

OCT 15 2020

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF VENTURA**

RUBEN MENDEZ, an individual

Plaintiff,

v.

GENERAL MOTORS LLC, a Delaware Limited Liability Company; and DOES 1 through 20, inclusive,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES**

*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.

**JURY TRIAL DEMANDED.**

Plaintiff RUBEN MENDEZ, an individual, hereby alleges and complains as follows:

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

1. Plaintiff is an individual, residing in the County of Ventura, in the State of California.
2. Defendant, GENERAL MOTORS LLC, (hereinafter referred to as "Manufacturer"), is a California corporation doing business in the County of Ventura, State of California, and, at all times relevant herein, was/is engaged in the manufacture, sale, distribution, and/or importing of General Motors motor vehicles and related equipment.

3. The true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants, Does 1 through 20, inclusive, are unknown to Plaintiff who therefore sues these

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1 Defendants by such fictitious names. Plaintiff will seek leave to amend this Complaint to set forth  
2 their true names and capacities when they have ascertained them. Further, Plaintiff is informed and  
3 believes, and thereon alleges, that each of the Defendants designated herein as a "Doe" is responsible  
4 in some manner for the events and happenings herein referred to and caused injury and damage to  
5 Plaintiff as herein alleged.

6 4. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
7 mentioned, Defendants, and each of them, were the agents, servants, and/or employees of each of  
8 their Co-Defendants. Plaintiff is informed and believes, and thereon alleges, that in doing the things  
9 hereinafter alleged Defendants, and each of them, were acting in the course and scope of their  
10 employment as such agents, servants, and/or employees, and with the permission, consent,  
11 knowledge, and/or ratification of their Co-Defendants, principals, and/or employers.

12 5. Before June 2018, defendants Manufacturer and Does 1 through 20 inclusive,  
13 manufactured and/or distributed into the stream of commerce a new 2018 GMC Canyon, VIN  
14 1GTG5CENXJ1284531 (hereinafter referred to as the "Vehicle") for its eventual sale/lease in the  
15 State of California.

16 6. On or about June 10, 2018, Plaintiff purchased, for personal, family, and/or household  
17 purposes, the subject Vehicle from the Seller for a total consideration over the term of the installment  
18 contract of approximately \$34,000. The Purchase Agreement is in the possession of Defendants.

19 7. The subject Vehicle was/is a "new motor vehicle" under the Song-Beverly Warranty  
20 Act.

21 8. Along with the purchase of the Vehicle, Plaintiff received written warranties and other  
22 express and implied warranties including, but not limited to, warranties from Manufacturer and Seller  
23 that the Vehicle and its components would be free from all defects in material and workmanship;  
24 that the Vehicle would pass without objection in the trade under the contract description; that the  
25 Vehicle would be fit for the ordinary purposes for which it was intended; that the Vehicle would  
26 conform to the promises and affirmations of fact made; that Defendants, and each of them, would  
27 perform any repairs, alignments, adjustments, and/or replacements of any parts necessary to ensure  
28 that the Vehicle was free from any defects in material and workmanship; that Defendants, and each

1 of them, would maintain the utility of the Vehicle for four years or 50,000 miles and would conform  
2 the Vehicle to the applicable express warranties. (A copy of the written warranty is in the possession  
3 of the Defendants).

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

8 10. Plaintiff has delivered the Vehicle to the Manufacturer's authorized service and repair  
9 facilities, agents and/or dealers, including Seller, on at least nine (9) separate occasions resulting in  
10 the Vehicle being out of service by reason of repair of nonconformities. Repair Orders/Invoices are  
11 in the possession of Defendants.

12 11. By way of example, and not by way of limitation, the defects, malfunctions,  
13 misadjustments, and/or nonconformities with Plaintiff's Vehicle include the following: Plaintiff has  
14 submitted the subject Vehicle for numerous defects and malfunctions, specifically for engine,  
15 ignition, key, transmission, and other defects.

16 12. Each time Plaintiff delivered the nonconforming Vehicle to a Manufacturer-  
17 authorized service and repair facility, Plaintiff notified Defendants, and each of them, of the defects,  
18 malfunctions, misadjustments, and/or nonconformities existent with the Vehicle and demanded that  
19 Manufacturer or its representatives repair, adjust, and/or replace any necessary parts to conform the  
20 Vehicle to the applicable warranties.

21 13. Each time Plaintiff delivered the nonconforming Vehicle to a Manufacturer-  
22 authorized service and repair facility, Defendants, and each of them, represented to Plaintiff that they  
23 could and would conform the Vehicle to the applicable warranties, that in fact they did conform the  
24 Vehicle to said warranties, and that all the defects, malfunctions, misadjustments, and/or  
25 nonconformities have been repaired; however, Manufacturer or its representatives failed to conform  
26 the Vehicle to the applicable warranties because said defects, malfunctions, misadjustments, and/or  
27 nonconformities continue to exist even after a reasonable number of attempts to repair was given.

28 14. The amount in controversy exceeds TWENTY-FIVE THOUSAND DOLLARS

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1 (\$25,000.00), exclusive of interest and costs, for which Plaintiff seeks judgment against Defendants,  
2 together with equitable relief. In addition, Plaintiff seeks damages from Defendants, and each of  
3 them, for incidental, consequential, exemplary and actual damages including interest, costs, and  
4 actual attorneys' fees.

5 **FIRST CAUSE OF ACTION**

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

7 Against all Defendants

8 15. Plaintiff realleges each and every paragraph (1-14) and incorporates them by this  
9 reference as though fully set forth herein.

10 16. The distribution and sale of the Vehicle was accompanied by the Manufacturer and  
11 Seller's implied warranty that the Vehicle was merchantable.

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

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

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

27 20. Plaintiff hereby gives written notice and justifiably revokes acceptance of the  
28 nonconforming Vehicle under the Commercial Code sections 2607 and 2608. Plaintiff further

1 demands that the Manufacturer cancel the sale, take back the nonconforming Vehicle, refund all the  
2 money expended, pay the difference between the value of the Vehicle as accepted and the value the  
3 Vehicle would have had if it had been as warranted, and/or pay damages under the Commercial Code  
4 sections 2711, 2714, and 2715. Defendants, and each of them, have, however, refused to  
5 comply. Notification Letter is in the possession of Defendants.

6 21. Plaintiff hereby gives written notice and makes demand upon Manufacturer and Seller  
7 for replacement or restitution, pursuant to Song-Beverly. Defendants, and each of them, knew of  
8 their obligations under Song-Beverly; however, despite Plaintiff's demand, Defendants and each of  
9 them, have intentionally failed and refused to make restitution or replacement pursuant to Song-  
10 Beverly.

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

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

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

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

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1 interest thereon at the legal rate. Plaintiff will seek leave of Court to amend this Complaint to set  
2 forth the exact amount of restitution and interest, upon election, when that amount has been  
3 ascertained.

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

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

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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 actual attorney's fees, reasonably incurred;
- 10 F. For costs of suit and expenses, according to proof;
- 11 G. For the difference between the value of the Vehicle as accepted and the value the  
12 Vehicle would have had if it had been as warranted;
- 13 H. For remedies provided in Chapters 6 and 7 of Division 2 of the Commercial Code;
- 14 I. For pre-judgment interest at the legal rate;
- 15 J. Such other relief the Court deems appropriate.

16 Date: October 15, 2020

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19 By:   
20 ADAM M. ZOLONZ  
21 Attorneys for Plaintiff RUBEN MENDEZ  
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