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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION**

RAUL SIQUEIROS, TODD AND JILL CRALLEY,
LARRY GOODWIN, GABRIEL DEL VALLE, SCOTT
SMITH, WILLIAM DAVIS, JR., JOHN GRAZIANO,
JOSHUA BYRGE, and RUDY SANCHEZ, and
MANUEL FERNANDEZ, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

GENERAL MOTORS LLC,

Defendant.

Case No. 3:16-cv-07244-EMC

**GENERAL MOTORS LLC'S
ANSWER TO SEVENTH
AMENDED CLASS ACTION
COMPLAINT**

1 General Motors LLC (“GM”) for answer to plaintiffs’ Seventh Amended Complaint herein,
2 admits, alleges and denies as follows:

3
4 **I. NATURE OF THE CASE**

5 1-2. Answering paragraphs 1 and 2 thereof, admits that plaintiffs purport to bring this
6 action on behalf of a class, classes, or subclasses of owners and lessees of model year 2011 through
7 2014 GM vehicles equipped with Generation IV Vortec 5300 engines (“Subject Vehicles”); denies
8 that any class or subclass has been or may properly be certified; further denies that the Subject
9 Vehicles’ engines were or are “defective.”

10 3. Denies the allegations of paragraph 3 thereof.

11 4. Admits the allegations of paragraph 4 thereof.

12 5. Denies the allegations of paragraph 5 thereof.

13 6. Admits the allegations of paragraph 6 thereof, except admits and alleges that the
14 date of the Old GM bankruptcy petition was June 1, 2009; further admits and alleges that GM only
15 acquired the Old GM assets and only assumed the Old GM liabilities specified in the sale agreement
16 that was consummated on July 10, 2009.

17 7-11. Denies the allegations of paragraphs 7 through 11 thereof.

18 12. Denies the allegations of paragraph 12 thereof, except admits and alleges that (1)
19 the Oil Life Monitoring System is not designed to and does not measure oil level and (2) the Oil
20 Life Monitoring System uses inputs such as engine revolutions and temperature to estimate
21 expected (and normal) deterioration of oil quality over time and thus indicate when a regular oil
22 change is recommended.

23 13. Denies the allegations of paragraph 13 thereof, except admits and alleges that the
24 oil pressure gauge and warning light indicate when oil *pressure* is too low and do not measure oil
25 *levels* in the engine; however, low oil levels can trigger low oil pressure warnings.

26 14-15. Denies the allegations of paragraphs 14 and 15 thereof.

27 16. Denies the allegations of paragraph 16 thereof, except admits and alleges that it
28 introduced the Generation V Vortec 5300 engine in some model year 2014 vehicles, that this

1 engine included an engine oil level indicator; further, admits and alleges that during production of
2 model year 2010 and 2011 Subject Vehicles GM introduced an AFM shield and a new valve
3 cover with a relocated and baffled PCV orifice.

4 17-18. Denies the allegations of paragraphs 17 and 18 thereof, except admits and alleges
5 that it issued Technical Service Bulletins that speak for themselves.

6 19-20. Denies the allegations of paragraphs 19 and 20 thereof; admits and alleges that any
7 and all issues concerning defects in materials and workmanship in the engines of Subject
8 Vehicles, including issues resulting from high oil consumption, were covered by GM's five-year,
9 100,000-mile (whichever comes first) powertrain warranties which offered free-of-charge repairs
10 and adjustments for vehicles presented to GM dealers during the warranty period.

11 **II. JURISDICTION AND VENUE**

12 21. Answering paragraph 21 thereof, GM admits that plaintiffs have alleged the
13 amount in controversy and diversity of citizenship required to establish subject matter jurisdiction
14 under 28 U.S.C. § 1332(d); GM denies that it is liable to plaintiffs in the amount alleged or at all.

15 22. GM denies the allegations of paragraph 22 thereof, except admits and alleges that
16 the Court has personal jurisdiction of claims by plaintiffs who either reside in or purchased their
17 Subject Vehicles in the State of California.

18 23. Answering paragraph 23, insofar as some of its allegations are legal conclusions
19 no response is required; otherwise GM denies the allegations for want of sufficient information or
20 knowledge to form a belief as to the truth thereof, except admits and alleges that GM has sold
21 Subject Vehicles within this District.

22 **III. PARTIES**

23 24-79. Denies the allegations of paragraphs 24 through 79 thereof on the ground that it
24 lacks sufficient information or knowledge to form a belief as to the truth of these allegations.

25 80. Admits the allegations of paragraph 80 thereof.

IV. FACTUAL ALLEGATIONS

1
2 81. Denies the allegations of paragraph 81 thereof, except admits and alleges that it
3 introduced the Gen III Vortec 5300 engine on certain model year 1999 vehicles.

4 82-83. Admits the allegations of paragraphs 82 and 83 thereof.

5 84. Denies the allegations of paragraph 84 thereof.

6 85-87. Admits the allegations of paragraphs 85 through 87 thereof, except admits and
7 alleges that the date of Old GM's bankruptcy filings was June 1, 2009; further admits and alleges
8 that GM only acquired the Old GM assets and only assumed the Old GM liabilities specified in
9 the sale agreement that was consummated on July 10, 2009.

10 88. Denies the allegations of paragraph 88 thereof, except admits that it manufactured
11 and distributed for retail sale or lease by authorized dealers model year 2010 through 2014
12 Subject Vehicles equipped with Generation IV Vortec 5300 engines.

13 89. Denies the allegations of paragraph 89 thereof.

14 90-92. Admits the allegations of paragraphs 90 through the first sentence of paragraph 92
15 thereof; denies the second sentence of paragraph 92 thereof, except admits and alleges that the
16 primary purpose of the compression rings is to withstand combustion pressures and hold
17 combustion gases in the combustion chambers (balanced against friction and wear attributes);
18 admits and alleges that the image in paragraph 92 is not representative of a Gen III, IV or V
19 piston assembly.

20 93-97. Denies the allegations of paragraph 93 through 97 thereof, except admits and
21 alleges that the Generation V Vortec engines incorporated numerous design changes, primarily to
22 accommodate direct fuel injection ("SIDI"), a product improvement; denies that any of these
23 design changes is admissible as evidence to show that the engines of the Subject Vehicles were
24 defective. *See* Rule 407, Federal Rules of Evidence.

25 98. Denies the allegations of paragraph 98 thereof.

26 99. Admits the allegations of paragraph 99 thereof.

1 100-102. Denies the allegations of paragraph 100 through 102 thereof, except admits
2 and alleges that it issued TSB #10-06-001, which speaks for itself and instructed dealers to install
3 a deflector over the AFM oil pressure relief valve; denies that engines with the deflector installed
4 will require piston and ring replacement as “the ultimate fix.”

5 103. Denies the allegations of paragraph 103 thereof.

6 104. Answering paragraph 104 thereof, denies that its allegations accurately and
7 completely describe the purpose and operation of the PCV system; admits that the PCV system is
8 not intended to “vacuum” liquid oil from the valvetrain.

9 105-106. Denies the allegations of paragraph 105 through 106 thereof, except admits
10 and alleges that it issued TSB #10-06-001, which speaks for itself and instructed dealers to
11 replace the left rocker arm cover with a redesigned part; specifically denies that engines with the
12 new part installed will require piston and ring replacement as “the ultimate fix.”

13 107. Denies the allegations of paragraph 107 thereof.

14 108. Denies the allegations of paragraph 108 thereof, except admits the allegations of
15 the first three sentences of this paragraph; admits and alleges (a) that the Oil Life Monitoring
16 System is not designed or intended to, and does not, measure oil levels or alert drivers when oil
17 levels are low and (b) that as stated in the Owners Manuals for the Subject Vehicles, it is the
18 owners’ responsibility to monitor engine oil levels by periodic “dipstick” checks.

19 109. Denies the allegations of paragraph 109 thereof, except admits and alleges (a) that
20 the Subject Vehicles include an oil pressure gauge and warning light that will alert the driver
21 when oil *pressure* is low and (b) that low oil *levels* are only one of several potential causes of low
22 oil pressure.

23 110-112. Denies the allegations of paragraphs 110 through 112 thereof; specifically
24 denies that the low oil pressure warning does not illuminate prior to any imminent danger of a
25 safety hazard such as engine shutdown or fire.

26 113-117. Denies the allegations of paragraphs 113 through 117 thereof.

1 118-122. Denies the allegations of paragraphs 118 through 122 thereof, except
2 admits that its Owners Manuals provide warnings such as the warnings quoted in paragraphs 119-
3 120 thereof.

4 123. Denies the allegations of paragraph 123 thereof, except admits and alleges that
5 design activity for the Gen V Vortec 5300 engine began approximately five years before 2011.

6 124-125. Denies the factual allegations and legal characterizations of paragraphs 124
7 and 125 thereof, except admits that the “carcomplaints” website includes oil consumption
8 complaints about vehicles manufactured by Old GM that were equipped with Gen IV Vortec
9 5300 engines.

10 126-129. Denies the allegations of paragraphs 126 through 129 thereof, except
11 admits and alleges that the Technical Service Bulletins it issued and online complaints posted
12 following July 10, 2009 speak for themselves.

13 130-155. Denies the allegations of paragraphs 130 through 155 thereof, except
14 admits that the complaints quoted therein (mostly concerning vehicles manufactured by Old GM)
15 were posted on the websites identified therein, and most of them were posted after most plaintiffs
16 bought their Subject Vehicles.

17 156-177. Denies the allegations of paragraphs 156 through 177 thereof, except
18 admits that these paragraphs partially quote GM advertising, brochures and annual reports.

19 178. Denies the allegations of paragraph 178 thereof, except admits that Mr. Ludington
20 sent the letter alleged therein.

21 179. Denies the allegations of paragraph 179 thereof, except admits that plaintiffs’
22 counsel sent the letter alleged therein.

23 180. Denies the allegations of paragraph 180 thereof, except admits and alleges that it
24 sent the November 29, 2016 letter therein alleged, which speaks for itself.

25 **V. TOLLING OF THE STATUTES OF LIMITATION**

26 181-182. Denies the allegations of paragraph 181 and 182 thereof.

27 183-189. Denies the allegations of paragraphs 183 through 189 thereof.

28

1 190-192. Denies the allegations of paragraphs 190 through 192 thereof.

2 **VI. CLASS ACTION ALLEGATIONS**

3 193-196. Answering paragraphs 193 through 196 thereof, GM admits that plaintiffs
4 purport to bring this action as a class action on behalf of a nationwide and statewide classes as
5 specified therein; but admits and alleges that no class can be certified or maintained because
6 plaintiffs cannot satisfy the requirements of Rules 23 of the Federal Rules of Civil Procedure.

7 197. Answering paragraph 197 thereof, GM states that it does not contest the
8 numerosity requirement.

9 198-199. Denies the allegations of paragraphs 198 and 199.

10 200. Denies the allegations of paragraph 200 thereof on the ground that it lacks
11 sufficient information or knowledge to form a belief as to the truth of these allegations.

12 201-202. Denies the allegations of paragraphs 201 and 202 thereof.

13 **VII. CLAIMS FOR RELIEF**

14 **A. Individual Claim**

15 **COUNT 1 (Magnuson Moss Warranty Act)**

16 203. Answering paragraph 203 thereof, repeats and incorporates by reference its
17 admissions, allegations and denials in paragraphs 1 through 202 hereof; further, admits and
18 alleges that all plaintiffs' breach of express warranty claims asserted as part of Count 1 have been
19 dismissed under Rule 12(b)(6) and that the Count 1 claim of plaintiff Goodwin has been
20 dismissed in its entirety under Rule 12(b)(6).

21 204. Admits the allegations of paragraph 204. .

22 205. Denies the allegations of paragraph 205 thereof, except admits and alleges that the
23 Court has jurisdiction under 28 U.S.C. § 1332(d).

24 206. Denies the allegations of paragraph 206 thereof on the ground of lack of sufficient
25 information or knowledge to form a belief as to the truth of these allegations.

26 207-209. Paragraphs 207 through 209 are legal conclusions as to which no response
27 is required.

28

1 210. Denies the allegations of paragraph 210 thereof, except admits and alleges that
2 GM issued a limited new vehicle warranty that offered to repair defects in materials and
3 workmanship if vehicles were presented to an authorized dealership for repairs during the
4 warranty period; further admits and alleges that the GM limited new vehicle warranties included
5 the language partially quoted in paragraph 210; otherwise, the complete terms of the GM
6 warranty speak for themselves.

7 211. Answering paragraph 211, admits that its limited warranty is a “written warranty”
8 within the meaning of 15 U.S.C. § 2301(6) and that any implied warranty of merchantability
9 arising under state law is an “implied warranty” pursuant to 15 U.S.C. § 2301(7); admits and
10 alleges that GM did not issue any implied warranty of merchantability to purchasers of used
11 vehicles.

12 212. Denies the allegations of paragraph 212 thereof on the ground of lack of sufficient
13 information or knowledge to form a belief as to the truth of these allegations.

14 213-214. Denies the allegations of paragraphs 213 and 214 thereof, except admits
15 that Mr. Ludington sent the letter alleged therein.

16 215. Denies the allegations of paragraph 215 thereof.

17 216. Answering paragraph 216 thereof, admits that plaintiffs allege the amounts in
18 controversy required to be alleged under the Magnuson Moss Act; denies that GM is liable to
19 plaintiffs, or any of them, in the amounts alleged or at all.

20 217. Denies the allegations of paragraph 217 thereof.

21 218. Answering the allegations of paragraph 218 thereof, admits that plaintiffs purport
22 to seek all damages permitted by law; specifically denies that plaintiffs or purported class
23 members are entitled to any damages or other monetary or equitable relief, including damages for
24 claimed diminution in value.

25 **B. Claims Brought on Behalf of the Statewide Classes**

26 **1. Claims Brought Individually and on Behalf of the California Class**

27 **COUNT 2 (California Consumer Legal Remedies Act)**

1 389. Answering paragraph 389 thereof, repeats and incorporates by reference its
2 admissions, allegations and denials in paragraphs 1 through 388 hereof.

3 390. Answering paragraph 390 thereof, admits and alleges that the statute partially
4 quoted by plaintiffs speaks for itself.

5 391-398. Denies the allegations of paragraphs 391 through 398 thereof, and
6 specifically denies that plaintiff has been damaged in any amount or at all or are entitled to
7 recover attorneys' fees, costs or other relief under the cited statute or otherwise.

8 **COUNT 19 (Massachusetts Breach of Express Warranty)**

9 399-409. GM is not required to respond to paragraphs 399 through 409 because the
10 Court has dismissed this Count under Rule 12(b)(6).

11 **COUNT 20 (Massachusetts Breach of Implied Warranty)**

12 410. Answering paragraph 410 thereof, repeats and incorporates by reference its
13 admissions, allegations and denials in paragraphs 1 through 409 hereof.

14 411. Paragraph 411 is a legal conclusion as to which no response is required.

15 412. Answering paragraph 412 thereof, admits and alleges that the statutes cited by
16 plaintiffs speak for themselves.

17 413. Denies the allegations of paragraph 413 thereof.

18 414. Denies the allegations of paragraph 414 thereof, except admits that Mr. Ludington
19 sent the letter alleged therein.

20 415-416. Denies the allegations of paragraphs 415 and 416 thereof and specifically
21 denies that plaintiff has been damaged in any amount or at all.

22 **COUNT 21 (Massachusetts Fraudulent Omission)**

23 417. Answering paragraph 417 thereof, repeats and incorporates by reference its
24 admissions, allegations and denials in paragraphs 1 through 416 hereof.

25 418-425. Denies the allegations of paragraphs 418 through 425 thereof, and
26 specifically denies that plaintiff has been damaged in any amount or at all.

27 **COUNT 22 (Massachusetts Unjust Enrichment)**

28

1 484-489. Denies the allegations of paragraphs 484 through 489 thereof, and
2 specifically denies that plaintiffs or other members of the purported class have been damaged in
3 any amount or at all or are entitled to recover attorneys' fees, costs, punitive or treble damages, an
4 injunction or other relief under the cited statute or otherwise.

5 **COUNT 29 (Pennsylvania Breach of Express Warranty)**

6 490-503. GM is not required to respond to paragraphs 490 through 503 because the
7 Court has dismissed this Count under Rule 12(b)(6).

8 **COUNT 30 (Pennsylvania Breach of Implied Warranty)**

9 504. Answering paragraph 504 thereof, repeats and incorporates by reference its
10 admissions, allegations and denials in paragraphs 1 through 503 hereof.

11 505. Answering paragraph 505 thereof, admits that plaintiffs purport to bring this action
12 on behalf of an alleged Pennsylvania class; denies that any class can be certified.

13 506. Paragraph 506 is a legal conclusion as to which no response is required.

14 507. Paragraph 507 is a legal conclusion as to which no response is required.

15 508. Admits the allegations of paragraph 508 thereof.

16 509. Answering paragraph 509 thereof, admits and alleges that the statutes cited by
17 plaintiffs speak for themselves.

18 510. Denies the allegations of paragraph 510 thereof.

19 511. Denies the allegations of paragraph 511 thereof, except admits that Mr. Ludington
20 sent the letter alleged therein.

21 512-513. Denies the allegations of paragraphs 512 and 513 thereof and specifically
22 denies that plaintiffs or other members of the purported class have been damaged in any amount
23 or at all.

24 **COUNT 31 (Pennsylvania Fraudulent Omission)**

25 514. Answering paragraph 514 thereof, repeats and incorporates by reference its
26 admissions, allegations and denials in paragraphs 1 through 513 hereof.

1 543-554. GM is not required to respond to paragraphs 543 through 554 because the
2 Court has dismissed this Count under Rule 12(b)(6).

3 **COUNT 35 (Tennessee Breach of Implied Warranty)**

4 555. Answering paragraph 555 thereof, repeats and incorporates by reference its
5 admissions, allegations and denials in paragraphs 1 through 554 hereof.

6 556. Answering paragraph 556 thereof, admits that plaintiffs purport to bring this action
7 on behalf of an alleged Tennessee class; denies that any class can be certified.

8 557. Paragraph 557 is a legal conclusion as to which no response is required.

9 558. Answering paragraph 558 thereof, admits and alleges that the statutes cited by
10 plaintiffs speak for themselves.

11 559. Denies the allegations of paragraph 559 thereof.

12 560. Denies the allegations of paragraph 560 thereof, except admits that Mr. Ludington
13 sent the letter alleged therein.

14 561-562. Denies the allegations of paragraphs 561 and 562 thereof and specifically
15 denies that plaintiffs or other members of the purported class have been damaged in any amount
16 or at all.

17 **COUNT 36 (Tennessee Fraudulent Omission)**

18 563. Answering paragraph 563 thereof, repeats and incorporates by reference its
19 admissions, allegations and denials in paragraphs 1 through 562 hereof.

20 564. Answering paragraph 564 thereof, admits that plaintiffs purport to bring this action
21 on behalf of an alleged Tennessee class; denies that any class can be certified.

22 565-572. Denies the allegations of paragraphs 565 through 572 thereof, and
23 specifically denies that plaintiffs or other members of the purported class have been damaged in
24 any amount or at all.

25 **COUNT 37 (Tennessee Unjust Enrichment)**

26 573. Answering paragraph 573 thereof, repeats and incorporates by reference its
27 admissions, allegations and denials in paragraphs 1 through 572 hereof.

28

1 3. The breach of implied warranty and Magnuson Moss claims of plaintiffs
2 Fernandez, Siqueiros, Cralley, Goodwin, Del Valle, Smith, Davis, Graziano and Byrge, (Counts
3 1, 4, 10, 15, 20, 25, 30, 35,) are barred by applicable state law statutes of limitations.

4 **Fourth (Statutes of Limitations – Consumer Protection Act Claims)**

5 4. The claims of plaintiffs Goodwin, Smith,-Sanchez, under state consumer
6 protection statutes (Counts 8, 18, 38) are barred by applicable state law statutes of limitations.

7 **Fifth (Statutes of Limitations – Fraudulent Omissions Claims)**

8 5. On information and belief, the fraudulent omission claims of plaintiffs Fernandez,
9 Siqueiros, Cralley, Goodwin, , Del Valle, Smith, Davis, Graziano, Byrge and Sanchez, (Counts 5,
10 11, 16, 21, 26, 31, 36, 41) are barred by applicable state statutes of limitations.

11 **Sixth (Statutes of Limitations – Unjust Enrichment Claims)**

12 6. The unjust enrichment claims of plaintiffs Goodwin, Smith, and Graziano, (Counts
13 12, 22, 32) are barred by applicable state law statutes of limitations.

14 **Seventh (Privity – Consumer Protection Act Claims)**

15 7. The claim of plaintiff Del Valle under state consumer protection statutes (Count 13)
16 are precluded for lack of privity with GM.

17 **Eighth (Privity – Implied Warranty Claims)**

18 8. The implied warranty claim of plaintiffs Del Valle (Count 15) is precluded for lack
19 of privity with GM.

20 **Ninth (Express Contracts and Adequate Legal Remedies – Unjust Enrichment**
21 **Claims)**

22 10. The unjust enrichment claims of plaintiffs Goodwin, Del Valle, Smith, Graziano,
23 Byrge, (Counts 12, 17, 22, 32 and 37) are precluded by express contracts and adequate legal
24 remedies.

25 **Tenth (Preemption by Federal Law)**

26 11. State regulation of motor vehicle safety issues via injunctive relief is preempted by
27 federal law, specifically the National Traffic and Motor Vehicle Safety Act, 49 U.S.C. § 30101 *et*
28

1 *seq.* (“Act”) and regulations issued by the federal expert safety agency, the National Highway and
2 Traffic Safety Administration (“NHTSA”) that govern the recall remedy provided by the Act and
3 NHTSA regulations.

4 **Eleventh (No Legal Duty To Adopt New Design Absent Unreasonable Safety Risks)**

5 12. Manufacturers have potential liability based on alleged design defects only to
6 plaintiffs who claim personal injury or property damage, or when the alleged defect poses an
7 unreasonable safety risk. Plaintiffs are not alleging personal injury or property damage in this
8 action and the alleged design defect in the Generation IV Vortec 5300 engine does not pose an
9 unreasonable safety risk. GM therefore had no legal duty to adopt a different (unspecified)
10 design for the Generation IV Vortec 5300 engine that, according to plaintiffs, would have been
11 better for them financially given their own individual driving habits and vehicle usages:

12 “[A]lthough '[a] consumer should not be charged at the will of the manufacturer with
13 bearing the risk of physical injury when he buys a product on the market,' the consumer
14 nevertheless 'can . . . be fairly charged with the risk that the product will not match his
15 economic expectations unless the manufacturer agrees that it will.’”

16 *Cholyakan v. Mercedes-Benz USA, LLC*, 796 F. Supp. 2d 1220, 1235 (C.D. Cal. 2011), *citing*
17 *Seely v. White Motor Co.*, 63 Cal. 2d 9, 18 (1965); *see also Asghari v. Volkswagen Group of*
18 *America, Inc.*, 42 F. Supp. 3d 1306, 1329, n. 80 (C.D. Cal. 2013) (collecting cases with similar
19 holdings). Because plaintiffs’ claims for relief rest upon claimed design defects, as to which GM
20 owed plaintiffs no legal duty, they must all be dismissed.

21 **Twelfth (No Payment to GM – No Basis for UCL Restitution Claim)**

22 13. The claims of plaintiffs and members of the purported classes are barred because
23 they did not pay sums representing all or part of the monetary recovery sought in this case to GM
24 and therefore cannot claim restitution thereof from GM.

25 **Thirteenth (Lack of Standing under State Statutes and Common Law)**

1 14. The claims of some plaintiffs and putative class members who did not suffer injury
2 and/or lose money or property as a result of any alleged violation of state statutes or implied
3 warranties are barred for lack of standing.

4 **Fourteenth (Lack of Injury to Support Implied Warranty Claims)**

5 15. The implied warranty and Magnuson Moss Act claims of any purported member of
6 the alleged classes whose vehicle has not manifested any alleged defect are barred by the lack of
7 any injury or damage.

8 **Fifteenth (Failure to Give GM Reasonable Notice and Opportunity to Repair)**

9 16. The Magnuson Moss Act claim is barred by plaintiffs' failure to afford GM
10 reasonable notice of and a reasonable opportunity to cure any alleged defect *after* advising GM that
11 plaintiff was purporting to act on behalf of a class. *See* 15 U.S.C. § 2310(e).

12 **Sixteenth (Accord and Satisfaction)**

13 17. The claims of some plaintiffs and purported class members may be barred by the
14 doctrine of accord and satisfaction.

15 **Seventeenth (Compromise and Settlement)**

16 18. The claims of some plaintiffs and purported class members may be barred by the
17 terms of settlement agreements with GM.

18 **Eighteenth (Release)**

19 19. The claims of some plaintiffs and purported class members may be barred by valid
20 releases.

21 **Nineteenth (Due Process)**

22 20. The certification of any class would violate GM's due process rights by allowing
23 purported class members to assert claims without sustaining their burden of proof on the individual
24 elements of their claims and by preventing GM from challenging the merits of their individual
25 claims and asserting valid individual defenses.

26 **Twentieth (Constitutional Limits on Punitive Damages)**

1 21. An award of punitive damages would violate GM’s rights under the Full Faith and
2 Credit and Commerce Clauses of, and the Eighth and Fourteenth Amendments to, the United States
3 Constitution and similar applicable provisions of state constitutions and laws.

4 **Twenty-First (Economic Loss Doctrine)**

5 22. The claims of some plaintiffs and purported class members may be barred by the
6 economic loss doctrine under the relevant state law.

7 **Twenty-Second (No Private Class Action – State Consumer Protection Act Claims)**

8 25. The state consumer protection act class claim of plaintiff Byrge (Count 33) is barred
9 because the applicable statutes do not permit private class actions.

10 **WHEREFORE, GM PRAYS FOR JUDGMENT ON PLAINTIFFS’ SEVENTH**
11 **AMENDED COMPLAINT AS FOLLOWS:**

- 12 (1) That plaintiffs’ Seventh Amended Complaint and each claim for relief therein be
13 dismissed with prejudice;
- 14 (2) That plaintiffs take nothing by their Seventh Amended Complaint;
- 15 (3) That no class be certified, and that plaintiffs be precluded from prosecuting this
16 action on behalf of the general public;
- 17 (4) That GM be awarded its costs incurred herein, including reasonable attorneys’
18 fees; and
- 19 (5) That GM receive such other and further relief as the Court may deem just and
20 proper.

21
22
23 Dated: November 20, 2020

By: CROWELL & MORING LLP

s/ April N. Ross

APRIL N. ROSS

Attorneys for General Motors LLC