LEE LITIGATION GROUP, PLLC
C.K. Lee (CL 4086)
Anne Seelig (AS 3976)
30 East 39th Street, Second Floor
New York, NY 10016
Tel.: 212-465-1188
Fax: 212-465-1181
Attorneys for Plaintiff and the Class

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JONES WON, *on behalf of himself and all others similarly situated*,

Plaintiff,

v.

GENERAL MOTORS COMPANY,
GENERAL MOTORS HOLDINGS LLC, and
GENERAL MOTORS LLC,

Defendants.

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, JONES WON (hereinafter, "Plaintiff"), on behalf of himself and all others similarly situated in the United States of America, by and through his undersigned counsel, hereby bring this Class Action Complaint against Defendants, GENERAL MOTORS COMPANY, GENERAL MOTORS HOLDINGS LLC, and GENERAL MOTORS LLC, and alleges the following upon his own knowledge, or where he lacks personal knowledge, upon information and belief, including the investigation of his counsel:

NATURE OF THE ACTION

1. Defendants GENERAL MOTORS COMPANY, GENERAL MOTORS LLC and GENERAL MOTORS GLOBAL SERVICE OPERATIONS, INC. (collectively, "Defendants" or "GM") manufacture consumer vehicles worldwide.

2. The American taxpayers lost more than $11 billion propping up GM during the financial crisis.[1] Now, Defendants make billions of dollars of profits for their shareholders every quarter.[2] They earn these profits by using inadequate materials in their vehicles, failing to design them properly, advertising the vehicles as if they properly functioned, failing to warn consumers that their vehicles have known defects, and then selling consumers replacement parts when those vehicles inevitably break. Those GM vehicles which were manufactured with the defective parts are listed in **Exhibit A**, organized by defective part (the "Products").

3. Poor design and workmanship has left thousands of Defendants' consumers with air conditioning systems that routinely fail. Having learned of the flaws in its air conditioning system, Defendants have compounded this problem by doing nothing to warn their customers that the almost inevitable failure of factory-installed air conditioning systems will cause them extensive loss, including potential damage to non-defective subcomponents of the air-conditioning system.

4. Despite not warning its customers, Defendants have redesigned some of the defective parts in an effort to compensate for their structural weakness. Despite their knowledge of the flaws in their vehicles, Defendants refuse to compensate consumers for the repairs necessitated by the Products' defective design.

5. As part of their extensive and comprehensive nationwide marketing campaign, Defendants actively promote the Products as possessing "Tri-zone automatic climate control with

---

[1] https://www.reuters.com/article/us-autos-gm-treasury-idUSBREA3T0MR20140430 (last accessed 8/11/2017).
[2] http://www.gm.com/investors/earnings-releases.html (last accessed 8/11/2017).

individual climate settings for driver, right-front passenger and rear passengers." *See* **Exhibit B**, an excerpt from Defendants' brochure marketing the 2015 Suburban (emphasis added). In other words, Defendants market the Products as if they had an advanced air conditioning system, when in fact they almost inevitably have no air conditioning system at all soon after they are purchased. Defendants' advertising campaign includes photographs of the Products' interior cabin in which the air conditioning control system is clearly visible. *See* **Exhibit C**, an excerpt from Defendants' brochure advertising the 2015 Suburban. Furthermore, Defendants advertise the Products as luxury cars, which necessarily have air conditioning systems. All of Defendants' advertisements convey the same contain false, deceptive and misleading message because the air conditioning systems in the Products generally fails within a few months of purchase.

6. By making false, deceptive and misleading statements to consumers, Defendants have deceived hundreds of thousands of consumers into purchasing vehicles. However, Defendants failed to provide vehicles with the promised features.

7. Plaintiff WON purchased five defective cars from Defendant: a 2016 Escalade and four 2015 Suburbans. The air conditioning systems in every one of those cars quickly began to fail. All five vehicles suffered air conditioning failure that needed replacement, and for two of the Suburbans the air conditioning system has failed twice.

8. At all material times hereto, Plaintiff and other consumers have been deceived into spending significant amounts of money to repair their defective vehicles. Moreover, Plaintiff and other consumers are also deceived by the Defendants' advertisement of their vehicles as having air conditioning systems. Plaintiff and other members of the Class (as defined below), have been harmed by Defendants' fraudulent misrepresentations.

9. This lawsuit seeks redress for the defective vehicles Defendants sold and the deceptive manner in which Defendants have marketed and continues to market them. Plaintiff brings this proposed consumer class action individually and on behalf of all other persons similarly situated, who, from the applicable limitations period of six years up to and including the present ("Class Period"), purchased a vehicle with one of the parts listed in **Exhibit A**. All of these parts are defective and cause the air conditioning system in the vehicles to fail prematurely.

10. Plaintiff seeks to secure, among other things, equitable and declaratory relief, restitution, and alternative damages, for similarly situated purchasers, against Defendants, for violating statutes that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. It is the policy of every jurisdiction in the United States to outlaw consumer fraud. Defendants violated statutes enacted in each of the fifty states and the District of Columbia, including New York, that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are:

i. Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.*;
ii. Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et seq.*;
iii. Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.*;
iv. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
v. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
vi. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.*;
vii. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
viii. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
ix. District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;
x. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
xi. Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;
xii. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statues § 480-1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.*;
xiii. Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
xiv. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.*;
xv. Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.*;

xvi. Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.*;
xvii. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.*;
xviii. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.*;
xix. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. §§ 51:1401, *et seq.*;
xx. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*;
xxi. Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
xxii. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
xxiii. Michigan Consumer Protection Act, §§ 445.901, *et seq.*;
xxiv. Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.;* and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;
xxv. Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.*;
xxvi. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
xxvii. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code § 30-14-101, *et seq.*;
xxviii. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
xxix. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*;
xxx. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.*;
xxxi. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, *et seq.*;
xxxii. New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57-12-1, *et seq.*;
xxxiii. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law § 349 and the New York's False Advertising Law, Gen. Bus. Law § 350350, *et seq.*;
xxxiv. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.*;
xxxv. North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.*;
xxxvi. Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.*;
xxxvii. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
xxxviii. Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;
xxxix. Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. §§ 201-1, *et seq.*;
xl. Rhode Island Unfair Trade Practices and Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
xli. South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.*;
xlii. South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37-24-1, *et seq.*;
xliii. Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.*;
xliv. Texas Stat. Ann. §§ 17.41, *et seq.*, Texas Deceptive Trade Practices Act, *et seq.*;
xlv. Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.*;
xlvi. Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.*;
xlvii. Virginia Consumer Protection Act, Virginia Code Ann. §§59.1-196, *et seq.*;
xlviii. Washington Consumer Fraud Act, Wash. Rev, Code § 19.86.010, *et seq.*;
xlix. West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.*;
l. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100. 18, *et seq.*;
li. Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§40-12-101, *et seq.*

11. These statutes include New York's Deceptive Acts or Practices Law, Gen. Bus. Law § 349, and New York's False Advertising Law, Gen. Bus. Law § 350.

13. Plaintiff expressly does not seek to contest or enforce any state law that has requirements beyond those required by federal laws or regulations.

JURISDICTION AND VENUE

14. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than Defendants, and the amount in controversy exceeds the sum or value of $5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).

15. The Court has jurisdiction over the federal claims alleged herein pursuant to 28 U.S.C. § 1331 because they arise under the laws of the United States.

16. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

17. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C § 1332 because the matter in controversy exceeds the sum or value of $75,000 and is between citizens of different states.

18. This Court has personal jurisdiction over Plaintiff because Plaintiff submits to the Court's jurisdiction. This Court has personal jurisdiction over Defendants, pursuant to New York Statute N.Y. CVP. Law § 302, because it conducts substantial business in this District, some of the actions giving rise to the Complaint took place in this District, and some of Plaintiff's claims arise out of Defendants operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state; committing a tortious act in this state; and causing injury to person or property in this state arising out of Defendants' acts and

omissions outside this state. Additionally, this court has personal jurisdiction over Defendants because its moving equipment and storage facilities are advertised, marketed, distributed, and sold throughout New York State; Defendants engaged in the wrongdoing alleged in this Complaint throughout New York State; and Defendants have sufficient minimum contacts with New York and/or otherwise has intentionally availed itself of the markets in New York State, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendants are engaged in substantial and not isolated activity within New York State.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to these claims occurred in this District, the Defendants have caused harm to class members residing in this District, and the Defendants are residents of this District under 28 U.S.C. 1391(c)(2) because they are subject to personal jurisdiction in this district.

PARTIES

Plaintiff

20. Plaintiff JONES WON is, and at all times relevant hereto has been, a citizen of the State of New Jersey and resides in Bergen County, New Jersey. Plaintiff WON purchased his first two 2015 Suburbans from Major Chevy located at 43-41 Northern Blvd., Long Island City Plaintiff WON purchased his third and fourth 2015 Suburban from East Hills Chevrolet of Douglaston located at 240-02 Northern Blvd, Douglaston, NY 11362. Plaintiff WON purchased his 2016 Escalade from Brogan Cadillac located at 1 12 Route 46 East, Totowa, NJ 07512. In all cases, WON relied on Defendants' representations that the cars had functioning air conditioning systems. Plaintiff WON was not informed that air conditioning systems would imminently and routinely

malfunction. As a result of his purchase, Plaintiff WON suffered injury in fact, lost money, and was denied the benefit of his bargain.

21. Plaintiff WON's Suburbans and Escalades all suffered from failed air conditioning systems within months of his purchase, requiring expensive repairs and the loss of use of the vehicles. The first two Suburbans have had their air conditioning systems fail twice, with each episode requiring expensive repairs and loss of use of the vehicle.

22. Plaintiff WON suffered injury in fact, lost money, and was denied the benefit of his bargain when he purchased his five vehicles as a result of (a) his repair costs, (b) his inability to use the vehicles while they were broken or being repaired, and (c) lost time and wages. Plaintiff WON was also deprived of the benefit of his bargain insofar as he purchased inherently defective vehicles worth far less than the luxury vehicles with functioning systems that he paid to re

Defendants

23. Defendant GENERAL MOTORS COMPANY is a corporation organized under the laws of Delaware, with its headquarters at 300 Renaissance Center, Detroit, Michigan 48243 and an address for service of process at 251 Little Falls Drive, Wilmington, DE 19808. GENERAL MOTORS COMPANY received substantially all of General Motors' assets during the 2009 bailout of GM and is now the parent company of Defendants' various operations. GENERAL MOTORS COMPANY trades on the New York Stock Exchange under the ticker symbol "GM".

24. Defendant GENERAL MOTORS HOLDINGS LLC. is a corporation organized under the laws of Delaware, with its headquarters at 300 Renaissance Center, Detroit, Michigan 48243 and an address for service of process at 251 Little Falls Drive, Wilmington, DE 19808. GENERAL MOTORS HOLDINGS LLC is wholly owned by GENERAL MOTORS COMPANY.

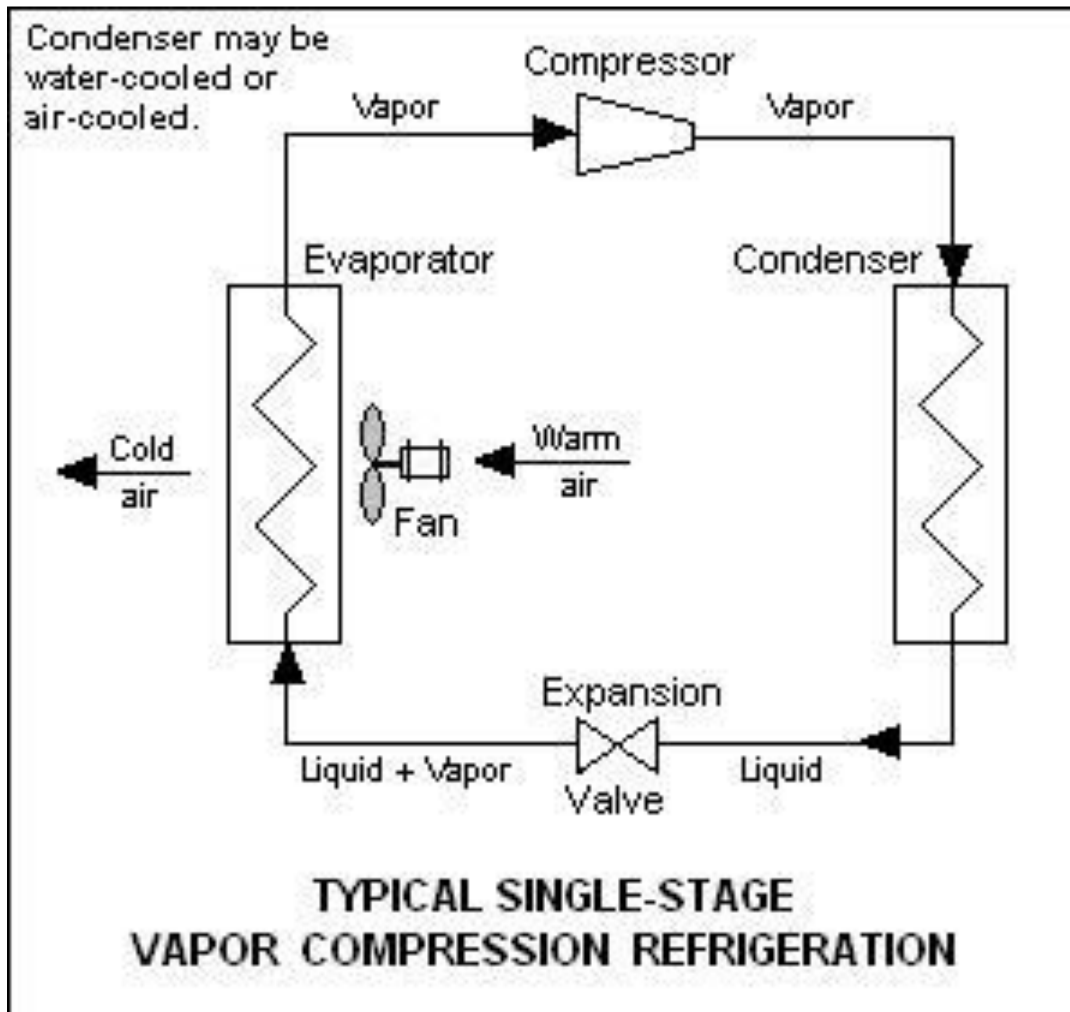
25. Defendant GENERAL MOTORS LLC is a corporation organized under the laws of Delaware, with its headquarters at 300 Renaissance Center, Detroit, Michigan 48243 and an address for service of process at 251 Little Falls Drive, Wilmington, DE 19808. GENERAL MOTORS LLC is wholly owned by GENERAL MOTORS HOLDINGS LLC. GENERAL MOTORS LLC conducts Defendants' day-to-day operations.

FACTUAL ALLEGATIONS

26. General Motors' air conditioners cool a vehicle by blowing air over a cold evaporator that contains cold coolant fluid. The evaporator is part of a system that repetitively cycles the coolant to the evaporator as a cold liquid and away from the evaporator as warmer gas. This cycle is completely sealed off from the environment, so the coolant flows continuously through the system and is never diminished or used up in this process. The air blown into the vehicle cabin never comes into direct contact with the coolant – the air is cooled by being blown over the evaporator, and the evaporator is cold due to the coolant it contains.

27. The air conditioning system cycles the coolant as follows:

- The coolant is coldest while it is a liquid in the evaporator, where a fan blows air over the evaporator into the vehicle cabin. The coolant cools the evaporator, and the evaporator cools the air in the car because heat is transferred from the air around the evaporator into the evaporator. Eventually, this process warms and boils the coolant into gas, so the air conditioner cycles out the warm coolant gas to the compressor.
- The compressor compresses the coolant into a hot, high pressure gas and pushes the coolant to the condenser.
- The hot and dense gas coolant conveys heat into the condenser, and the condenser radiates heat into the environment as external air passes over it, but the coolant itself is never exposed to the air. The hot gas coolant loses heat until it condenses into a liquid. After heat has been released, the coolant is collected in the dehydrator/receiver/dryer until it is ready to be decompressed.
- The coolant then passes through an expansion valve that opens to allow the desired amount of coolant through to the evaporator. This expansion transforms some of the coolant from a cold liquid into a cold, low-pressure gas. When the coolant reaches the evaporator, the cycle begins again. The coolant is never exposed to the outside air, and so it is entirely conserved in this process.



28. In the defective General Motors Products, the physical components of the system are too weak to withstand the pressure that the coolant is under. The malfunction is caused by the weakness and poor design of two parts: the discharge line and the condenser. Either the discharge line or condenser breaks from this pressure and develops a leak, despite normal operation of the vehicle. This causes coolant to leak out and air to leak in, both of which impede the air conditioner from working. First, as air leaks into the system, water vapor in the air freezes into ice, blocking the circulation of coolant within the air conditioning system. As ice blocks the flow of coolant within the system, the fluid is forced out through the leak. Second, as coolant leaks out, the air conditioning system becomes less and less effective. When the evaporator no longer has enough

coolant to absorb heat from the surrounding air, ice forms on and within the system, damaging it directly. Eventually, the system ceases to function at all.

29. Defendants know that its Products are defective and fail from overpressure and has issued a service bulletin addressing the issue. Bulletin #PIE0340 notes that pressurization and leak problems occur in the vehicles even before they are delivered to consumers. **See Exhibit D**.

30. The Product condenser, the rubber part of the Product discharge line, and the metal part of the Product discharge line are all defective and fail easily because Defendants overpressurize the system by using too much coolant. The various defective elements of the air conditioning system fail in different ways.

31. The condenser is simply too weak to hold the pressure of the coolant, so it springs a leak at the neck, where high-pressure gas enters, unless a leak in the discharge line occurs first. Defendants have discontinued the defective condenser part and sells replacement condensers, all without compensating consumers who purchased vehicles with the defective condensers. Because all of the original Product condensers are intrinsically too weak to withstand the pressure of the coolant, GM's part manufacturer ACDelco has discontinued making those condensers for Plaintiff's vehicle. *See* **Exhibit E**.

32. The discharge line is made of long aluminum pipes connected by a rubber hose. The excess pressure in the system causes either a) the rubber to become disconnected from the aluminum, or b) the aluminum to break open.

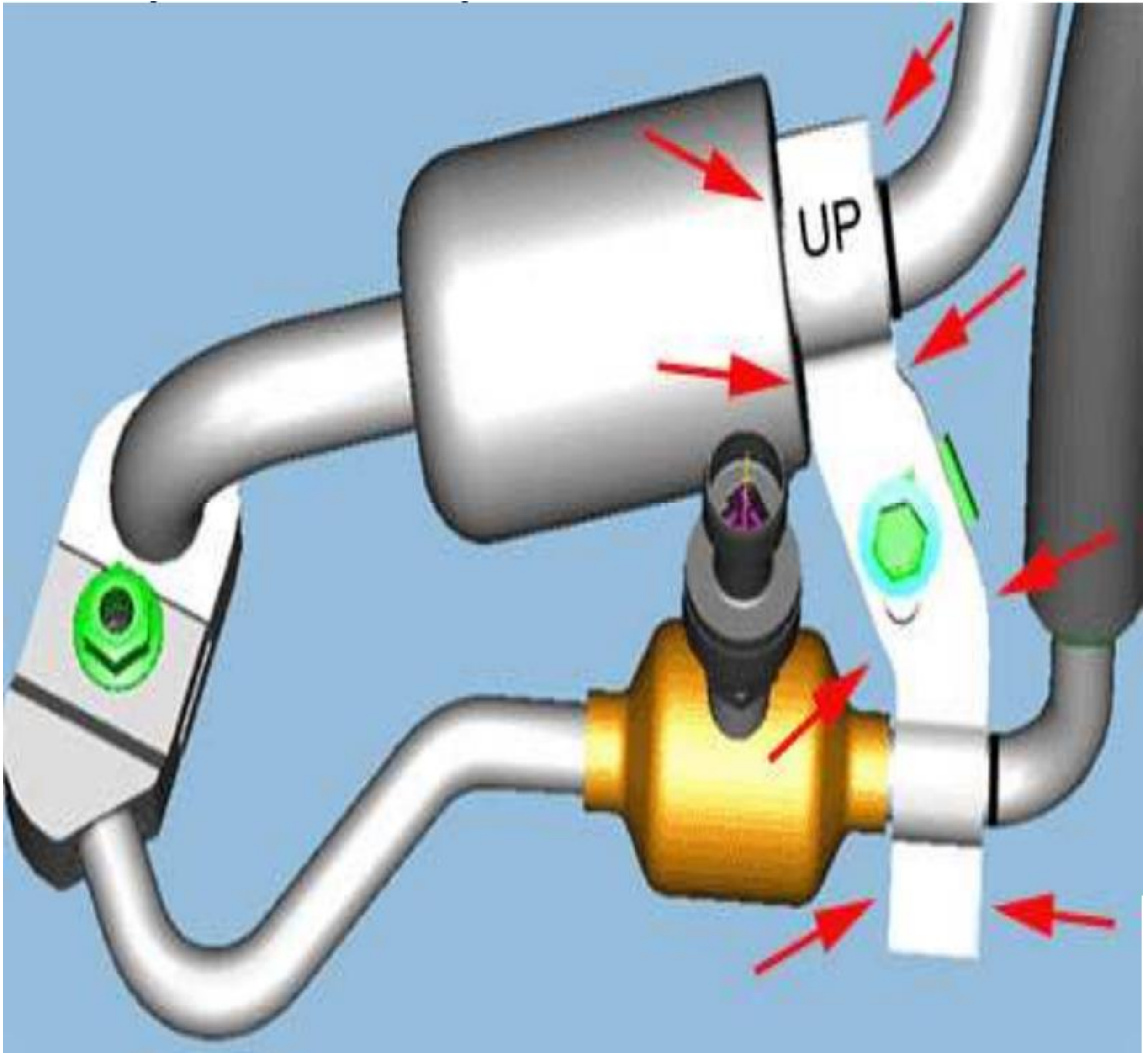
33. The rubber to metal connection in the original Product discharge hoses is not strong enough and simply detaches from the metal. Defendants have discontinued the original model of the discharge hose and replaced it with one that has a reinforced connection. *See* **Exhibit F**. [3]

34. In Products that contain the new discharge hose model, the aluminum part of the hose bursts from the excessive pressure in the system due to its poor design. As the car vibrates in the course of normal driving, the weight of the aluminum pipe part of the discharge line causes the pipe to flex up and down like a diving board.[4] This effect is particularly pronounced on models that have a bulky muffler near the end of one of the aluminum pipes. The continuous flexing gradually weakens the pipe until the excessive pressure bursts it. Defendants have redesigned the discharge line to not have the heavy muffler. *See* **Exhibit F**.

35. The failure of GM's discharge lines has spawned an after-market in custom discharge hoses made from steel, which is stronger than aluminum. *See* **Exhibit G**. A simpler solution to the flexing problem is to use a bracket to hold the end of the long aluminum part of the discharge hose in place. Defendants have issued a service bulletin instructing mechanics to reinforce the discharge lines with a reinforcing bracket that prevents the line from vibrating. *See* **Exhibit H**.

36. In Plaintiff's vehicles, the condensers broke open, which required replacement of the condensers. By breaking open, the condensers lowered the pressure in the system before the discharge hose could fail. Plaintiff's experience is typical of other purchasers of Defendants' vehicles whose air conditioning system leaks due to overpressure and the use of fragile components.

[3] The original discharge line is numbered GM #22777831. The discharge line with a reinforced hose is numbered GM#23438932. The discharge line without the muffler is numbered GM#23220458.
[4] Professional diving boards are made of aluminum. *See* https://duraflexinternational.com/diving-boards/ (last accessed 5/23/17).



37. In Defendants' cars with a reinforced discharge line, the condenser is the weakest spot and is usually the place where overpressure causes a leak. All four of Plaintiff's cars developed leaks in the necks of their condensers

38. Defendants' air conditioning systems are not built to withstand the pressure of the refrigerant they contain.

39. Defendants possess and exercise the knowledge and authority to inform new purchasers that the Product air conditioning systems will fail, but it does not do so. Defendants

possess the knowledge and authority to inform their existing customers that its air conditioning systems need reinforcement, but they fail to do so.

A Reasonable Consumer Would Be Deceived

40. Reasonable consumers (including Plaintiff and the Class) must and do rely on companies such as Defendants' to honestly advertise Products. Corporations such as Defendants intend and know that consumers rely upon advertisements in making their purchasing decisions. Such reliance by consumers are also eminently reasonable, since companies are prohibited from engaging in deceptive acts or practices in the conduct of any business, trade or commerce under New York State law and the consumer protection laws of every state in the United States and the District of Columbia.

41. As detailed herein, New York in particular has placed requirements on companies that are designed to ensure that the claims manufacturers such as Defendants make about their products to consumers are truthful and accurate.

42. Reasonable consumers, such as Plaintiff and the Class, rationally expected that when they purchased a vehicle advertised as having an air conditioning system it would function for more than a few months.

43. Plaintiff and the Class reasonably relied to their detriment on Defendants' false and misleading misrepresentations.

44. Plaintiff did, and a reasonable consumer would, attach importance to whether Defendants' advertisements are deceptive or misleading and therefore unlawful.

45. Defendants' misleading and false advertising of the reservation policy violate New York consumer protection laws against deceptive acts and practices in the conduct of business.

Plaintiff Relied on Defendants' Claims

46. Plaintiff was attracted to the Products because he relied on Defendants' representations that they are high-quality vehicles that have air conditioning and would not malfunction or require repeated expensive repairs.

47. Plaintiff did not know, and had no reason to know, that the Products were defective.

48. Defendants' advertisements that the Products had functioning air conditioning systems was a material factor in Plaintiff's and Class members' decision to purchase the Products for thousands of dollars each. Relying on Defendants' misleading advertisements, Plaintiff and Class members believed that they were getting vehicles equipped with serviceable air conditioning, but in fact they received vehicles with air conditioning units that would soon fail. The vehicles Plaintiff and the Class purchased were therefore worth far less than had been represented, and so Plaintiff and the Class were denied the benefit of their bargain. Subsequently, Plaintiff and the Class were forced to pay for repairs to the air conditioning system—repairs that would only temporarily fix the air conditioning systems because the systems are designed with unfixable defects.

49. Defendants' false advertisements as alleged herein are deceptive and misleading and are designed to increase sales and the sale price of Products beyond what they would have been had they been truthfully advertised as lacking a functional air conditioner. Defendants' misrepresentations are part of its systematic pricing, advertising, and marketing practice.

50. As a result of Defendants' misrepresentations, Plaintiff and thousands of others throughout the United States purchased defective Products from Defendants.

Plaintiff and Class Were Injured

51. Plaintiff and the Class (defined below) have been damaged by Defendants' deceptive and unfair conduct in that he purchased Products that failed to contain a functioning air

conditioning system. Plaintiff and the Class were damaged at purchase, and Defendants continuously injure them by not informing them that the air conditioning systems are prone to fail and need reinforcement.

52. Defendants did not deliver to Plaintiff and class the benefit of their bargain. Therefore, consumers suffered injury in terms of the price paid for all repairs and inconvenience, as well as the portion of the purchase price attributable to the false representations. Thus, Plaintiff and other similarly situated consumers have been harmed in more than the amount they paid for repairs, and the total amount of damages may be calculated based upon expert testimony at trial.

CLASS ACTION ALLEGATIONS

53. Plaintiff seeks relief in his individual capacity and as representative of all others who are similarly situated. Pursuant to Rule 23(a), 23(b)(2) and/or 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiff seeks certification of the following classes:

The Nationwide Class

> All United States consumer purchasers of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate (the "Nationwide Class").

The New York Class

54. Alternatively, if the Nationwide Class is not certified, Plaintiff WON seeks to represent a class consisting of the following:

> All New York consumer purchasers of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate (the "New York Class"; collectively, the Nationwide Class and the New York Class comprise the "Classes").

55. Excluded from the Classes are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants' legal representatives, heirs, successors, assigns, and any entity in which they have or

have had a controlling interest. Also, excluded from the Classes is the judicial officer to whom this lawsuit is assigned.

56. Plaintiff reserves the right to revise the Class definitions based on facts learned in the course of litigating this matter.

57. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of his claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

58. **Numerosity:** Each Class is so numerous that individual joinder of all class members is impracticable. The precise number of members of the Classes is unknown to Plaintiff, but it is clear that the number greatly exceeds the number that would make joinder practicable, particularly given Defendants' comprehensive nationwide distribution and sales network. Members of the Classes may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

59. **Commonality and Predominance:** This action involves common questions of law and fact, which predominate over any questions affecting individual members of the Classes. All members of the Classes were exposed to Defendants' deceptive and misleading reservation policy because those claims were on the Defendants website, advertisements, and Product literature. Furthermore, common questions of law or fact include:

a. whether the Product vehicles' air conditioning systems are defective;

b. whether Product vehicle advertisements were false and misleading because they failed to inform consumers of those defects;

c. whether not Defendants had a duty to warn consumers of the defects;

d. whether Defendants engaged in a marketing practice intended to deceive consumers;

e. whether Defendants deprived Plaintiff and the other members of the Class of the benefit of the bargain because Defendants did not provide the vehicles as promised;

f. whether Defendants have been unjustly enriched at the expense of Plaintiff and other Class members by their misconduct;

g. whether Defendants must disgorge any and all profits it has made as a result of their misconduct;

h. whether Defendants should be barred from marketing its reservation guaranteed policy without including disclaimers, however characterized; and

i. whether Defendants should be held liable for advertising fully functioning vehicles and then actually providing consumers with vehicles that have defective air conditioning systems.

60. Defendants engaged in a common course of conduct in contravention of the laws sought to be enforced by Plaintiff individually and on behalf of the other members of the Classes. Similar or identical statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action. Moreover, the common questions will yield common answers.

61. **Typicality:** Plaintiff's claims are typical of those of the members of the Class because Plaintiff and the other Class members sustained damages arising out of the same wrongful conduct, as detailed herein. Plaintiff and Class members purchased Defendants' vehicles and sustained

similar injuries arising out of Defendants' conduct, which was and is in violation of the laws of all 50 states and the District of Columbia. Defendants' unlawful, unfair and fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. The injuries to the Class were caused directly by Defendants' wrongful misconduct. In addition, the factual underpinning of Defendants' misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiff's claim arises from the same practices and course of conduct that give rise to the claims of the members of the Class and are based on the same legal theories.

62. **Adequacy:** Plaintiff will fairly and adequately represent and pursue the interests of the Class and has retained competent counsel experienced in prosecuting nationwide class actions. Plaintiff understands the nature of his claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Classes. Neither Plaintiff nor Plaintiff's counsel has any interests that conflict with or are antagonistic to the interests of the Classes. Plaintiff has retained highly competent and experienced class action attorneys to represent his interests and those of the Classes. Plaintiff and Plaintiff's counsel has the necessary resources to adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Classes and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the members of the Classes.

63. **Superiority:** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other members of the Classes is relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would

be impracticable for members of the Classes to individually seek redress for Defendants' wrongful conduct. Even if the members of the Classes could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Given the similar nature of the members of the Classes' claims and the absence of material or dispositive differences in the statute and common laws upon which the claims are based when such claims are grouped as proposed above and below, the Nationwide Class (or, alternatively, the New York Class) will be easily managed by the Court and the parties.

64. **Declaratory and Injunctive Relief:** The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

65. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

66. Defendants' conduct is generally applicable to the Class as a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendants' systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

67. Further, in the alternative, the Class may be maintained as class actions with respect to particular issues, pursuant to Fed.R.Civ.P. 23(c)(4).

CAUSES OF ACTION

COUNT I

INJUNCTION FOR VIOLATIONS OF NY GBL § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

(Brought Individually and on behalf of the Nationwide Class under New York Law; Alternatively, brought Individually and on behalf of the New York Subclass of the Nationwide Class; Alternatively, brought Individually and on behalf of the New York Class.)

68. Plaintiff WON realleges and incorporates herein by reference the allegations contained in all the preceding paragraphs of this Complaint, as if fully set forth herein.

69. Plaintiff WON brings this claim individually and on behalf of the Class for an injunction for violations of NY GBL § 349.

70. NY GBL § 349 provides that deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are unlawful.

71. Any person who has been injured by reason of any violation of the NY GBL § 349 may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the Defendants willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

72. Defendants misrepresented and omitted material information regarding the Products, as set forth herein, by:

- Designing the Products defectively, such that they fail soon after purchase;
- Falsely advertising the Products as having functioning air conditioning systems;

- Doing nothing to warn their customers that the almost inevitable failure of factory-installed air conditioning systems will cause them extensive loss;
- Refusing to compensate consumers for the repairs necessitated by the Products' defective design.

73. Defendants' misrepresentations and concealment of material facts constitute unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation, and/or the knowing concealment, suppression, or omission of materials facts with the intent that others rely on such concealment, suppression, or omission in connection with the sale and advertisement of the Products.

74. Defendants engaged in the deceptive acts and practices alleged herein in order to sell Products to the public, including Plaintiff and the Class.

75. Defendants' practices, acts, policies, and course of conduct, including its omissions, as described above, were intended to induce, and did induce, Plaintiff and the Class to purchase the Products.

76. Acts and omissions by Defendants were likely to mislead a reasonable consumer into purchasing the Products. Defendants' deceptive acts and omissions are material because they concern an essential feature of the Product, its air conditioning system.

77. The sale and distribution in New York of the Products was a consumer-oriented act. and thereby falls under the New York deceptive acts and practices statute.

78. Defendants have refused to act on grounds generally applicable to the injunctive relief sought by Plaintiff, thereby making final injunctive relief appropriate.

79. Defendants persist in their deceptive and unfair marketing and sales practices regarding the Products to the detriment of consumers across the country, including Plaintiff and the Class.

80. Under all of the circumstances, Defendants' conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

81. Defendants' actions impact the public interest because Plaintiff and members of the New York Class were injured in exactly the same way as thousands of others who purchased the Products.

82. If Defendants are allowed to continue with these practices, consumers, including Plaintiff and the Class, will be irreparably harmed. Plaintiff and the Class do not have a plain, adequate, speedy, or complete remedy at law to address all of the wrongs alleged in this Complaint unless injunctive relief is granted to stop Defendants' deceptive marketing and sale of the Products.

83. Plaintiff WON is therefore entitled to an injunction requiring Defendants to cease its unfair and deceptive practices relating the sale of the Products.

84. Plaintiff WON and the Class seek declaratory relief, a judgment enjoining Defendants' from continuing to disseminate their false and misleading statements and awarding costs of this proceeding and attorneys' fees, as provided by NY GBL § 349, and other relief allowable under NY GBL § 349.

COUNT II

DAMAGES FOR VIOLATIONS OF NY GBL § 349 and § 350 (DECEPTIVE AND UNFAIR TRADE PRACTICES/FALSE ADVERTISING)

(Brought Individually and on behalf of the Nationwide Class under New York Law; Alternatively, brought Individually and on behalf of the New York Subclass of the Nationwide Class; Alternatively, brought Individually and on behalf of the New York Class.)

85. Plaintiff WON realleges and incorporates herein by reference the allegations contained in all the preceding paragraphs of this Complaint, as if fully set forth herein.

86. Plaintiff WON brings this claim for damages under NY GBL §§ 349 and 350.

87. Defendants engaged in consumer-oriented, commercial conduct by selling and advertising the Products.

88. Defendants misrepresented and omitted material information regarding the Products by failing to disclose that the air conditioning in the Products would fail imminently.

89. Defendants' misrepresentations and concealment of material facts constitute unconscionable commercial practices, deception, fraud, false advertising, misrepresentation, and/or the knowing concealment, suppression, or omission of materials facts with the intent that others rely on such concealment, suppression, or omission in connection with the sale and advertisement of the Products, in violation of NY GBL § 349.

90. Defendants knowingly and falsely represented that the Products were fit to be used for the purpose for which they were intended, when Defendants knew they were defective and dangerous.

91. Defendants engaged in the deceptive acts and practices alleged herein in order to sell the Products to the public, including to Plaintiff WON.

92. Defendants' practices, acts, policies, and course of conduct, including its omissions, as described above, were intended to induce, and did induce, Plaintiff WON to purchase the Products.

93. Defendants sold the Products knowingly concealing that they contained the defects alleged herein.

94. As a direct and proximate result of these unconscionable, unfair, and deceptive acts or practices, Plaintiff WON and the Class were injured when they paid money for a product that did not have the qualities and attributes that Defendants had advertised.

95. Plaintiff and the Class are therefore entitled to compensatory damages, equitable and declaratory relief, punitive damages, costs and reasonable attorney's fees.

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(Brought Individually and on behalf of the Nationwide Class under New York Law;
Alternatively, brought Individually and on behalf of the New York Subclass of the Nationwide Class;
Alternatively, brought Individually and on behalf of the New York Class.)

96. Plaintiff realleges and incorporates herein by reference the allegations contained in all the preceding paragraphs of this Complaint, as if fully set forth herein.

97. In "a breach of warranty of merchantability claim, Plaintiff must allege that the product is not fit for the ordinary purposes for which such goods are used." *Gasque v. Thor Motor Coach*, 2017 NY Slip Op 50122(U), ¶ 3 (Sup. Ct.) (citing *Bradley v. Earl B. Feiden, Inc.*, 8 NY3d 265, 273, 864 N.E.2d 600, 832 N.Y.S.2d 470 (2007)).

98. Defendants impliedly warranted and represented through advertisements, marketing, packaging, labels, websites and other material that the Products were fit for the ordinary purposes of vehicles—namely, comfortably transporting a driver and passengers in a safe and healthy fashion.

99. Defendants breached said warranty because the Products purchased by Plaintiff and the class were defective and would suffer imminent air conditioning failure due to their defective design and physical weakness, which was inconsistent with the ordinary purpose of vehicles.

100. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff purchased defective products whose lack of effective air conditioning greatly lowered their value.

101. As a direct and proximate result of Defendants' breach, Plaintiff has been damaged in an amount to be determined at trial.

COUNT IV

STRICT PRODUCTS LIABILITY
(MANUFACTURING DEFECT AND FAILURE TO WARN)

(Brought Individually and on behalf of the Nationwide Class under New York Law;
Alternatively, brought Individually and on behalf of the New York Subclass of the Nationwide Class;
Alternatively, brought Individually and on behalf of the New York Class.)

102. Plaintiff realleges and incorporate herein by reference the allegations contained in all the preceding paragraphs of this Complaint, as if fully set forth herein, and further alleges as follows.

103. At all times herein mentioned, Defendants designed, researched, manufactured, tested, advertised, promoted, marketed, sold and/or distributed the Products used by Plaintiff.

104. The Products were expected to, and did, reach the usual consumers, handlers, and persons coming into contact with said product without substantial change in the condition in which they were produced, manufactured, sold, distributed, and marketed by Defendants.

105. In order to plead a manufacturing defect a plaintiff must assert that (1) the product was not reasonably safe as marketed; (2) the plaintiff used the product for a normal purpose; (3) by exercising reasonable care, plaintiff would not have discovered the defect and apprehended its

danger; and (4) plaintiff would not have otherwise avoided injury by exercising ordinary care. *Derienzo v. Trek Bicycle Corp.*, 376 F.Supp.2d 537, 560 (S.D.N.Y. 2005).

106. Element #1 is satisfied because the Products were not reasonably safe as marketed. Air conditioning is needed for the safety of a vehicle's driver and passengers during hot weather.

107. Element #2 is satisfied because Plaintiff used the Products for their normal, intended purpose—driving people.

108. Element #3 is satisfied because Plaintiff could not have discovered the danger of the Products through the exercise of reasonable care. Plaintiff did not have access to information in Defendants' internal engineering documents, which would indicate the inadequacy of the parts. No visual inspection would reveal the defects.

109. Element #4 is satisfied because Plaintiff could not have prevented the air conditioning systems' failure through the exercise of ordinary care. The parts are simply too weak.

110. To establish a *prima facie* case of manufacturing defect, the plaintiff "may rely upon the circumstances of the accident and proof that the product did not perform as intended." *Hare v. Hoveround Corp.*, 2009 WL 3086404, at *4 (N.D.N.Y. September 23, 2009) (citing *Brown v. Borruso*, 238 A.D.2d 884, 885, 660 N.Y.S.2d 780 (4th Dept. 1997)).

111. The circumstances of the Products' swift and routine failure establish that the Products were defectively manufactured—that is, manufactured such that they would imminently fail even with moderate, ordinary use.

112. Defendants failed to warn Plaintiff of this problem even though they knew or had reason to know of it.

113. Defendants had a duty to give adequate warning of the dangers associated with the Products, which they knew or should have known existed.

114. As a direct and proximate result of Defendants' manufacturing process and failure to warn Plaintiff of the dangers created by that process, Plaintiff suffered physical discomfort, risk of serious injury, and/or economic harm.

115. Defendants' actions and omissions as identified in this Complaint show that Defendants acted maliciously and intentionally disregarded the rights of Plaintiff, thus warranting the imposition of punitive damages.

COUNT V

NEGLIGENCE

(Brought Individually and on behalf of the Nationwide Class under New York Law; Alternatively, brought Individually and on behalf of the New York Subclass of the Nationwide Class; Alternatively, brought Individually and on behalf of the New York Class.)

116. Plaintiff realleges and incorporates herein by reference the allegations contained in all the preceding paragraphs of this Complaint, as if fully set forth herein, and further alleges as follows:

117. At all times material hereto, Defendants designed and manufactured the Products.

118. Defendants had a duty to exercise reasonable care in designing, manufacturing, assembling, marketing, selling and/or distributing the Products. Defendants placed the Products into the stream of commerce. It had a duty to ensure that the Products would perform as intended and not create comfort or safety risks to Plaintiff.

119. Defendants failed to exercise ordinary care in the designing, manufacturing, assembling, inspecting, marketing, selling and/or distributing the Products into the stream of commerce. Defendants knew or should have known that the Products was manufactured such that they would soon fail and that this created an unreasonable risk of health problems in extreme heat, as well as certain discomfort.

120. The negligence of Defendants, its agents, servants, and/or employees, included, but was not limited to, the following acts and/or omissions:

a. manufacturing, marketing, and distributing the Products without adequately testing them for durability;

b. failing to warn Plaintiff, the public, car dealers, and mechanics of the dangers and defects of the Products;

c. failing to recall or otherwise notify users at the earliest date that it became known that the Products were dangerous and defective;

d. representing that the Products was safe for their intended purpose when they are in fact unsafe and defective;

e. concealing information reported by its own employee(s) that its manufacturing practices did not conform to accepted industry and regulatory standards.

121. Defendants knew or should have known that consumers such as Plaintiff would suffer foreseeable injury, both physical and economic, and/or be at an increased risk of suffering injury as a result of Defendants' failure to exercise ordinary care.

122. Defendants' actions and omissions constitute negligence per se by virtue of violating statutes, ordinances and/or rules and/or regulations.

123. Defendants' negligence was the proximate cause of the injury to Plaintiff.

124. Defendants' conduct as described herein, including but not limited to its failure to provide adequate warnings, and its continued manufacture, sale, and marketing of the Product, which it knew was dangerous and defective, evidences intentional disregard for the rights of Plaintiff and warrant the imposition of punitive damages.

COUNT VI

FRAUDULENT MISREPRESENTATION/CONCEALMENT

(Brought Individually and on behalf of the Nationwide Class under New York Law; Alternatively, brought Individually and on behalf of the New York Subclass of the Nationwide Class; Alternatively, brought Individually and on behalf of the New York Class.)

125. Plaintiff realleges and incorporate herein by reference the allegations contained in all the preceding paragraphs of this Complaint, as if fully set forth herein.

126. A claim for fraudulent misrepresentation requires a plaintiff to allege "[1] a misrepresentation or a material omission of fact which was false and known to be false by defendant, [2] made for the purpose of inducing the other party to rely upon it, [3] justifiable reliance of the other party on the misrepresentation or material omission, and [4] injury" *Mandarin Trading Ltd. v. Wildenstein*, 2011 NY Slip Op 741, ¶ 3, 16 N.Y.3d 173, 178, 919 N.Y.S.2d 465, 469, 944 N.E.2d 1104, 1108 (quoting Lama Holding Co. v Smith Barney Inc., 88 NY2d 413, 421, 668 NE2d 1370, 646 NYS2d 76 [1996]).

127. Element #1 is satisfied because Defendants falsely represented to Plaintiff and the public that the Products have air conditioning when it knew these representations to be essentially false. A product that truly had air conditioning would be manufactured such that the air conditioning would last more than a few months.

128. Element #1 is also satisfied because Defendants failed to disclose, while having a duty to disclose, that their manufacturing process was not subject to appropriate quality measures.

129. Element #2 is satisfied because these and other similar representations were made for the purpose of inducing the reliance of Plaintiff. Any consumer would care a great deal about whether a car had air conditioning.

130. Element #3 is satisfied because Plaintiff WON's reliance on these representations was justified. He had no way of discovering that they were not true.

131. Element #4 is satisfied because Plaintiff WON suffered injury as a result of the defects in the Products, both because he lost use of the vehicles, he had to pay for repairs, and received vehicles less valuable than advertised.

132. Defendants' conduct as described herein, including but not limited to its failure to provide adequate warnings, and its continued manufacture, sale, and marketing of the Product, which it knew was dangerous, evidences intentional disregard for the rights of Plaintiff and warrant the imposition of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated, seeks judgment against Defendants, as follows:

a. An Order that this action be maintained as a class action and appointing Plaintiff as representatives of the Nationwide Class and/or the New York Class;

b. An Order appointing the undersigned attorney as class counsel in this action;

c. Restitution and disgorgement of all amounts obtained by Defendants as a result of their misconduct, together with interest thereon from the date of payment, to the victims of such violations;

d. All recoverable compensatory and other damages sustained by Plaintiff and the Class, including repair costs, time spent in repairing the Products, and loss of value of the Products;

e. Actual and/or statutory damages for injuries suffered by Plaintiff and the Class and in the maximum amount permitted by applicable law;

f. An order (i) requiring Defendants to immediately cease their wrongful conduct as set forth in this Complaint; (ii) enjoining Defendants from continuing to misrepresent and conceal material information and conduct business via the unlawful, unfair and deceptive business acts and practices complained of herein; and (iii) ordering Defendants to engage in a corrective advertising campaign;

g. Statutory pre-judgment and post-judgment interest on any amounts;

h. Payment of reasonable attorneys' fees and costs; and

i. Such other relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff, on behalf of himself and all others similarly situated, demands a trial by jury on all questions of fact raised by the Complaint.

Dated: August 16, 2017

Respectfully submitted,

LEE LITIGATION GROUP, PLLC
C.K. Lee (CL 4086)
Anne Seelig (AS 3976)
30 East 39th Street, Second Floor
New York, NY 10016
Tel.: 212-465-1188
Fax: 212-465-1181
Attorneys for Plaintiff and the Class

By: /s/ C.K. Lee
C.K. Lee