel by exerting higher fuel pressures. But U.S. diesel fuel does not provide enough lubrication for the CP4 pump to work reliably, and the CP4 pumps consistently fail. When they do, they often shed tiny particles of metal throughout the entire fuel system, requiring replacement of the whole system—including the CP4 pump, the fuel injectors, the injection lines, and the fuel rails—leading to repair costs exceeding $10,000. Even with those repairs made, the defect is not resolved; after time, the replacement CP4 pump will lead to recurrence of the same problem and still more costs to the consumer.

3. GM has long known about the defect but never warned the truck-buying public. GM stayed silent even as the CP4 pump failures have reached a level of consistency and inevitability that various writers have called a "ticking time bomb,"[1] with even the relatively restrained saying "it's literally just a matter of time until your CP4 pump fails."[2] Affected consumers have thus purchased trucks that are far less valuable than they would be without the defective CP4 pumps, and are also forced to incur highly-expensive repairs when the pumps inevitably fail.

4. Plaintiffs bring this suit not only on their own behalf, but also on behalf of all others who purchased the affected vehicles. They seek to provide needed remuneration to all those affected by Defendant's unlawful conduct as well as an injunction forcing GM to warn drivers of the defect and provide effective repairs.

[1] https://www.raceready fab.com/blogs/news/attention-to-all-2011-present-lml-duramax-and-2011-present-6-7-powerstroke-owners.

[2] https://www.dieseltechmag.com/2017/12/common-problems-the-cp4-time#.

PARTIES

5. Plaintiff Calvin Smith is a citizen and resident of Elk Grove, California, located in Sacramento County.

6. Plaintiff Jacqueline Bargstedt is a citizen and resident of Smithville, Texas, located in Bastrop County.

7. Defendant General Motors Company ("GM") is a Delaware corporation and has its principal place of business in Michigan.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d). There are at least 100 members in the proposed class, the aggregated claims of the individual class members exceed the sum or value of $5,000,000, exclusive of interest and costs, and this is a class action in which GM and more than two-thirds of the proposed plaintiff classes are citizens of different states.

9. This Court may exercise jurisdiction over Defendant because it is registered to conduct business in California; has sufficient minimum contacts in California; and/or intentionally avails itself of the markets within California through the promotion, sale, marketing, and distribution of its products, thus rendering the exercise of jurisdiction by this Court proper and necessary.

10. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District; among other things, many Class Vehicles were sold in this District and continue to be owned and maintained in this District.

SUBSTANTIVE ALLEGATIONS

11. GM manufactures, markets, and distributes mass-produced vehicles in the United States under the GMC brand as well as associated brand names, such as Chevrolet.

12. Irrespective of brand identifier, GM's heavy duty pickup truck models tend to be virtually identical. For example, a given model year Chevrolet Silverado 2500 or 3500 is virtually identical to its GMC Sierra 2500 and 3500 counterpart.

The Market for Class Vehicles and Diesel Trucks Generally

13. Pickup trucks in the U.S. are powered by either diesel or gasoline. In gasoline trucks, gas is injected into the combustion chamber, which, along with the compression of the air drawn in by the piston, is typically ignited by a spark plug. The expanding gas drives down the piston, thus turning the driveshaft leading into the transmission. In diesel engines, diesel fuel is injected, and the piston compresses the air mixture. The high temperature ignites the diesel fuel, which then drives down the piston and turns the drive shaft.

14. Diesel pickup trucks are typically substantially more expensive than comparable gasoline powered pickup trucks. A new diesel pickup truck can run between $4,000 and $11,000 more than a comparable gasoline powered truck.

15. There are various benefits to diesel engines. Notably, diesel-powered engines last longer and are more reliable than gasoline-powered engines. Diesel engines last three to four times longer than gasoline engines—lasting well in excess of 500,000 miles or more. Diesel trucks are also more durable and maintain a high-level of reliability for many hundreds of thousands of miles of use.

16. The superior longevity and reliability of diesel trucks helps drive the premium price that they command when sold new. Diesel trucks also command higher trade-in and resale values.

17. The Class Vehicles are all diesel trucks and were thus sold and leased at premium prices. GM received revenue from the sale of Class Vehicles to consumers and profited from the perception that the Class Vehicles were worth a premium price as typically reliable and long-lasting diesel vehicles.

The Defect in Class Vehicles

18. Diesel fuel systems are made up of core components that include the fuel tank, the fuel transfer pump, filters, the injection pump, and the injection nozzles.

19. The diesel fuel system must inject precise amounts of pressurized diesel fuel at the proper times. Combustion occurs when this fuel is mixed with hot compressed air (which are converted into mechanical energy that turns the vehicle's wheels).

20. Immense amounts of pressure are needed to compress diesel fuel. The diesel high-pressure injection pump is responsible for compressing the diesel fuel in preparation for injection into the combustion chamber. Consequently, diesel fuel systems are much more expensive than gasoline fuel systems that use gravity or air pressure to move fuel from the tank through the injection system.

21. The GM vehicle models (or "Class Vehicles") that are the subject of this case are the 2011-2016 model year Chevrolet Silverado 2500 and 3500 and GMC Sierra 2500 and 3500 heavy duty pickup trucks, which come factory-equipped with the 6.6-liter, V-8, turbocharged, Duramax engines. This version of the Duramax engine (often referred to as the "LML") features a CP4 high-pressure fuel pump that is manufactured and designed by Bosch. After the fuel is delivered from the fuel tank to the pump via a low-pressure connection, the CP4 high-pressure pump is responsible for compressing the diesel fuel in Class Vehicles (as required for high-pressure injection).

22. The introduction of the CP4 in Class Vehicles was a design change motivated by cost reduction (since a smaller amount of fuel is required when running the more efficient piezoelectric injectors). The CP4 pump creates higher pressures with less volume, meaning a more efficient pump--but with the lack of fuel volume also means less lubrication.

23. Class Vehicles rely on the diesel fuel itself to lubricate the fuel injection system. The lubricity of diesel fuel is a function of the way it is refined and blended. For example, hydrotreatment to remove sulfur and the blending of diesel with kerosene to improve low temperature performance both lower the fuel's lubricity. In the mid-2000s, the United States began moving toward lower sulfur contents in diesel fuel, and since late 2010, all highway diesel fuel has been ultra-low sulfur diesel fuel. This entails substantially less lubricity in the fuel. Insufficient lubricity can cause catastrophic levels of wear to pump components resulting in fuel pump failure.

24. Class Vehicle engines also lack lift pumps (which in some engines help supply fuel to the injection pump), increasing the amount of work the injection pump has to do, putting more demand on the fuel injection pump, and causing wear and tear on the pump and the injectors.

25. Class Vehicles cannot handle the combination of reduced volume, reduced lubrication, and increased demand on the CP4 pump, leading to CP4 pump failures, which cause metal shavings to enter the fuel injection system. Compounding this problem is that there is no filter between the pump and injectors, so that the particles or shavings of metal travel throughout the entire high-pressure fuel system.

26. This typically requires replacement of all of the components in the high-pressure fuel system—including the CP4 pump, fuel injectors, injection lines, and fuel rails—and can cost around $10,000. In some instances, the failure can crack the gear and throw it through the engine's front timing cover, requiring even more expensive repairs. Simply flushing the fuel system is inadequate after a CP4 failure, as doing so can lead to residual contaminants in the fuel system, and contamination is a top cause of repeat injector failure. Replacing all of the fuel system components is thus necessary.

27. The CP4 pump thus suffers from a long-known design weakness. The failures are so routine that those in and around the industry have termed the "common problem" a "ticking time bomb" and have said "it's literally just a matter of time until your CP4 pump fails." The inevitability of the failures has created a cottage industry for independent repair facilities to market prophylactic measures such as installation of a lift pump or replacing the CP4 pump with a CP3 pump. These expensive measures are not provided by GM dealerships for free and are instead borne at Class Vehicle owners' expense.

28. Also indicative of the magnitude of the defect are the many driver complaints about the defect. Below are just a few examples of the numerous complaints lodged with the NHTSA by Class Vehicle owners and lessees. Although the complaints that GM receives directly from drivers are not publicly available, typically for every driver who complaints to the NHTSA, multiples more will complain directly to the manufacturer or their dealership. As the below complaints to the NHTSA reflect, not only is the failure of Class Vehicle fuel pump common, but also when it fails, it can lead to abrupt vehicle stalling at high speeds—a serious safety hazard for drivers, their passengers, and for anyone else around them on the road. The following complaints are also viewable online at www.safercar.gov.

2011 Chevrolet Silverado 2500: The truck had the check engine light come on when we took it to the dealership they replace[d] the fuel pressure regulator. The light soon came back on due to a faulty fuel pump which sent the car into safe mode, which made the car do a nose dive from 55 to 15 in a matter of seconds on a major interstate in Atlanta.

(Date Complaint Filed: 07/02/2012, NHTSA ID Number: 10463992)

2012 GMC Sierra 3500: Driving from GM dealer for two miles change fuel filter message appeared and engine died. Towed to a dealer diagnosed as a high pressure injector pump failure with metal contamination to fuel system. I have found a bulletin dated 2009 from equipment manufacturers. This joint statement has information about the fuel used in the USA that I was not aware of and may have avoided this failure. This is a very expensive repair as I use my truck for work.

(Date Complaint Filed: 07/02/2014, NHTSA ID Number: 10607796)

2012 Chevrolet Silverado 2500: Vehicle would not start. when they put it on scope they found that the fuel rail pressure was too low. They found metal shavings throughout the fuel system as if a part was coming apart from the inside. They had to replace entire fuel system from pump to injectors plus all the lines and injection pump. This vehicle is 2 years old.

(Date Complaint Filed: 08/05/2014, NHTSA ID Number: 10619113)

2012 Chevrolet Silverado 2500: The contact owns a 2012 Chevrolet Silverado 2500. The contact stated that while driving at approximately 35 mph, the vehicle stalled. The vehicle was not able to restart. The vehicle was towed to a dealer, who diagnosed that the fuel pump needed to be replaced. The technician mentioned that the fuel pump fractured and debris went through the fuel system causing internal damages. The vehicle was not repaired. The manufacturer was notified of the failure. The approximate failure mileage was 47,000.

(Date Complaint Filed: 12/26/2014. NHTSA ID Number: 10668322)

2011 GMC Sierra 3500: Vehicle was traveling down access road coming up to interstate offramp. Right before yield sign Bosch CP4 pump failed stopping motor. Brakes and steering affected. Just enough momentum to fight truck into adjacent parking lot right after ramp.

(Date Complaint Filed: 05/04/2015, NHTSA ID Number: 10714457)

2011 GMC Sierra 3500: While driving uphill the truck just shut off. Could not start it again. There was no warning signs it took over 2 weeks and 2 different GM dealers to figure out it was a fuel injector pump that exploded. There were no codes on the trucks computer to acknowledge there was any problem with the truck even after it would not start. Could have been extremely dangerous if our circumstance we're different. 5 miles earlier and we would have been on an express way.

(Date Complaint Filed: 06/29/2015, NHTSA ID Number: 10730877)

2013 Chevrolet Silverado 2500: On Aug 2, 2015 about 25 miles east of Grand Jjunction CO. Driving speed was about 65 mph on interstate I-70. My Chevy Silverado 2500 went into a computer shutdown. Being a skilled professional driver, with a class A CDL I just made it to the shoulder before truck shut down, truck and travel trailer I was towing needed to be towed to Ed Bozarth GM dealer. On Monday I was informed would need to pay $ 775 to determine point of failure…. An estimate by said dealer was given to SpeedCo and myself in the amount of $8,692.02. When the fuel injection pump went, sent metal shavings though my whole system engine, fuel oil, cooling system ECT. GM has know about this problem for a long time, however failed to disclose to its customers. In my opinion to allow for warranty to expire. … I have contacted GM in Detrioit many times with different case numbers. One phone call I got from GM, stated the original estimate stated above was far low. When I asked how much, stated to me could not say however much higher. … Truck had 20k, with warranty.

(Date Complaint Filed: 10/29/2015, NHTSA ID Number: 10787120)

2012 Chevrolet Silverado 2500: I was driving down a highway road when my vehicle abruptly lost power, I received a warning from my dashboard saying fuel filter needs replacing and subsequently lost engine power which resulted in no power steering and no brakes. I was able to keep the vehicle under control and got it to the side of the road before it became dead. After getting the vehicle towed to a garage it was determined that the CP4 fuel injection pump had failed resulting in fuel being starved from the engine and the result was the engine shutting off. The repairs alone for this single failure are $8550 because this pump has fouled all the fuel injectors and regulators in the fuel system. Most importantly though, I was fortunate enough to be in a position on highway where I had no traffic behind me, and on a relatively straight road where I was able to get to the curb before it become a bigger problem. From what I have found this is becoming a common problem on all of the Duramax 6.6l LML engines utilizing this type of fuel injection pump and GM needs to recall these systems and repair them. I do not have the repair invoice yet because the vehicle is still being repaired but will be happy to supply it when I receive it.

(Date Complaint Filed: 06/13/2016, NHTSA ID Number: 10873931)

2014 Chevrolet Silverado 3500: The contact owns a 2014 Chevrolet Silverado 3500. While driving 65 mph, the speedometer decelerated to 1 mph without warning. The vehicle was towed to a dealer where it was diagnosed that the high pressure fuel pump failed and caused the metal shavings to clog the fuel system. The manufacturer was made aware of the failure and stated that there was a TSB in reference to the failure. The TSB number was unavailable. The failure mileage was approximately 196,000.

(Date Complaint Filed: 08/31/2016, NHTSA ID Number: 10899800)

2016 GMC Sierra 2500: While driving at 45mph in the left lane of a major city thoroughfare the engine quit running, power steering and brakes did not work. The check engine light came on when the engine quit running. I was able to get the vehicle stopped but the engine would not start. The vehicle was towed to the dealership where I was told this issue was reported in Arkansas, Louisiana and Tennessee. The dealership reported that shards of metal were found in the fuel injector and the entire fuel system would have to be completely replaced. Additionally I was told the parts are hard to get. The vehicle was purchased new and was 7 months old and had just over 7,000 miles. The vehicle is still sitting at the dealership 10 days later and has not been moved from where it was delivered by the wrecker service. GM has been notified but no response from GM or dealership management yet as to what caused the engine failure. I occasionally tow a fifth-wheel RV with this vehicle. I no longer feel safe driving the vehicle and would not consider purchasing another until a determination is made on exactly what went wrong.

(Date Complaint Filed: 11/05/2016, NHTSA ID Number: 10924403)

2012 Chevrolet Silverado 2500: The contact owns a 2012 Chevrolet Silverado 2500. While driving 10 mph, the vehicle stalled without warning. The vehicle was towed to the dealer to be diagnosed. The contact was informed that there was metal contamination in the fuel system due to a fuel pump fracturing in the fuel tank. The vehicle was not repaired. The manufacturer was not notified of the failure. The approximate failure mileage was 130,000.

(Date Complaint Filed: 12/19/2016, NHTSA ID Number: 10936256)

2016 GMC Sierra 2500: The contact owns a 2016 GMC Sierra 2500. While driving approximately 15 mph, the engine stalled without warning. The vehicle was towed to a dealer where it was diagnosed that the fuel injector pump failed and needed to be replaced. The vehicle was repaired. The manufacturer was informed of the failure. The VIN was unknown. The approximate failure mileage was 11,000.

(Date Complaint Filed: 12/28/2016, NHTSA ID Number: 10937972)

2013 GMC Sierra 2500: Bosch CP4 fuel pump failure. Please reference EA11-003 and find the same fuel pumps that were found to fail on Audi/VW vehicles are also used on GM, Ford, and Dodge vehicles. Said pump failed during driving without warning causing complete engine shutdown and loss of power. Ceramic and metal internals of the pump disintegrated and traveled through the fuel system, subsequently causing the injectors to fail. Similar to the findings in EA11-003, page 16 paragraph 2, the repair is to cost approximately $10,000 to fix the entire fuel system.

(Date Complaint Filed: 01/09/2017, NHTSA ID Number: 10943828)

2012 Chevrolet Silverado 3500: While driving on a four-lane highway towing our 15,500 lb fifth wheel, suddenly, without any warning, we heard rattling, lost power, and the engine shut down. The noise and loss of propulsion, power steering and power brakes all occurred within about 2-3 seconds. Gratefully, the driver had the fortitude to immediately begin pulling onto the shoulder of the slight downward slope on which we were driving. Luckily, we were on a stretch of road that was not inclined, not in a construction zone with barriers, not in a snowy mountain pass or in other inclement weather, not in the left lane passing, etc. had any of these factors prevented us from simply pulling onto the shoulder of the road, the potential for a life threatening accident would have been significant. The Chevrolet/GM service center confirmed the Bosch CP4 hpfp suffered a catastrophic failure, destroying the entire fuel system of the truck. GM is covering part of the repair costs (truck is at 119,705 miles), but our bill will remain substantial. Research of diesel, TDI, and other forums document this problem as well-known and broader than the existing 9 complaints in the NHTSA public database and the investigation of VW /Audi. Some people are even reporting multiple failures. The most common believable cause of the failures seems to be a mismatch of lubricity specs between the Bosch CP4 and the diesel fuel in the U.S. Please open an investigation, and order GM, Ford, VW, Bosch and others to recall these vehicles to provide the necessary repairs. Also please mandate, to the extent you're able, reimbursement to those of us paying for repairs today. I have read, but have not been able to confirm, that VW extended the warranty to 120k miles. This seems like a minimum (more is better) step, and it should be retroactive.

(Date Complaint Filed: 03/15/2017, NHTSA ID Number: 10966092)

2012 Chevrolet Silverado 2500: Bosch CP4.2 fuel pump malfunctioned and contaminated the entire fuel and injection system with metal shavings. The truck engine stopped while traveling at 50 mph on a city street and left me with no power steering. The entire fuel system needs to now be replaced and not covered by the manufacturer. Repair bill of over $7,000.

(Date Complaint Filed: 08/03/2017, Date of Incident: 07/31/2017)

2015 GMC Sierra 2500: My vehicle's engine stopped running while I was driving on a very busy road. I lost power steering, power brakes, everything. Other motorists were swerving to avoid me. I had the truck towed to a GM dealer, and they diagnosed the problem as the fuel injector pump. I researched this online, and found that this is a common issue! This should be a major safety concern since it's causing vehicles to simply stop running at any given speed on any given highway!

(Date Complaint Filed: 09/06/2017, NHTSA ID Number: 11021712)

2014 GMC Sierra 2500: My fuel pump and injectors failed while I was driving, stranding my truck in the middle of traffic right where a city street was changing to a country road. The GMC dealership falsely claimed that this was caused by using unapproved fuel. The fuel I used was b20 biodiesel, with 80% renewable diesel, which meets diesel specifications and is a legal road fuel in California. They also claimed that a cascade of other problems were all caused by my fuel and refused to apply my warranty.

(Date Complaint Filed: 11/13/2017, NHTSA ID Number: 11045708)

2016 Chevrolet Silverado 2500: Vehicle just shut off while in operation then would turn over but no start. Vehicle was towed to dealership and was advised fuel pump failed and would be covered under warranty. Luckily vehicle was stationary but was in preparation for a vacation pulling our 5th wheel camper. From researching since this incident, I've been in contact with several individuals who have had this part fail not only while moving but have had it happen twice. Even the service advisors acknowledge that this part is a known failure item and will happen again. Service department had vehicle for 2 weeks.

(Date Complaint Filed: 03/28/2018, NHTSA ID Number: 11081742)

2013 GMC Sierra 3500: The contact owns a 2013 GMC Sierra 3500. The contact stated that the vehicle failed to start. The vehicle was towed … where it was diagnosed that the fuel pump and injectors failed and needed to be replaced. The vehicle was not repaired. The manufacturer was contacted and did not assist. the approximate failure mileage was 34,500. The VIN was not available.

(Date Complaint Filed: 04/17/2018, NHTSA ID Number: 11088735)

2013 GMC Sierra 2500: I bought my 2013 Sierra 2500 HD 4x4 used with only 42000 miles on it. Within 1000 miles of that purchase, the power steering pump failed and

needed replaced. I was pulling into the gas station and almost took out a fueling tower. Power steering pumps do not fail -- they are manufacturing defects. I have had vehicles for 30 years and never had a PS pump failure. Most people never experience this. I had to fork out $500 for the repair – GMC should reimburse me for this; they are lucky this didn't turn out to be a catastrophe. I was lucky to have been moving very slowly due to the congestion at the station.

(Date Complaint Filed: 09/13/2018, NHTSA ID Number: 11129310)

2011 Chevrolet Silverado 2500: I was traveling to work in the fast lane of the freeway when I heard a faint squealing noise and the truck suddenly started running rough. I began crossing all 4 lanes and by the time I made it to the slow lane the truck completely died. I was able to safely coast off of the freeway due to my quick reaction and lack of traffic at the time, but the situation was very dangerous and could have been much more so with heavier traffic or a less aware driver. Later diagnosis at the Chevrolet dealership told me that the CP4 fuel pump disintegrated inside. After speaking with the diesel technician at the dealer I learned that it is a very common problem and the repair comes with a $10,000 price tag. I was also very surprised that there has never been a recall for this problem and GM continued to use them until 2017…7 years! My truck is a 2011 with only 54k miles, and they just fixed a 2017 with only 7k miles! I have since done a lot of research finding hundreds of low mileage GM Duramax diesel between 2011-2017 with the exact same failure. I was able to get the bottom of the failure itself and I found the following…the Bosch CP4 fuel pumps that were used in these trucks (also found in late Ford and VW diesels) are made in Europe to different specifications. The pumps rely on lubricant found in diesel #1 to operate smoothly and last a long time. Here in the U.S. we only have diesel #2 which lacks that lubricant and causes the internal parts of the pump to disintegrate sending metal shavings throughout the entire fuel system. This is why the repair averages $10,000 across the country, the entire fuel system becomes contaminated and has to be replaced. I contacted gm and they don't believe this is a safety issue. A vehicle suddenly dying with seconds notice on the freeway is certainly a safety issue in my eyes. Especially when it's a common failure that can be prevented.

(Date Complaint Filed: 11/12/2018, NHTSA ID Number: 11150932)

2015 GMC Sierra 2500: Duramax diesel engine fuel injection pump broke with no notice while driving causing a total loss of power. Failure repair under warranty required replacement of pump, injectors, lines, filters and flush of fuel tank.

(Date Complaint Filed: 12/03/2018, NHTSA ID Number: 11155789)

Defendant's Knowledge and Concealment of the Defect

29. GM has known about the defect affecting the CP4 fuel pump in Class Vehicles since Class Vehicles were first sold and leased.

30. In early 2011, when Class Vehicles were newly available for sale and lease, the NHTSA initiated an investigation into failing high-pressure fuel pumps in certain Audi and Volkswagen vehicles. As part of the investigation, the NHTSA requested information from other manufacturers, including GM, about their own vehicles and about high-pressure fuel pump failures in those vehicles.

31. GM provided the NHTSA with a written response on December 9, 2011.[3] The data GM provided to the NHTSA was already sufficient to detect a serious defect involving Class Vehicles' fuel pumps.

32. For example, GM counted the number of fuel pump component failures in its 2009 and 2010 models as compared to its 2011 models (which was the first model year for Class Vehicles). Even though GM was compiling this data during the 2011 calendar year, such that the 2011 models remained brand new and the earlier models had been on the road for multiple years already, the 2011 model year Class Vehicle fuel pumps were already failing at many multiple times the rate of the predecessor models (which did not come with Bosch CP4 fuel pumps).

33. For example, the 2011 GMC Sierra HD had already experienced 16 reported fuel pump failures compared to just 8 in the two preceding years of Sierras combined. And the 2011 Chevrolet Silverado HD had experienced 30 reported fuel pump failures compared to just 8 in the two preceding model years of Silverados combined.

34. Likewise, GM provided warranty data comparing the 2011 model year Class Vehicles with the preceding model year vehicles. Whereas the 2011 model year Silverado had already generated 68 warranty claims for the fuel pump, the 2010 model year Silverado only had 20. And whereas the 2011 model year Sierra had generated 35 warranty claims, the preceding model year only had 2.

[3] https://static.nhtsa.gov/odi/inv/2011/INRL-EA11003-50067P.pdf.

35. A major quality control measure used by GM and other automotive manufacturers is to compare a particular model year vehicle's warranty claims and other aggregate information (such as driver complaints and field reports) with the preceding model year vehicle's data to evaluate whether there is a measurable uptick in the failure rate. In modern day vehicle production, failures are typically measured per thousand vehicles or sometimes even per hundred thousand vehicles, and defect trends are frequently identified after just one or several reported failures. Where, like here, the early warranty rates reflected between a three-fold and seventeen-fold increase over the previous year, GM must have recognized the existence of a defect no later than December 2011 at the time it compiled this information for the NHTSA (though it was likely conducting internal analysis of its own even earlier).

36. In addition, for many decades, GM has conducted durability and reliability testing of its new vehicles before introducing them to the market. This means that GM trucks, including Class Vehicles, are exposed to lengthy and comprehensive physical testing that reveals how the vehicles and component parts (including the engines and fuel pumps) will last when driven for tens of thousands of miles.

37. Through this testing, GM also would have discovered the defect—before selling the first Class Vehicle. As the driver complaints to the NHTSA above show, it is not uncommon for the Class Vehicle fuel pump to fail before the vehicle has driven 50,000 miles, with some failing at as low as 7,000 miles of driving. Likewise, it is not uncommon for the Class Vehicle fuel pump to fail within the first year or two of driving. These early failures are well within the scope of GM's durability and reliability testing.

38. Despite its knowledge of the defect affecting the Bosch CP4 fuel pump in Class Vehicles, GM has long concealed the problem from drivers and potential customers alike. GM has never warned consumers at the point of sale or lease (nor instructed its dealerships to do so), and has made no effort to alert drivers to the risk of stalling that may result. As a result, most drivers are unaware that they are driving unsafe vehicles and consumers are deprived of the right to make informed purchasing and lease decisions taking into account the available information at the time of purchase or lease.

39. As GM also knows, the defect is not reasonably discoverable by consumers unless they experience the stalling or other symptoms firsthand and thus are exposed to the attendant safety risks. While vehicles with similar defects have been the subject of voluntary safety recalls—which by law requires notification to owners and lessees of the danger—GM has conducted no such recall, instead profiting from the sale and lease of defective vehicles through the 2016 model year, and continuing to profit from resulting repairs at its authorized dealerships.

40. Given the severity and the safety risks posed by the defect, GM either should not have sold or leased Plaintiffs and class members their vehicles or it should have prominently disclosed—both in a written disclosure to be acknowledged in writing by Plaintiffs and class members and through an oral disclosure to be given by GM's authorized dealerships—that the vehicles are prone to stalling, including at highway speeds.

PLAINTIFFS' EXPERIENCES

Calvin Smith

41. Plaintiff Calvin Smith purchased a new 2012 Chevrolet Silverado 2500 from Folsom Chevrolet, an authorized GM dealership located in Folsom, California. Mr. Smith's vehicle was equipped with a factory-installed Bosch CP4 fuel pump. Mr. Smith researched the vehicle online, including on the Chevrolet website, and he also spoke with dealership personnel about the vehicle before making his purchase.

42. In October 2017, when the vehicle had about 143,000 miles on the odometer, the vehicle experienced catastrophic fuel line failure, with the fuel pump sending metal through the fuel line. Mr. Smith ultimately paid about $4,500 for resulting repairs.

43. Mr. Smith was told by his GM dealership after paying for the repairs that many other vehicles were experiencing the same problem.

44. Had GM adequately disclosed the defect, Mr. Smith would not have purchased his vehicle, or he would have paid substantially less for it.

Jacqueline Bargstedt

45. Plaintiff Jacqueline Bargstedt purchased a new 2011 Chevrolet Silverado 3500 from Jerry's Chevrolet, an authorized GM dealership located in Weatherford, Texas. Ms. Bargstedt's

vehicle was equipped with a factory-installed Bosch CP4 fuel pump. Ms. Bargstedt researched the vehicle online before her purchase, including on the Chevrolet website, and by asking questions of dealership personnel before buying the vehicle.

46. In January 2017, when the vehicle had approximately 107,000 miles on the odometer, Ms. Bargstedt was driving when her check engine light came on. She presented the vehicle to an authorized GM dealership but was refused warranty coverage and instead spent over $10,000 on repairs.

47. Had GM adequately disclosed the defect, Ms. Bargstedt would not have purchased her vehicle, or she would have paid substantially less for it.

CLASS ACTION ALLEGATIONS

48. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this action on behalf of themselves and the following proposed statewide classes:

California Class:

All persons who purchased or leased a Class Vehicle in California.

Texas Class:

All persons who purchased or leased a Class Vehicle in Texas.

49. Excluded from the proposed classes are Defendant; any affiliate, parent, or subsidiary of Defendant; any entity in which Defendant have a controlling interest; any officer, director, or employee of Defendant; any successor or assign of Defendant; anyone employed by counsel in this action; any judge to whom this case is assigned and his or her spouse; members of the judge's staff; and anyone who purchased a Class Vehicle for the purpose of resale.

50. **Numerosity**. GM sold many thousands of Class Vehicles, including a substantial number in California and Texas. Members of the proposed classes likely number in the thousands and are thus too numerous to practically join in a single action. Class members may be notified of the pendency of this action by mail, supplemented by published notice (if deemed necessary or appropriate by the Court).

51. **Commonality and Predominance**. Common questions of law and fact exist as to all proposed members of the classes and predominate over questions affecting only individual class members. These common questions include:

a. Whether there is a defect in Class Vehicles that causes the Bosch CP4 fuel pump to fail abruptly;

b. Whether Class Vehicles are therefore prone to abrupt and unexpected stalling, including at highway speeds;

c. Whether GM knew or should have known of the defect, and if so, when GM discovered this;

d. Whether the knowledge of the defect would be important to a reasonable person, because, among other things, it impacts the central functionality of Class Vehicles and poses an unreasonable safety hazard;

e. Whether GM failed to disclose and concealed the existence of the defect from potential customers;

f. Whether the Court may enter an injunction requiring GM to notify owners and lessees about the defect;

g. Whether GM's conduct, as alleged herein, violates the consumer protection laws of California and Texas;

h. Whether GM has breached its implied warranty obligations; and

i. Whether GM's conduct, as alleged herein, entitles Plaintiffs and the statewide Classes they represent to restitution under the laws of their respective states.

52. **Typicality**. Plaintiffs' claims are typical of the claims of the proposed classes. Plaintiffs and the members of the proposed classes all purchased or leased Class Vehicles with the same defect, giving rise to substantially the same claims. As illustrated by class member complaints, some of which have been excerpted above, each vehicle model included in the proposed class definitions has suffered from the same defect that Plaintiffs are complaining about.

53. **Adequacy**. Plaintiffs are adequate representatives of the proposed classes because their interests do not conflict with the interests of the members of the classes they seek to represent.

Plaintiffs have retained counsel who are competent and experienced in complex class action litigation, and will prosecute this action vigorously on class members' behalf.

54. **Superiority**. A 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 Defendant economically feasible. Even if class members themselves could afford such individualized litigation, the court system could not. In addition to the burden and expense of managing many actions arising from the defective vehicles, individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the legal and factual issues of the case. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

55. In the alternative, the proposed classes may be certified because:

a. the prosecution of separate actions by the individual members of the proposed classes would create a risk of inconsistent adjudications, which could establish incompatible standards of conduct for Defendant;

b. the prosecution of individual actions could result in adjudications, which as a practical matter, would be dispositive of the interests of non-party class members or which would substantially impair their ability to protect their interests; and

c. Defendant has acted or refused to act on grounds generally applicable to the proposed classes, thereby making appropriate final and injunctive relief with respect to the members of the proposed classes as a whole.

TOLLING OF STATUTES OF LIMITATIONS

56. **Discovery Rule**. Plaintiffs' and class members' claims accrued upon discovery that their Class Vehicles are defective. While Defendant knew, and concealed, the existence of the defect in Class Vehicles, Plaintiffs and class members could not and did not discover this fact through reasonable diligent investigation until after they experienced the defect and learned that the problem was not isolated to their vehicle.

57. **Active Concealment Tolling**. Any statutes of limitations are tolled by Defendant's knowing and active concealment of the defect in Class Vehicles. Defendant kept Plaintiffs and all class members ignorant of vital information essential to the pursuit of their claim, without any fault or lack of diligence on the part of Plaintiffs. The details of Defendant's efforts to conceal the above-described unlawful conduct are in their possession, custody, and control, to the exclusion of Plaintiffs and class members, and await discovery. Plaintiffs could not reasonably have discovered the defect on their own.

58. **Estoppel**. Defendant was and is under a continuous duty to disclose to Plaintiffs and all class members the true character, quality, and nature of the defect in Class Vehicles. At all relevant times, and continuing to this day, Defendant knowingly, affirmatively, and actively concealed the true character, quality, and nature of the defect in the Class Vehicles. The details of Defendant's efforts to conceal the above-described unlawful conduct are in their possession, custody, and control, to the exclusion of Plaintiffs and class members, and await discovery. Plaintiffs reasonably relied upon Defendant's active concealment. Based on the foregoing, Defendant is estopped from relying upon any statutes of limitation in defense of this action.

59. **Equitable Tolling**. Defendant took active steps to conceal the fact that it wrongfully, improperly, illegally, and repeatedly manufactured, marketed, distributed, sold, and/or leased defective products. The details of Defendant's efforts to conceal the above-described unlawful conduct are in their possession, custody, and control, to the exclusion of Plaintiffs and class members, and await discovery. When Plaintiffs learned about this material information, they exercised due diligence by thoroughly investigating the situation, retaining counsel, and pursuing their claims. Defendant fraudulently concealed the above-described wrongful acts. Should such tolling be necessary, therefore, all applicable statutes of limitation are tolled under the doctrine of equitable tolling.

FIRST CAUSE OF ACTION

Unlawful, Unfair, and Fraudulent Business Practices

Cal. Bus. & Prof. Code § 17200, *et seq.*

(Plaintiff Calvin Smith individually and on behalf of the proposed California Class)

60. Plaintiff Calvin Smith re-alleges the paragraphs above as if fully set forth herein.

61. Defendant violated and continues to violate California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, which prohibits unlawful, unfair, and fraudulent business acts or practices.

62. Defendant's acts and practices, as alleged in this complaint, constitute unlawful, unfair, and fraudulent business practices, in violation of the Unfair Competition Law. In particular, GM sold vehicles to class members even though the Bosch CP4 fuel pumps installed in those vehicles are defective and pose a safety hazard, and failed to disclose its knowledge of the defect and its attendant risks at the point of sale or otherwise.

63. Defendant's business acts and practices are unlawful in that they violate the Consumers Legal Remedies Act, Cal. Civil Code § 1750, *et seq.*, and the Song-Beverly Consumer Warranty Act for Breach of Implied Warranty, Cal. Civ. Code § 1790, *et seq*., for the reasons set forth below.

64. Defendant's acts and practices also constitute fraudulent practices in that they are likely to deceive a reasonable consumer. As described above, GM knowingly concealed and failed to disclose at the point of sale and otherwise that Class Vehicles' fuel pumps are defective and thus create in the Class Vehicles a propensity to abruptly stall—including at high speeds—endangering the personal safety of drivers and passengers and requiring immediate repair. Had GM disclosed this fact, Plaintiffs, class members, and reasonable consumers would not have purchased Class Vehicles or would have paid significantly less for them. Furthermore, GM charges for repairs of Plaintiffs' and class members' vehicles without disclosing that the problem is widespread and that the repairs do not address the root cause of the failures.

65. Defendant's conduct also constitutes unfair business practices for at least the following reasons:

a. The gravity of harm to Plaintiff and the proposed California Class from Defendant's acts and practices far outweighs any legitimate utility of that conduct;

b. Defendant's conduct is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff and the members of the proposed California Class; and

c. Defendant's conduct undermines or violates the stated policies underlying the Consumers Legal Remedies Act and the Song-Beverly Consumer Warranty Act—to protect consumers against unfair and sharp business practices and to promote a basic level of honesty and reliability in the marketplace.

66. As a direct and proximate result of Defendant's business practices, Plaintiff and proposed class members suffered injury in fact and lost money or property, because they purchased and paid for vehicles that they otherwise would not have, or in the alternative, would have paid less for.

67. Plaintiff and the proposed California Class are entitled to equitable relief, including an order directing GM to disclose the existence of the defect to drivers and consumers and to provide restitution and disgorgement of all profits paid to GM as a result of its unfair, deceptive, and fraudulent practices, reasonable attorneys' fees and costs, and a permanent injunction enjoining such practices.

SECOND CAUSE OF ACTION

Violation of the Consumers Legal Remedies Act

Cal. Civ. Code § 1750, *et seq.*

(Plaintiff Calvin Smith individually and on behalf of the proposed California Class)

68. Plaintiff Calvin Smith re-alleges the paragraphs above as if fully set forth herein.

69. Defendant is a "person" within the meaning of Civil Code §§ 1761(c) and 1770, and has provided "goods" within the meaning of Civil Code §§ 1761(b) and 1770.

70. Plaintiff and members of the proposed California Class are "consumers" within the meaning of Civil Code §§ 1761(d) and 1770, and have engaged in a "transaction" within the meaning of Civil Code §§ 1761(e) and 1770.

71. GM's acts and practices, which were intended to result and which did result in the sale of defective Class Vehicles, violate § 1770 of the Consumers Legal Remedies Act for at least the following reasons:

a. GM represents that its vehicles have characteristics, uses, or benefits which they do not have;

b. GM advertises its goods with intent not to sell them as advertised;

c. GM represents that its vehicles are of a particular standard, quality, or grade when they are not;

d. GM represents that a transaction conferred or involved rights, remedies, or obligations which they do not; and

e. GM represents that its goods have been supplied in accordance with a previous representation when they have not.

72. As described above, GM sold vehicles to class members even though the vehicles are defective and pose a safety hazard, and failed to disclose its knowledge of the defect and its attendant risks at the point of sale or otherwise. GM intended that Plaintiff and the members of the proposed class rely on this omission in deciding to purchase their vehicles.

73. Had GM adequately disclosed the defect, Plaintiff, members of the proposed class, and reasonable consumers would not have purchased or would have paid less for their vehicles. Furthermore, GM charges for repairs of Plaintiffs' and class members' vehicles without disclosing that the problem is widespread and that the repairs do not address the root cause of the defecet.

74. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff Smith is notifying Defendants to provide them with the opportunity to correct their business practices.

75. Pursuant to California Civil Code § 1780, Plaintiff seeks an order enjoining GM from the unlawful practices described above and a declaration that GM's conduct violates the Consumers Legal Remedies Act, as well as actual and punitive damages and attorneys' fees and costs.

THIRD CAUSE OF ACTION

Violation of Song-Beverly Consumer Warranty Act for Breach of Implied Warranty,

Cal. Civ. Code § 1790, *et seq.*

(Plaintiff Calvin Smith individually and on behalf of the proposed California Class)

76. Plaintiff Calvin Smith re-alleges the paragraphs above as if fully set forth herein.

77. Class Vehicles are "consumer goods" and Plaintiff Smith and the proposed California Class are "buyers" within the meaning of Cal. Civ. Code § 1791. GM is also a "manufacturer," "distributor," or "retail seller" under Cal. Civ. Code § 1791.

78. The implied warranty of merchantability included with the sale of each Class Vehicle means that GM warranted that each Class Vehicle (a) would pass without objection in trade under the contract description; (b) was fit for the ordinary purposes for which the Class Vehicle would be used; and (c) conformed to the promises or affirmations of fact made on the container or label.

79. The Class Vehicles would not pass without objection in the automotive trade because of the defect affecting the Bosch CP4 fuel pump, which also makes them unfit for the ordinary purpose for which a Class Vehicle would be used.

80. The Class Vehicles are not adequately labeled because their labeling fails to disclose the defect and risk of stalling and does not advise the members of the proposed California Class of the existence of the issue prior to experiencing failure firsthand.

81. GM's actions have deprived Plaintiff and the members of the proposed California Class of the benefit of their bargains and have caused Class Vehicles to be worth less than what Plaintiff and other members of the proposed California Class paid.

82. As a direct and proximate result of GM's breach of implied warranty, members of the proposed California Class received goods whose condition substantially impairs their value. Plaintiff and members of the proposed California Class have been damaged by the diminished value of their Class Vehicles.

83. Under Cal. Civ. Code §§ 1791.1(d) and 1794, Plaintiff and members of the proposed California Class are entitled to damages and other legal and equitable relief, including, at their election, the right to revoke acceptance of Class Vehicles or the overpayment or diminution in value of their Class Vehicles. They are also entitled to all incidental and consequential damages resulting from GM's breach, as well as reasonable attorneys' fees and costs.

FOURTH CAUSE OF ACTION

Violation of Texas Deceptive Trade Practices Act,

Tex. Bus. & Com. Code Section 17.46 et seq.

(Plaintiff Jacqueline Bargstedt individually and on behalf of the proposed Texas Class)

84. Plaintiff Jacqueline Bargstedt re-alleges the paragraphs above as if fully set forth herein.

85. The purposes of the Texas Deceptive Trade Practices and Consumer Protection Act (DTPA) is to "protect consumers against false, misleading, and deceptive practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection," and it is liberally construed to effect those purposes. Tex. Bus. & Com. Code § 17.44.

86. Plaintiff and the other members of the proposed class are "consumers," Class Vehicles are "goods," and GM was engaged in "trade or commerce" as those terms are defined by § 17.45 of the DTPA.

87. GM violated section 17.50(a)(1) and 17.46(b)(24) of the DTPA because in connection with the sale and lease of Class Vehicles to Plaintiff and proposed class members, GM failed to disclose material information—namely, that the Class Vehicles are defective and experience failure of the Bosch CP4 fuel pump, making the vehicles prone to abrupt and unexpected stalling including at high speeds.

88. GM's omissions were intended to induce Plaintiff and other members of the proposed class to purchase and lease Class Vehicles that they otherwise would not have purchased at a price they otherwise would not have paid. Plaintiff and other members of the proposed class relied upon GM's omissions to their detriment, purchasing vehicles they otherwise would not have purchased at a price they otherwise would not have paid.

89. GM has also violated section 17.50(a)(2) of the DTPA because it is in breach of its implied warranties. GM provided each purchaser and lessee of a Class Vehicle with an implied warranty that each vehicle (i) would pass without objection in the trade under the contract description; (ii) is fit for the ordinary purposes for which such goods are used; and (iii) conforms to

the promises or affirmations of fact made on the container or label. The Class Vehicles would not pass without objection in the automotive trade because the vehicles are prone to fuel pump failures that are expensive to repair and which endanger drivers and passengers by creating a risk of unexpected and abrupt stalling, including at high speeds. The Class Vehicles are not adequately labeled because their labeling fails to disclose the defect and risks prior to drivers experiencing the stalling first-hand. GM's breach has denied Plaintiff and other members of the proposed class the benefit of their bargain.

90. GM has also violated section 17.50(a)(3) of the DTPA because in connection with the sale and lease of Class Vehicles to Plaintiff and proposed class members, GM failed to disclose material information—namely, that the Class Vehicles are defective, experience fuel pump failure, and are prone to unexpected and abrupt stalling, including at high speeds. GM's conduct constitutes an unconscionable course of action, as GM took advantage of the lack of knowledge of Plaintiff and other members of the proposed class to a grossly unfair degree and has left them with vehicles of decreased value due to the defect.

91. As a direct and proximate result of GM's conduct, Plaintiff and other members of the proposed class have been harmed in that they purchased and leased Class Vehicles they otherwise would not have, paid more for the vehicles than they otherwise would have, and are left with vehicles of decreased value due to the defect. Meanwhile, GM has sold more Class Vehicles than it otherwise could have and charged inflated prices for the vehicles, unjustly enriching itself thereby.

92. GM is liable to Plaintiff and the members of the proposed Texas class for damages in amounts to be proven at trial, including attorney fees recoverable pursuant to § 17.50(d) of the DTPA, costs, and treble damages.

93. Pursuant to the provisions of § 17.505 of the DTPA, Plaintiff will send a notice letter to GM to provide it with the opportunity to correct its business practices.

94. Pursuant to § 17.50 of the DTPA, Plaintiff and the members of the proposed Texas class seek economic damages, treble damages, appropriate injunctive relief, restitution, and any other relief the Court deems proper, as well as their reasonable and necessary attorney fees.

FIFTH CAUSE OF ACTION

Unjust Enrichment

(Plaintiffs Calvin Smith and Jacqueline Bargstedt, individually and on behalf of the proposed California and Texas Classes)

95. Plaintiffs re-allege the paragraphs above as if fully set forth herein.

96. As described above, GM sold defective vehicles to class members even though the defect would be material to a reasonable consumer and poses a safety hazard, and failed to disclose its knowledge of the defect and its attendant risks at the point of sale or otherwise. Further, GM charges for repairs of Plaintiffs' and class members' Class Vehicles without disclosing that the problem is widespread and that the repairs do not address the root cause of the defect.

97. As a result of its fraudulent acts and omissions related to the defect, GM obtained monies which rightfully belong to Plaintiffs and the proposed California and Texas Classes to the detriment of Plaintiffs and the proposed class members.

98. GM appreciated, accepted, and retained the non-gratuitous benefits conferred by Plaintiffs and the proposed class members, who, without knowledge of the defect, paid a higher price for their vehicles than those vehicles were worth. GM also received monies for vehicles that Plaintiffs and the proposed class members would not have otherwise purchased.

99. It would be inequitable and unjust for GM to retain these wrongfully obtained profits.

100. GM's retention of these wrongfully-obtained profits would violate the fundamental principles of justice, equity, and good conscience.

101. Each Plaintiff and the proposed Class he or she represents is entitled under the laws of their respective states (California as to Plaintiff Smith and Texas as to Plaintiff Bargstedt) to restitution of the profits GM unjustly obtained, plus interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter a judgment awarding the following:

a. An order certifying the proposed California and Texas Classes, and appointing Plaintiffs' counsel to represent the classes;

b. An order awarding Plaintiffs and class members their actual damages, punitive damages, restitution, and/or any other form of monetary relief provided by law (except that Plaintiffs do not now seek damages under the California Consumers Legal Remedies Act);

c. An order awarding Plaintiffs and the Classes injunctive and equitable relief as the Court deems proper;

d. An order requiring GM to adequately disclose and repair the defect;

e. An order awarding Plaintiffs and the Classes pre-judgment and post-judgment interest as allowed under the law;

f. An order awarding Plaintiffs and the Classes reasonable attorneys' fees and costs of suit, including expert witness fees; and

g. An order awarding such other and further relief as this Court may deem proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury for all issues so triable under the law.

DATED: January 2, 2019

Respectfully submitted,

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