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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF VENTURA – HALL OF JUSTICE

JEREMY LOOKOFSKY, an individual,  
  
Plaintiff,  
  
v.  
  
GENERAL MOTORS, LLC, A Delaware  
Limited Liability Company; and DOES 1  
through 20, inclusive,  
  
Defendants.

Case No.

COMPLAINT FOR DAMAGES

Original

-

*Assigned for all purposes to the Hon.  
in Dept.*

1. Breach of Implied Warranty of Merchantability under the Song-Beverly Warranty Act.
2. Breach of Express Warranty under the Song-Beverly Warranty Act.
3. Fraudulent Inducement - Concealment.

JURY TRIAL DEMANDED.

1 PLAINTIFF JEREMY LOOKOFSKY, an individual, hereby alleges and complains as  
2 follows:

3 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

4 1. Defendant, GENERAL MOTORS, LLC (hereinafter referred to as  
5 “Manufacturer”), is a limited liability company doing business in the County of Ventura, State of  
6 California, and, at all times relevant herein, was/is engaged in the manufacture, sale, distribution,  
7 and/or importing of Cadillac motor vehicles and related equipment.

8 2. The true names and capacities, whether individual, corporate, associate, or otherwise,  
9 of the Defendants, Does 1 through 20, inclusive, are unknown to Plaintiff who therefore sues these  
10 Defendants by such fictitious names. Plaintiff will seek leave to amend this Complaint to set forth  
11 their true names and capacities when they have ascertained them. Further, Plaintiff is informed and  
12 believes, and thereon alleges, that each of the Defendants designated herein as a “Doe” is  
13 responsible in some manner for the events and happenings herein referred to and caused injury and  
14 damage to Plaintiff as herein alleged.

15 3. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
16 mentioned, Defendants, and each of them, were the agents, servants, and/or employees of each of  
17 their Co-Defendants. Plaintiff is informed and believes, and thereon alleges, that in doing the  
18 things hereinafter alleged Defendants, and each of them, were acting in the course and scope of  
19 their employment as such agents, servants, and/or employees, and with the permission, consent,  
20 knowledge, and/or ratification of their Co-Defendants, principals, and/or employers.

21 4. On or about January 13, 2017, defendants Manufacturer and Does 1 through 20  
22 inclusive, manufactured and/or distributed into the stream of commerce a new 2017 Cadillac  
23 Escalade, VIN 1GYS3BKJ8HR404621 (hereinafter referred to as the “Vehicle”) for its eventual  
24 sale/lease in the State of California.

25 5. On or about February 13, 2017, Plaintiff leased, for personal, family, and/or  
26 household purposes, the new subject Vehicle from the Lessor. The lease agreement is in the  
27 possession of Defendants.

28 6. The subject Vehicle was/is a “new motor vehicle” under the Song-Beverly Warranty  
Act.

1           7. Along with the purchase of the Vehicle, Plaintiff received written warranties and other  
2 express and implied warranties including, but not limited to, warranties from Manufacturer and  
3 Seller that the Vehicle and its components would be free from all defects in material and  
4 workmanship; that the Vehicle would pass without objection in the trade under the contract  
5 description; that the Vehicle would be fit for the ordinary purposes for which it was intended; that  
6 the Vehicle would conform to the promises and affirmations of fact made; that Defendants, and  
7 each of them, would perform any repairs, alignments, adjustments, and/or replacements of any  
8 parts necessary to ensure that the Vehicle was free from any defects in material and workmanship;  
9 that Defendants, and each of them, would maintain the utility of the Vehicle for Four (4) years or  
10 50,000 miles and would conform the Vehicle to the applicable express warranties. (A copy of the  
11 written warranty is in the possession of the Defendants).

12           8. Plaintiff has duly performed all the conditions on Plaintiff's part under the purchase  
13 agreement and under the express and implied warranties given to plaintiff, except insofar as the  
14 acts and/or omissions of the Defendants, and each of them, as alleged herein, prevented and/or  
15 excused such performance.

16           9. Plaintiff has delivered the Vehicle to the Manufacturer's authorized service and repair  
17 facilities, agents and/or dealers, including Seller, on at least Three (3) occasions resulting in the  
18 Vehicle being out of service by reason of repair of nonconformities. Repair Orders/Invoices are in  
19 the possession of Defendants.

20           10. By way of example, and not by way of limitation, the defects, malfunctions, mis  
21 adjustments, and/or nonconformities with Plaintiff's Vehicle include the following: Plaintiff has  
22 submitted the subject Vehicle for defects and malfunctions, specifically for issues with  
23 transmission issues, defective gas tank, coolant leaking, Recall N192268490 for increased brake  
24 pedal effort on two separate occasions, and startup issues.

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1           11.       Each time Plaintiff delivered the nonconforming Vehicle to a Manufacturer-  
2 authorized service and repair facility, Plaintiff notified Defendants, and each of them, of the  
3 defects, malfunctions, mis adjustments, and/or nonconformities existent with the Vehicle and  
4 demanded that Manufacturer or its representatives repair, adjust, and/or replace any necessary parts  
5 to conform the Vehicle to the applicable warranties.

6           12.       Each time Plaintiff delivered the nonconforming Vehicle to a Manufacturer-  
7 authorized service and repair facility, Defendants, and each of them, represented to Plaintiff that  
8 they could and would conform the Vehicle to the applicable warranties, that in fact they did  
9 conform the Vehicle to said warranties, and that all the defects, malfunctions, mis adjustments,  
10 and/or nonconformities have been repaired; however, Manufacturer or its representatives failed to  
11 conform the Vehicle to the applicable warranties because said defects, malfunctions, mis  
12 adjustments, and/or nonconformities continue to exist even after a reasonable number of attempts  
13 to repair was given.

14           13.       The amount in controversy exceeds TWENTY-FIVE THOUSAND DOLLARS  
15 (\$25,000.00), exclusive of interest and costs, for which Plaintiff seeks judgment against  
16 Defendants, together with equitable relief. In addition, Plaintiff seeks damages from Defendants,  
17 and each of them, for incidental, consequential, exemplary, and actual damages including interest,  
18 costs, and actual attorneys' fees.

19                           **The 8L90 MYC Hydra-Matic Automatic Transmission Defect**

20           14.       GENERAL MOTORS, LLC manufactured and/or distributed over Twenty (20) vehicle  
21 models throughout the United States equipped with defective 8L90 MYC Hydra-Matic automatic  
22 transmissions. These defective transmissions were installed in all 2010-2018 Cadillac Escalade  
23 automobiles sold or leased to consumers, including Plaintiff.

24           15.       The 8L90 MYC Hydra-Matic automatic transmission is defective in that it causes  
25 reduced acceleration at low speed and/or transmission slipping at launch; sudden, hard shaking and  
26 violent jerking (commonly known as "juddering" or "shuddering") during acceleration; and  
27 complete failure to function, each and all of which prevent the 8L90 MYC Hydra-Matic automatic  
28 transmission-equipped vehicle from operating as intended by the driver, especially during

1 acceleration from a complete stop.

2 16. This 8L90 MYC Hydra-Matic automatic transmission defect creates unreasonably  
3 dangerous situations while driving and increases the risk of a crash when trying to acceleration  
4 from a stop; at low speeds when drivers intend to accelerate to merge with highway traffic. The  
5 transmission defect creates a serious safety risk that can lead to accidents, injuries, or even death to  
6 the driver, the vehicles' occupants, other drivers, and pedestrians.

7 17. Plaintiff reasonably expected that his 2017 Cadillac Escalade would not experience  
8 transmission problems. These are reasonable and objective consumer expectations.

9 18. GENERAL MOTORS, LLC knew or should have known about the safety hazard  
10 posed by the defective 8L90 MYC Hydra-Matic automatic transmissions before the sale of the  
11 vehicles from pre-market testing, consumer complaints to the National highway Traffic Safety  
12 Administration ("NHTSA"), consumer complaints made directly to GENERAL MOTORS, LLC  
13 and its dealers, and other sources which drove GENERAL MOTORS, LLC to issue Technical  
14 Service Bulletins acknowledging the 8L90 MYC Hydra-Matic automatic transmission's defect.  
15 GENERAL MOTORS, LLC should not have sold, leased, or marketed the 8L90 MYC Hydra-  
16 Matic automatic transmission-equipped vehicles without a full and complete disclosure of the  
17 transmission defect, and should have voluntarily recalled all 8L90 MYC Hydra-Matic automatic  
18 transmission-equipped vehicles years ago.

19 19. Despite knowing about the 8L90 MYC Hydra-Matic automatic transmission defect  
20 and the danger it poses to consumers and other parties, GENERAL MOTORS, LLC sold, leased,  
21 and continues to sell and lease, vehicles equipped with the 8L90 MYC Hydra-Matic automatic  
22 transmission.

23 20. GENERAL MOTORS, LLC knew about the transmission defect contained in Cadillac  
24 Escalade vehicles equipped with the 8L90 MYC Hydra-Matic automatic transmission, along with  
25 the attendant safety problems and associated costs, and concealed the existence of those defects  
26 from Plaintiff and other consumers prior to the time they purchased or leased their respective  
27 Cadillac Escalade vehicles. GENERAL MOTORS, LLC continued this concealment from Plaintiff  
28 and other consumers following their respective sales or leases. GENERAL MOTORS, LLC's

1 concealment caused Plaintiff and other consumers to experience the 8L90 MYC Hydra-Matic  
2 automatic transmission defect throughout the life of each such vehicle, including during use within  
3 the respect warranty periods.

4 21. GENERAL MOTORS, LLC has chosen financial gain at the expense of consumer  
5 safety by failing to disclose its knowledge of this critical safety defect to consumers.

6 **GENERAL MOTORS, LLC Knowingly Sold a Dangerously Defective Vehicle to Plaintiff**

7 22. The Subject Vehicle was leased to Plaintiff on or about February 13, 2017.

8 23. Upon information and belief, GENERAL MOTORS, LLC was aware, should have  
9 been aware, of the 8L90 MYC Hydra-Matic automatic transmission defect present in the Subject  
10 Vehicle before it was leased to Plaintiff.

11 24. GENERAL MOTORS, LLC has a long history of minimizing the significance of the  
12 8L90 MYC Hydra-Matic automatic transmission defect by preparing and issuing Technical Service  
13 Bulletins (“TSBs”) to its dealerships’ service and repair facilities.

14 25. In its TSBs issued to its dealerships’ service and repair facilities, GENERAL  
15 MOTORS, LLC has attributed this problem to the Clutch Select Solenoid Valve 2; however,  
16 GENERAL MOTORS, LLC’s proposed fixes have not resolved the 8L90 MYC Hydra-Matic  
17 automatic transmission defect in affected vehicles.

18 26. On October 28, 2014, GENERAL MOTORS, LLC acknowledged the transmission  
19 failures due to the Clutch Select Solenoid Valve 2. Specifically, GENERAL MOTORS, LLC stated  
20 that 2010-2015 Chevrolet Suburban models were experiencing reduced acceleration at low speed  
21 and/or transmission slipping from a launch.

22 27. By November 6, 2015 GENERAL MOTORS, LLC had expanded its TSB a fourth  
23 time to include various 2016 vehicle models, including the Cadillac Escalade and identified  
24 continued problems with the 8L90 MYC Hydra-Matic automatic transmission as well as other  
25 varying transmission models for acceleration at low speed and/or transmission slipping from  
26 launch.

27 28. By November 3, 2017 GENERAL MOTORS, LLC had issued another TSB to include  
28 various 2017 and 2018 vehicle models, including the Cadillac Escalade and identified continued

1 problems with the 8L90 MYC Hydra-Matic automatic transmission for stalling shudder and/or hard  
2 shifting into 1<sup>st</sup> gear or reverse vibration on launch and/or engine noise.

3 29. GENERAL MOTORS, LLC suggested that technicians verify the transmission fluid  
4 level and condition are correct, then follow published diagnostics for DTC P0751, Circuit/System  
5 Testing. Additionally, when performing the solenoid performance test, the solenoid that could  
6 cause this condition is PC Solenoid 2. Other solenoids were not suspected to cause these  
7 conditions. The recommended inspection procedure is to remove the valve and inspect it for any  
8 scratches on the valves. If a bore shows signs of scratching or damage, the lower valve body should  
9 be replaced.

10 30. GENERAL MOTORS, LLC further suggested that technicians verify to determine if  
11 the crank shaft end play is within specification. If end play is found to be out of specification,  
12 remove engine and inspect for possible Crankshaft thrust bearing and/or crankshaft for wear.  
13 Lastly, technicians are to inspect thrust bearing for wear on one side and crankshaft on the  
14 “mating” surface. If wear is evident (3 vertical channels worn off) a replacement of the connecting  
15 rod bearings, main bearings, thrust bearing and crankshaft are needed.

16 31. Upon information and belief, GENERAL MOTORS, LLC has yet to develop any  
17 solution to correct the transmission defect.

18 32. GENERAL MOTORS, LLC has continued to manufacture, market, and distribute new  
19 8L90 MYC Hydra-Matic automatic transmissions into model year 2019, despite its failure to  
20 remedy the known transmission defect.

21 33. NHTSA provides a system for motor vehicle owners to report complaints relating to  
22 safety defects that pose a risk of accidents, injuries, and even death in vehicles manufactured or  
23 imported in the United States, including safety defects relating to transmission malfunctions. The  
24 safety defect complaints are entered into NHTSA’s consumer complaint automated database,  
25 which manufacturers can access. NHTSA also provides these consumer complaints to the vehicle’s  
26 manufacturer, including GENERAL MOTORS, LLC. GENERAL MOTORS, LLC undoubtedly  
27 reviews NHTSA consumer complaints. Given that the vast majority of vehicle owners are not  
28 aware of NHTSA and/or its reporting system, complaints received by NHTSA are a small minority

1 of the overall number of complaints made to GENERAL MOTORS, LLC, which also receives  
2 complaints directly and/or through its authorized dealerships.

3 34. Since at least 2010, GENERAL MOTORS, LLC has received complaints of  
4 transmission defects and safety concerns related to the 2010-2019 Cadillac Escalade.

5 35. Consumer complaints submitted to National Highway Traffic Safety Administration  
6 (“NHTSA”) about the transmission defect have persisted despite the application of GENERAL  
7 MOTORS, LLC’s supposed fixes. Drivers report that they do not feel safe driving the vehicles with  
8 the affected transmissions.

9 36. Consumers have submitted NHTSA complaints regarding the transmission defect  
10 described in GENERAL MOTORS, LLC’s Technical Service Bulletins. The number and content  
11 of NHTSA consumer complaints highlight the vehicles’ transmission defects.

12 37. Despite GENERAL MOTORS, LLC’S knowledge of the transmission defect in the  
13 2010-2019 Cadillac Escalade and its safety implications, GENERAL MOTORS, LLC’s continues  
14 to conceal this knowledge by, among other things, issuing TSBs that imply that the defect is  
15 insignificant and easily correct, and has failed to disclose that the transmissions are defective and  
16 dangerous.

17 38. GENERAL MOTORS, LLC has continuously experienced problems over a number  
18 of years with its automatic transmissions that result in the same transmission failures that Plaintiff  
19 has experienced. Yet, GENERAL MOTORS, LLC has continued to install the affected automatic  
20 transmissions in its vehicles and failed to adequately disclose to Plaintiff or other consumers the  
21 resulting transmission failures or the safety implications of such failures.

22 **GENERAL MOTORS, LLC Did Not Disclose the Safety Defect to Plaintiff**

23 39. Despite GENERAL MOTORS, LLC’s knowledge of the defect in the automatic  
24 transmission present in the Subject Vehicle, GENERAL MOTORS, LLC continued to fail to  
25 disclose this unresolved safety defect to new and subsequent purchasers and lessees of affected  
26 transmission vehicles, including Plaintiff. GENERAL MOTORS, LLC continues to manufacture  
27 and sell Cadillac Escalade equipped with the defective transmissions without any disclosure to  
28 consumers about these hidden safety defects. GENERAL MOTORS, LLC otherwise prevents

1 reasonable consumers from repairing or discovering this hazard until the vehicle's transmission  
2 unexpectedly fails to properly function, placing its occupants and other travelers in danger.

3 40. GENERAL MOTORS, LLC Technical Service Bulletins concerning the transmission  
4 problems in the Subject Vehicle were not directly sent to prospective purchasers or to consumers  
5 after purchase, and did not fully disclose the pervasiveness of the defect, the safety issues arising  
6 from the defect, or the uncertain nature of the prescribed fixes.

7 41. The existence of the automatic transmission defect is a material fact that a reasonable  
8 consumer would consider when deciding whether to purchase or lease a vehicle equipped with an  
9 affected transmission.

10 42. Plaintiff would not have purchased the Subject Vehicle, or would have paid  
11 significantly less for it, had he known of the transmission defect and the safety hazard it creates. By  
12 failing to disclose the defect, GENERAL MOTORS, LLC denied Plaintiff information that was  
13 material to the purchase of, and material to his willingness to use, the Subject Vehicle.

14 43. At all relevant times, GENERAL MOTORS, LLC had knowledge of the transmission  
15 defect.

16 44. GENERAL MOTORS, LLC had and continues to have a duty to disclose the  
17 automatic transmission defect and the likelihood of the associated out-of-pocket repair costs to  
18 Plaintiff and other consumers because: 1) the defect poses an unreasonable safety hazard; 2)  
19 GENERAL MOTORS, LLC has exclusive knowledge that is not reasonably discoverable by  
20 Plaintiff and consumers; 3) GENERAL MOTORS, LLC has actively concealed the defect.

21 **GENERAL MOTORS, LLC'S Warranties Cover Payment for Attempted Repairs to the**  
22 **Transmission Defect, but GENERAL MOTORS, LLC has Failed and Refused to Correct the**  
23 **Defect**

24 45. GENERAL MOTORS, LLC's express written warranty covered the Subject Vehicle,  
25 including but not limited to the transmission system.

26 46. GENERAL MOTORS, LLC's provided Plaintiff with a Vehicle Limited Warranty  
27 ("Warranty"). GENERAL MOTORS, LLC's Warranty covers any repairs needed to correct defects  
28 in materials or workmanship of covered parts. The basic coverage period lasts 3 years or 36,000

1 miles, whichever comes first, and the powertrain coverage lasts 5 years or 60,000 miles, whichever  
2 comes first. The Warranty begins on the date the vehicle is delivered to the first retail buyer or put  
3 into use, whoever is earliest. The powertrain coverage specifically applies to the engine,  
4 transmission and transaxle, drivetrain, and restraint system.

5 47. Furthermore, under the powertrain coverage, GENERAL MOTORS, LLC expressly  
6 warranted that it “covers any repairs needed to correct defects in materials or workmanship” to the  
7 powertrain components, which include the engine and the transmission.

8 48. GENERAL MOTORS, LLC also sold or leased the Subject Vehicle to Plaintiff under  
9 an implied warranty of merchantability. GENERAL MOTORS, LLC, for the same duration as the  
10 express warranty. GENERAL MOTORS, LLC impliedly warranted that the 2010-2019 Cadillac  
11 Escalade were merchantable in that they were in a safe and non-defective condition for use by their  
12 owners or lessees for the ordinary purpose for which they were intended and were not otherwise  
13 injurious. GENERAL MOTORS, LLC is under a duty to design, construct, manufacture, inspect,  
14 and test the Subject Vehicle so as to make it suitable for the ordinary purposes of its use—safe and  
15 reliable transportation.

16 49. GENERAL MOTORS, LLC breached its express and implied warranties for the  
17 Subject Vehicle when it designed, manufactured, and sold Plaintiff the Subject Vehicle with  
18 defects in the transmission system, subsequently refused to recognize or authorize an adequate  
19 repair to the defect in the transmission when confronted with knowledge of the widespread  
20 automatic transmission failures, and/or otherwise inadequately repaired the defect through  
21 ineffective replacement of the Clutch Select Solenoid Valve 2 in breach of GENERAL MOTORS,  
22 LLC’s warranties, 8L90 MYC Hydra-Matic automatic transmission equipped Subject Vehicle is  
23 defective, unsafe, unfit for the ordinary purposes for which it is intended to be used, and not  
24 merchantable.

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1 **FIRST CAUSE OF ACTION**

2 **Breach of Implied Warranty of Merchantability under Song-Beverly Warranty Act**

3 **Against all Defendants**

4 50. Plaintiff realleges each and every paragraph (1-49) and incorporates them by this  
5 reference as though fully set forth herein.

6 51. The distribution and sale of the Vehicle was accompanied by the Manufacturer  
7 implied warranty that the Vehicle was merchantable.

8 52. Furthermore, Defendants, and each of them, impliedly warranted, inter alia, that the  
9 Vehicle would pass without objection in the trade under the contract description; that the Vehicle  
10 was fit for the ordinary purposes for which it was intended; that the Vehicle was adequately  
11 assembled; and/or that the Vehicle conformed to the promises or affirmations of fact made to  
12 Plaintiff.

13 53. As evidenced by the defects, malfunctions, mis adjustments, and/or nonconformities  
14 alleged herein, the Vehicle was not merchantable because it did not have the quality that a buyer  
15 would reasonably expect, because it could not pass without objection in the trade under the contract  
16 description; because it was not fit for the ordinary purposes for which it was intended; because it  
17 was not adequately assembled; and/or because it did not or could not be conformed to the promises  
18 or affirmations of fact made to Plaintiff.

19 54. Upon discovery of the Vehicle's nonconformities, Plaintiff took reasonable steps to  
20 notify Defendants, and each of them, within a reasonable time that the Vehicle did not have the  
21 quality that a buyer would reasonably expect and, further, justifiably revoked acceptance of the  
22 nonconforming Vehicle.

23 55. Plaintiff hereby gives written notice and justifiably revokes acceptance of the  
24 nonconforming Vehicle under the Commercial Code sections 2607 and 2608. Plaintiff further  
25 demands that the Manufacturer cancel the sale, take back the nonconforming Vehicle, refund all  
26 the money expended, pay the difference between the value of the Vehicle as accepted and the value  
27 the Vehicle would have had if it had been as warranted, and/or pay damages under the Commercial  
28 Code sections 2711, 2714, and 2715. Defendants, and each of them, have, however, refused to

1 comply.

2 56. Plaintiff hereby gives written notice and makes demand upon Manufacturer for  
3 replacement or restitution, pursuant to Song-Beverly. Defendants, and each of them, knew of their  
4 obligations under Song-Beverly; however, despite Plaintiff's demand, Defendants and each of  
5 them, have intentionally failed and refused to make restitution or replacement pursuant to Song-  
6 Beverly.

7 57. As a result of the acts and/or omissions of the Defendants, and each of them, Plaintiff  
8 has sustained damage in the amount actually paid or payable under the contract, plus prejudgment  
9 interest thereon at the legal rate. Plaintiff will seek leave to amend this Complaint to set forth the  
10 exact amount thereof when that amount is ascertained.

11 58. As a further result of the actions of Defendants, and each of them, Plaintiff has  
12 sustained incidental and consequential damages in an amount yet to be determined, plus interest  
13 thereon at the legal rate. Plaintiff will seek leave to amend this Complaint to set forth the exact  
14 amount of incidental damages when that amount is ascertained.

15 59. As a further result of the actions of Defendants, and each of them, Plaintiff has  
16 sustained damages equal to the difference between the value of the Vehicle as accepted and the  
17 value the Vehicle would have had if it had been as warranted.

18 60. As a direct result of the acts and/or omissions of Defendants, and each of them, and in  
19 pursuing Plaintiff's claim, it was necessary for Plaintiff to retain legal counsel. Pursuant to Song-  
20 Beverly, Plaintiff, in addition to her other remedies, is entitled to the recovery of her attorneys' fees  
21 based upon actual time expended and reasonably incurred, in connection with the commencement  
22 and prosecution of this action.

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1 **SECOND CAUSE OF ACTION**

2 **Breach of Express Warranty under Song-Beverly Warranty Act**

3 **Against all Defendants**

4 61. Plaintiff realleges each and every paragraph (1-60) and incorporates them by this  
5 reference as though fully set forth herein.

6 62. The Vehicle had defects, malfunctions, mis adjustments, and/or nonconformities  
7 covered by the warranty that substantially impaired its value, use, or safety to Plaintiff.

8 63. Plaintiff delivered the Vehicle to Manufacturer or its authorized repair facilities for  
9 repair.

10 64. Defendants, and each of them, failed to service or repair the Vehicle to match the  
11 written warranty after a reasonable number of opportunities to do so.

12 65. The acts and/or omissions of Defendants, and each of them, in failing to perform the  
13 proper repairs, part replacements, and/or adjustments, to conform the Vehicle to the applicable  
14 express warranties constitute a breach of the express warranties that the Manufacturer provided to  
15 Plaintiff, thereby breaching Defendants' obligations under Song-Beverly.

16 66. Defendants, and each of them, failed to perform the necessary repairs and/or service in  
17 good and workmanlike manner. The actions taken by Defendants, and each of them, were  
18 insufficient to make the Subject Vehicle conform to the express warranties and/or proper  
19 operational characteristics of like Vehicles, all in violation of Defendants' obligations under Song-  
20 Beverly.

21 67. Plaintiff hereby gives written notice and makes demand upon Manufacturer for  
22 replacement or restitution, pursuant to Song-Beverly. Defendants and each of them, knowing their  
23 obligations under Song-Beverly, and despite Plaintiff's demand, failed and refused to make  
24 restitution or replacement according to the mandates of Song-Beverly. The failure of Defendants,  
25 and each of them, to refund the price paid and payable or to replace the Vehicle was intentional and  
26 justifies an award of a Civil Penalty in an amount not to exceed two times Plaintiff's actual  
27 damages.

28 68. As a result of the acts and/or omissions of Defendants, and each of them, and pursuant

1 to the provisions of the Song-Beverly, Plaintiff is entitled to replacement of the Vehicle or  
2 restitution of the amount actually paid or payable under the contract, at Plaintiff's election, plus  
3 prejudgment interest thereon at the legal rate. Plaintiff will seek leave of Court to amend this  
4 Complaint to set forth the exact amount of restitution and interest, upon election, when that amount  
5 has been ascertained.

6 69. Additionally, as a result of the acts and/or omissions of Defendants, and each of them,  
7 and pursuant to Song-Beverly, Plaintiff has sustained and is entitled to consequential and incidental  
8 damages in amounts yet to be determined, plus interest thereon at the legal rate. Plaintiff will seek  
9 leave of the court to amend this complaint to set forth the exact amount of consequential and/or  
10 incidental damages, when those amounts have been ascertained.

11 70. As a direct result of the acts and/or omissions of Defendants, and each of them, and in  
12 pursuing Plaintiff's claim, it was necessary for Plaintiff to retain legal counsel. Pursuant to Song-  
13 Beverly, Plaintiff, in addition to other remedies, is entitled to the recovery of her attorneys' fees  
14 based upon actual time expended and reasonably incurred, in connection with the commencement  
15 and prosecution of this action.

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1 **THIRD CAUSE OF ACTION**

2 **Fraudulent Inducement - Concealment**

3 **Against all Defendants**

4 71. Plaintiff realleges each and every paragraph (1-70) and incorporates them by this  
5 reference as though fully set forth herein.

6 72. GENERAL MOTORS, LLC and its agent intentionally concealed and failed to  
7 disclose facts relating to the defective transmission as explained in detail in paragraphs 21-44.

8 73. Defendant was the only party with knowledge of the defective transmission because  
9 that knowledge came from internal reports such as pre-release testing data, customer complaints  
10 made directly to Defendant, and technical service bulletins. None of this information was available  
11 to the public, nor did Defendant publicly or privately disclose any of the information to Plaintiff.  
12 GENERAL MOTORS, LLC had exclusive knowledge of the defect as described in detail in  
13 paragraphs 21-44.

14 74. GENERAL MOTORS, LLC actively concealed information from the public,  
15 preventing Plaintiff from discovering any of the concealed facts as described in detail in paragraphs  
16 21-44.

17 75. Prior to the date of sale, on the date of sale, and on the date of each of the repair  
18 attempts, Defendant had an opportunity to disclose the defective transmission to Plaintiff, but  
19 instead concealed from and failed to disclose to Plaintiff, any of the known irreparable issues with  
20 the Subject Vehicle.

21 76. GENERAL MOTORS, LLC intended to deceive Plaintiff by concealing the known  
22 issues with the 8L90 MYC Hydra-Matic automatic transmission in an effort to sell the Subject  
23 Vehicle at a maximum price.

24 77. GENERAL MOTORS, LLC knew of the specific issues affecting the Subject Vehicle,  
25 including the defective 8L90 MYC Hydra-Matic automatic transmission, prior to the sale of the  
26 Subject Vehicle. Plaintiff's Vehicle was sold after GENERAL MOTORS, LLC acknowledged  
27 these problems in TSBs without making any sort of disclosure to Plaintiff regarding same. When  
28 Plaintiff experienced repeated problems with the 8L90 MYC Hydra-Matic automatic transmission

1 in Plaintiff's Vehicle and delivered the Subject Vehicle to GENERAL MOTORS, LLC's  
2 authorized repair facility for evaluation and repair, GENERAL MOTORS, LLC and its agents  
3 continued to conceal the known defective transmission and repeatedly represented to Plaintiff that  
4 it was able to and did fix the issue.

5 78. Had GENERAL MOTORS, LLC and/or its agents publicly or privately disclosed the  
6 defective transmission to Plaintiff at or prior to the sale, Plaintiff would not have purchased the  
7 Subject Vehicle.

8 79. Plaintiff was harmed by Defendant's concealment of the defective transmission because  
9 Plaintiff was induced to enter into the sale of the vehicle that Plaintiff would not have otherwise  
10 purchased.

11 80. Defendant's concealment of the defects was a substantial factor in causing Plaintiff's  
12 harm.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment against all Defendants, and each of them, as  
3 follows:

- 4 A. For replacement or restitution, at Plaintiff's election, according to proof;
- 5 B. For incidental damages, according to proof;
- 6 C. For consequential damages, according to proof;
- 7 D. For a civil penalty as provided in Song-Beverly, in an amount not to exceed two  
8 times the amount of Plaintiff's actual damages;
- 9 E. For punitive damages where available;
- 10 F. For actual attorney's fees, reasonably incurred;
- 11 G. For costs of suit and expenses, according to proof;
- 12 H. For the difference between the value of the Vehicle as accepted and the value the  
13 Vehicle would have had if it had been as warranted;
- 14 I. For remedies provided in Chapters 6 and 7 of Division 2 of the Commercial Code;
- 15 J. For pre-judgment interest at the legal rate;
- 16 K. Such other relief the Court deems appropriate.

17 Date: September 3, 2020

THE BARRY LAW FIRM

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20 By: 

21 DAVID N. BARRY, ESQ.  
22 Attorney for Plaintiff,  
23 JEREMY LOOKOFSKY  
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