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24 **UNITED STATES DISTRICT COURT**

25 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

26 DONNA ARMENTI, individually
27 and on behalf of all others similarly
28 situated,

Plaintiff,

v.

GENERAL MOTORS LLC, and
DOES 1-10, inclusive,,

Defendants.

Case No. '16CV1473 WQHKSC

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff, Donna Armenti (“Plaintiff”), individually and on behalf of all persons
2 similarly situated as defined below (“Class Members”), by and through her attorneys,
3 for her complaint against Defendants General Motors LLC and DOES 1-10, inclusive
4 (“Defendants” or “GM”), states and alleges as follows on information and belief,
5 which allegations are likely to have evidentiary support after a reasonable opportunity
6 for investigation and discovery, except as to those allegations that pertain to the
7 named Plaintiff, which are alleged on personal knowledge:

8 **I. INTRODUCTION**

9 1. Plaintiff brings this action to remedy violations of law in connection
10 with Defendants’ marketing, advertising, and sale of various vehicles whose gas
11 mileage was less than affirmatively represented.

12 2. Defendants manufacture, market, and sell numerous vehicles in
13 California and the United States, including the Chevrolet Traverse, GMC Acadia, and
14 Buick Enclave. Since at least 2009, Defendants have overstated the gas mileage for
15 the following vehicles: Model Years 2009-2016 Chevrolet Traverse, Model Years
16 2009-2016 GMC Acadia, and Model Years 2009-2016 Buick Enclave (the “Affected
17 Vehicles”).

18 3. Through this uniform advertising and marketing, Defendants represented
19 that each of the Affected Vehicles would obtain a standard mile per gallon range and
20 falsely represented the fuel economy of the Affected Vehicles. For example,
21 Defendants falsely represented in promotional materials that the Affected Vehicles
22 would achieve 17 miles per gallon (“mpg”) in city driving, 24 mpg on highways, and
23 a combined fuel economy of 19 mpg (“17/24/19 mpg”). They do not. In fact, the
24 Affected Vehicles achieve materially less miles per gallon than advertised by
25 Defendants.

1 the events or omissions giving rise to Plaintiff's claims occurred in and/or emanated
2 from this District. Attached to this Complaint as Exhibit A is a Declaration from
3 Plaintiff attesting to facts establishing there is proper venue in this Court pursuant to
4 California Civil Code § 1780.

5 III. PARTIES

6 11. On personal knowledge, Plaintiff Donna Armenti is a California citizen
7 who resides in Imperial County, California. In November 2015, Plaintiff purchased
8 a 2016 Buick Enclave from Desert Auto Plaza, a Buick, Cadillac, GMC and
9 Chevrolet dealer in El Centro, California, for personal purposes. Plaintiff purchased
10 and still owns this vehicle. Prior to purchase, Plaintiff was exposed to marketing
11 materials, such as the Buick Enclave website maintained by GM, the website's
12 build-a-vehicle feature, and the website's competitive comparison tool. At the
13 dealership Plaintiff also discussed the vehicle's gas mileage with the dealer.
14 Plaintiff acted in substantial part on material representations of GM regarding the
15 fuel economy performance of the 2016 Buick Enclave, particularly when compared
16 to other similar vehicles, when deciding whether to purchase the Enclave. Plaintiff
17 believes she was charged and paid a price premium for her vehicle based on the
18 claim that it would achieve 17/24/19 mpg. Had GM disclosed the accurate fuel
19 economy of the 2016 Buick Enclave, Plaintiff in all reasonable probability would
20 not have purchased the Enclave or would have paid less for it.

21 12. Defendant General Motors LLC is a Delaware limited liability
22 company doing business throughout the United States, with its principal office
23 located at 300 Renaissance Center, Detroit, Michigan 48265, and is doing business
24 in the State of California. At all times relevant to this action, GM manufactured,
25 distributed, advertised, promoted, sold, leased and warranted the Affected Vehicles
26 under several prominent brand names, including but not limited to Chevrolet, Buick
27 and GMC. GM also developed and disseminated the owner's manuals and warranty
28

1 booklets, advertisements, interactive website, and other promotional materials
2 relating to the Affected Vehicles and conducted the relevant fuel economy testing.

3 13. The true names, roles and/or capacities of Defendants named as DOES
4 1 through 10, inclusive, are currently unknown to Plaintiff and, therefore, are named
5 as Defendants under fictitious names. Plaintiff will identify their true identities and
6 their involvement in the wrongdoing at issue if and when they become known.

7 **IV. FACTUAL BACKGROUND**

8 **A. Defendants' Marketing Promoted the Fuel Economy of the Enclave,
9 Acadia, and Traverse Vehicles**

10 14. Defendants advertise, manufacture or sell the Chevrolet Traverse, the
11 Buick Enclave, and the GMC Acadia on its full-size crossover SUV automobile
12 platform, known as the Lambda Platform. While sold under the Chevrolet, GMC,
13 and Buick brands, the Affected Vehicles, which are all "crossover" vehicles, share
14 similar particular characteristics. For example, the Affected Vehicles all combine
15 the body of an SUV with the suspension, tires, and ride similar to those of a sedan.
16 While the Affected Vehicles vary somewhat in price and available options, they are
17 built on identical platforms, with identical engines and substantially equivalent body
18 shapes and sizes, and as set forth below, were represented as having the same gas
19 mileage. Thus, there is sufficient similarity between all the Affected Vehicles to be
20 included in the same action, since based on their design and characteristics and
21 representations they should obtain the same gas mileage.

22 15. Since at least the beginning of 2009, Defendants have uniformly
23 misrepresented and materially overstated the fuel economy of the Affected Vehicles
24 in advertising materials for the Affected Vehicles.

25 16. GM disseminates television advertising and printed brochures that
26 prominently feature and advertise the Affected Vehicles' fuel-economy as 17/24/19
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1 mpg. It also repeatedly advertised the 17 city/24 highway mpg rating on its vehicle websites for the Enclave, Acadia and Traverse.

3 17. For example, the website for the Buick Enclave has included numerous representations emphasizing the vehicle's fuel efficiency, not just for the 2016 Enclave, but also for prior model years as well. The website provided a competitive comparison tool that contrasted features of the Buick Enclave, including the mileage, to those of other manufacturers' vehicles. As part of this marketing tool, Defendants represented the 2016 Enclave obtained 17 mpg city and 24 mpg highway. Defendants' website also featured the same tool for the 2014 and 2015 Enclaves, and represented the same fuel economy. This fuel economy was also advertised in other areas of the website.

12 18. Marketing materials for earlier Enclave model years also represented the vehicle could achieve mileage of 17 mpg city and 24 mpg highway. In advertising the 2013 Enclave's 24 mpg highway on GM's website, Defendants emphasized "FUEL EFFICIENCY," claiming "A bigger crossover doesn't have to mean a bigger fuel budget. The 2013 Enclave is proof."

17 19. As to the fuel efficiency of the 2012 Buick Enclave, Defendants represented on GM's website: "The 2012 Enclave is proof that bigger SUV doesn't have to spell trouble at the pump. In fact, this finely-tuned machine uses an intricate powertrain system to achieve better highway fuel economy than any other eight-passenger crossover – an EPA-estimated 24 MPG hwy for the FWD model." In comparison, the 2012 Honda Pilot, which is also an eight-passenger crossover, had a fuel economy of 18 mpg per city and 25 mpg per highway for the 2WD model.

25 20. Similarly, Defendants also represented that the 2011 Enclave had "better highway fuel economy than any other eight-passenger crossover," that the 2010 Enclave had "better highway fuel economy than any other eight-passenger

1 crossover or SUV,” and that the 2009 had “better highway fuel economy than any
2 other eight-passenger SUV” in each of their respective brochures.

3 21. Defendants also heavily promoted the fuel economy of the Chevrolet
4 Traverse, marketing it as a vehicle that achieve both power *and* fuel efficiency.

5 22. For example, in the brochure for the 2016 Chevrolet Traverse, GM
6 featured a large heading that read “CAPABILITY OR EFFICIENCY. CHOOSE
7 TWO” and stated “**REVVED UP**. With more horsepower and torque than Toyota
8 Highlander, Traverse lets you make the most out of every mile – and enjoy every
9 minute of it. The catalyst is a spirited yet efficient direct injected 3.6L V6 engine
10 that offers a winning combination of up to 288 horsepower and 24 MPG highway.”
11 GM made almost identical representations in its brochures for the 2015, 2014 and
12 2013 Traverse as well. Furthermore, its marketing materials for all of the affected
13 Traverse models (2009 through 2016) misrepresented the fuel economy of the
14 vehicles in the same amount as set forth herein.

15 23. For the 2015 Traverse, GM stated on its website, “But it’s not just
16 beautiful – Traverse is skillfully designed under the hood as well. An EPA-
17 estimated 17 MPG city/24 highway for FWD models offers up to 520 highway
18 miles per tank.” In the brochure for the 2015 Traverse, Defendants also represented
19 the vehicle achieved 17 mpg city and 24 mpg highway and consumers could still
20 expect high vehicle performance. In this brochure Defendants promised that
21 consumers would “ENJOY THE POWER OF EFFICIENCY,” claiming the vehicle
22 “offers a winning combination of 24 MPG highway and 281 horsepower.” In
23 advertising available on websites, in brochures, and at dealerships, Defendants
24 repeatedly and uniformly represented that the Traverse could achieve this fuel
25 economy level without sacrificing power.

26 24. In 2014, Defendants advertised the 2014 Traverse on its website by
27 promising fewer fill-ups and stating, “Roam freely [–]Enjoy the freedom of fewer
28

1 fill-ups with Traverse. An EPA-estimated 17 MPG city/24 highway for FWD
2 models offers up to 520 highway miles per tank.” Chevrolet made “the following
3 estimates for the 2013 Traverse: Traverse FWD: 17/24/19 mpg
4 (city/highway/combined).”¹

5 25. In online advertising for the 2013 Traverse, Defendants also promoted
6 the vehicle’s fuel economy by leading consumers to believe it could achieve the
7 advertised 17 mpg city/24 mpg highway under normal driving conditions. For
8 example, under a large heading promising “Performance Doesn’t Suffer In The
9 Name of Efficiency” GM’s website for the Chevrolet Traverse stated the following:

10 **Go Far – With Every Fill-Up**

11 Enjoy fewer trips to the pump with an EPA-estimated 17 MPG
12 city/24 highway on FWD models, giving you a range of up to 520
13 highway miles per tank. What’s more, the standard 3.6L V6
14 engine with Direct Injection in LS and LT delivers 281
15 horsepower, while LTZ delivers 288 horsepower. That’s enough
16 get-up-and-go to merge with confidence in highway traffic.

15 **Power and Grace**

16 Traverse gives you the power to carry up to 8 people or haul the
17 maximum amount of cargo in its class, and do so efficiently. The
18 Direct Injection 3.6L V6 engine with Direct Injection and standard
19 6-speed automatic transmission provides smooth shifting and
20 effortless, quiet acceleration while contributing to impressive
21 highway fuel economy—an EPA-estimated 24 MPG.

21 26. As with the other affected Traverse model years, Defendants made
22 almost identical claims on the website when advertising the 2012 Traverse:

23 **Fuel Economy That Takes You Up to 520 Highway Miles**

24 Traverse lets you go farther between fill-ups, thanks to an
25 estimated 17 MPG city/24 highway, giving you a range of up to
26 520 highway miles. What’s more, the standard Direct Injection
27 3.6L V6 engine in LS and LT delivers 281 horsepower, while it

28 ¹ <http://www.jdpower.com/cars/Chevrolet/Traverse/2013>.

1 delivers 288 horsepower in LTZ. That's ample power to merge
2 with confidence in highway traffic.

3 **Power and Fuel Efficiency**

4 Traverse gives you the power to carry up to 8 people or haul the
5 maximum amount of cargo in its class on a regular basis, and to
6 do it efficiently. The Direct Injection 3.6L V6 engine with
7 standard six-speed automatic transmission provides quiet shifting
8 and smooth acceleration while contributing to impressive highway
9 fuel economy – an estimated 24 MPG (FWD).

10 27. The brochure for the 2012 Chevrolet Traverse similarly represented
11 that the vehicle had a fuel economy of 17 MPG city/24 highway and stated:
12 “Performance, however, can be measured in many ways. Horsepower. Torque. Fuel
13 economy. Here again, Traverse doesn't disappoint. With an EPA-estimated **24**
14 **MPG ON THE HIGHWAY**, it has impressive fuel economy for an eight-
15 passenger crossover.” (emphasis added).

16 28. A sampling of marketing materials from the 2009 to 2011 Traverse
17 vehicles reveals similar representations:

- 18 a. 2011 Chevrolet Traverse Brochure: “24 MPG Highway. Traverse
19 offers the best fuel economy of any eight-passenger crossover.” On
20 another page it states: “Power and Efficiency. The Direct Injection
21 3.6L V6 engine with standard six-speed automatic transmission
22 provides quiet shifting and smooth acceleration while contributing to
23 outstanding highway fuel economy – an EPA estimated 24 MPG.”
- 24 b. Website for the 2011 Traverse: “With 24 MPG highway, Traverse
25 FWD offers better fuel economy than any eight-passenger crossover.”
- 26 c. 2010 Chevrolet Traverse Brochure: “With 24 MPG Highway, Traverse
27 offers the best fuel economy of any eight-passenger crossover. In fact,
28 Traverse is more fuel efficient and delivers 30% more cargo space than
Honda Pilot.” Elsewhere it reads: “Traverse is the total package. The

1 standard six-speed automatic transmission provides quiet shifting and
2 smooth acceleration while contributing to outstanding highway fuel
3 economy – 24 MPG.”

4 d. 2009 Chevrolet Traverse Brochure: “EPA Estimated 24 MPG
5 Highway: offering the best fuel economy of any eight-passenger
6 crossover.” It also states: “It takes more than good fortune to reach the
7 top. Traverse offers up to 116.4 cu. ft. of cargo space – over 32 cu. ft.
8 more than Flex, 29 cu. ft. more than Pilot and 21 cu. ft. more than
9 Highlander. And its highway fuel economy is unsurpassed by any of
10 these competitors.” On another page, Defendants represented: “The
11 standard six-speed automatic transmission provides seamless shifting
12 and smooth acceleration while contributing to Traverse’s impressive
13 fuel economy – an EPA estimated 24 MPG highway.”

14 29. As with the Buick Enclave and Chevrolet Traverse, Defendants also
15 represented that the 2009 to 2016 GMC Acadia vehicles could achieve 17 mpg city
16 and 24 mpg highway in its brochures and on its website. And like the Buick
17 Enclave website, the GMC Acadia website included a competitive comparison tool
18 for the 2014, 2015, and 2016 Acadia models that compared features like the
19 Acadia’s purported 17 mpg city and 24 mpg highway fuel rating to those of other
20 vehicles.

21 30. In both the 2013 and 2014 Acadia brochures Defendants claimed:
22 “With a high-performance direct-injected 24-valve, dual-overhead cam design, the
23 3.6L V-6 accelerates smoothly and quickly for confident highway passing and
24 merging. Yet its efficiency gives it surprising highway fuel economy – an EPA-
25 estimated 24 highway mpg.”

26 31. In the 2009, 2010, 2011 and 2012 brochures, Defendants advertised the
27 Acadia had “better highway fuel economy than any other eight-passenger SUV.”
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1 32. In the 2011 brochure, Defendants further claimed “Its direct-
2 injection technology improves efficiency and reduces emissions
3 and at 24 mpg, gives Acadia better highway fuel economy than
4 any other eight-passenger SUV.” A booklet is also made
5 available at GM dealerships to assist in comparing the fuel
6 economy of vehicles from all manufacturers for that model year,
7 along with pricing and other information, which made similar
8 claims.

9 **B. Defendants’ Admission and the Scope of GM’s Overstated Fuel**
10 **Economy Ratings**

11 33. On or about May 13, 2016, GM publicly admitted for the first time that
12 its fuel economy representations about the 2016 model year Affected Vehicles were
13 false.

14 34. On or about May 13, 2016, Defendants issued a stop sale order on the
15 2016 Buick Enclave, the 2016 GMC Acadia, and the 2016 Chevrolet Traverse.²

16 35. Defendants admitted they had falsely represented in promotional
17 materials that the 2016 Chevrolet Traverse, the 2016 Buick Enclave, and the 2016
18 GMC Acadia were able to achieve city/highway mileage of 17/24/19 mpg. GM’s
19 revised representations indicate the vehicles are less economical than previously
20 represented -- 15 mpg, 22 mpg highway, and a combined rating of 18 mpg. A 10%

21
22 ² Tom Krisher, *General Motors is telling dealers not to sell thousands of SUVs*
23 *because the gas mileage is wrong on the window stickers*, U.S. News, May 13, 2016,
24 available at <http://www.usnews.com/news/business/articles/2016-05-13/gm-stops-sale-of-suvs-mileage-on-window-stickers-was-wrong>; Jason Siu, *GM Issues Stop Sale on Crossovers with Overstated MPG Labels*, AutoGuide.com, May 13, 2016,
25 available at <http://www.autoguide.com/auto-news/2016/05/gm-issues-stop-sale-crossovers-overstated-mpg-labels.html>; Melissa Burden, *GM halts large SUV sales due to fuel economy labels*, The Detroit News, May 13, 2016, available at
26 <http://www.detroitnews.com/story/business/autos/general-motors/2016/05/13/gm-suvs/84340896/>.
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1 performance difference in fuel economy is material, as it would result in an annual
2 expenditure of over \$300 a year in gasoline alone (assuming present gasoline
3 prices), or over \$2,400 during the minimum useful life of such vehicles.

4 36. Defendants' misrepresentations, however, were not limited to the 2016
5 model years of the Enclave, Acadia and Traverse. Defendants overstated and
6 misrepresented the fuel economy of all the Affected Vehicles, which includes
7 model years 2009 through 2015 as well.

8 37. Since 2009, the weight, engine, size, and shape of the Affected
9 Vehicles has been substantially similar for each model year. Fuel economy
10 performance depends primarily on vehicle weight, engine, size and shape.

11 38. Until recently, when GM revised the fuel economy ratings for the 2016
12 Enclave, Acadia and Traverse, Defendants provided identical fuel economy ratings
13 for all of the Affected Vehicles, encompassing each model year from 2009 to 2016,
14 representing from 2009 to 2016 that all Affected Vehicles were able to achieve 17
15 mpg city, 24 mpg highway, and a combined 19 mpg.

16 39. Following Defendants' revision of its fuel economy ratings for the
17 2016 vehicles, GM now admits the 2016 Enclave, Acadia, and Traverse achieves
18 worse gas mileage than it claimed for the same vehicles from model years 2009 to
19 2015. The chart below demonstrates these figures for front-wheel drive vehicles,
20 and showed that the representations were the same for all Affected Vehicles.

21

	2009	2010	2011	2012	2013	2014	2015	2016
22 Enclave	17/24/19	17/24/19	17/24/19	17/24/19	17/24/19	17/24/19	17/24/19	15/22/18
23 Acadia	17/24/19	17/24/19	17/24/19	17/24/19	17/24/19	17/24/19	17/24/19	15/22/18
24 Traverse	17/24/19	17/24/19	17/24/19	17/24/19	17/24/19	17/24/19	17/24/19	15/22/18

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1 40. From January through May 2016, GM sold approximately 46,335
2 Chevrolet Traverse, 20,657 Buick Enclave, and 31,982 GMC Acadia vehicles
3 nationwide, all with false and overstated fuel-economy ratings.³ In 2015, GM sold
4 approximately 119,945 Chevrolet Traverse, 62,081 Buick Enclave, and
5 96,393 GMC Acadia vehicles throughout the United States.⁴ It is likely over
6 50,000 of these Affected Vehicles were sold in California alone.

7 41. Plaintiff has suffered an ascertainable loss as a result of GM's
8 omissions and/or misrepresentations of material facts associated with these false
9 fuel economy claims, including but not limited to out-of-pocket loss, additional fuel
10 costs, and the value of her vehicle.

11 42. Defendants did not inform Plaintiff of the inaccuracy of GM's fuel
12 economy representations prior to purchase of her vehicle.

13 43. A reasonable consumer in today's market attaches material importance
14 to the advertisements of gas mileage, as it has been consistently documented that
15 fuel efficiency is one of the most important considerations in making a vehicle
16 purchase or lease decision for most consumers. A reasonable consumer thus would
17 reasonably be expected to act on GM's advertisements and representations and
18 expect Defendants to truthfully and accurately reflect the Affected Vehicles' true
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20

21 ³ See GMAuthority.com, Chevrolet Traverse Sales Numbers,
22 <http://gmauthority.com/blog/gm/chevrolet/traverse/chevrolet-traverse-sales-numbers/>;
23 GMAuthority.com, Buick Enclave Sales Numbers,
24 <http://gmauthority.com/blog/gm/buick/enclave/buick-enclave-sales-numbers/>;
25 GMAuthority.com, GMC Acadia Sales Numbers,
26 <http://gmauthority.com/blog/gm/gmc/acadia/gmc-acadia-sales-numbers/>; see also
27 Mike Colias, *GM grounds large '16 crossovers with overstated EPA mileage labels*,
Automotive News, May 13, 2016,
28 <http://www.autonews.com/article/20160513/RETAIL05/160519919/gm-grounds-large-16-crossovers-with-overstated-epa-mileage-labels>.

⁴ See *id.*

1 fuel economy, establishing the presumed materiality of such representations.
2 Plaintiff did so act, to her detriment and loss.

3 **V. CLASS ALLEGATIONS**

4 44. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff
5 brings this action on behalf of herself and all other similarly situated and seeks
6 certification of the following Class:

7 All persons or entities in the State of California (and such other states as may
8 be appropriate) who are current or former owners and/or lessees of an
9 “Affected Vehicle.” Affected Vehicles include, without limitation: Model
10 Year (“MY”) 2009-2016 Buick Enclave; MY 2009-2016 GMC Acadia; and
11 MY 2009-2016 Chevrolet Traverse.

12 45. Excluded from the Class are Defendants, their parent companies,
13 subsidiaries and affiliates, any entity in which Defendants have a controlling
14 interest, the officers, directors or employees of Defendants, any affiliate, legal
15 representative, heir or assign of Defendants, and any co-conspirators. Also
16 excluded from the Class are all government entities and instrumentalities, and any
17 judges or justices assigned to hear any aspect of this litigation.

18 46. Numerosity: The Class is so numerous that joinder of all members is
19 impracticable. As set forth above, Plaintiff believes there are tens of thousands of
20 Class members located just in California. The number and identity of the Class
21 members are presently unknown to Plaintiff because such information is in the
22 control of Defendants, but can be readily ascertained.

23 47. Typicality: Plaintiff’s claims are typical of the claims of the Class in
24 that Plaintiff purchased an Affected Vehicle from Defendants, Plaintiff and the
25 members of the Class were injured by the same wrongful conduct of Defendants,
26 and the relief sought is common to all members of the Class. Plaintiff’s claims
27 therefore arise from the same common course of conduct giving rise to the claims of
28 other Class members.

1 48. Common Questions Predominate: Numerous common questions of
2 law and fact exist as to all members of the Class, including, but not limited to:

- 3 a. Whether GM engaged in the conduct alleged herein;
- 4 b. Whether Defendants designed, advertised, marketed, distributed,
5 leased, sold, or otherwise placed Affected Vehicles into the stream
6 of commerce;
- 7 c. Whether Defendants reasonably knew, or should have known, that
8 the fuel economy ratings of the Affected Vehicles were inaccurate;
- 9 d. Whether Defendants misrepresented the Affected Vehicles' fuel
10 economy;
- 11 e. Whether Defendants' conduct violates consumer protection
12 statutes and other laws as asserted herein including, but not
13 limited to, California's False Advertising Law (Cal. Bus. & Prof.
14 Code § 17500, *et seq.*), California's Unfair Competition Law (Cal.
15 Bus. & Prof. Code § 17200, *et seq.*), and California's Consumers
16 Legal Remedies Act (Cal. Civ. Code § 1750, *et seq.*);
- 17 f. Whether Plaintiff and the other Class members overpaid for their
18 Affected Vehicles;
- 19 g. Whether Defendants were unjustly enriched because of the
20 conduct described herein;
- 21 h. Whether Plaintiff and the other Class members are entitled to
22 equitable injunctive and monetary relief and, if so, in what
23 amount.

24 49. These and other questions of law or fact are common to the Class and
25 predominate over any questions affecting Class members individually.

26 50. Adequacy: Plaintiff will fairly and adequately represent the interests of
27 the Class because she purchased an Affected Vehicle from Defendants and has no
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1 irreconcilable conflict with any members of the Class. Furthermore, Plaintiff has
2 retained counsel with substantial experience and success in the prosecution of class
3 actions generally, and litigation of this nature specifically.

4 51. Superiority: A class action is superior to any other available method
5 for the fair and efficient group-wide adjudication of this controversy since
6 individual joinder of all Class members is impracticable. Furthermore, the expenses
7 and burden of individual litigation would make it difficult or impossible for
8 individual Class members to redress the wrongs done to them, especially given that
9 the damages or injuries suffered by each individual Class member may be relatively
10 small. Even if the Class members could afford individualized litigation, the cost to
11 the court system would be substantial and individual actions would also present the
12 potential for inconsistent or contradictory judgments. By contrast, a class action
13 presents fewer management difficulties and provides the benefits of a single
14 adjudication and comprehensive supervision by a single court.

15 **COUNT I**

16 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**
17 **(CAL. BUS. & PROF. CODE §§ 17200, et seq.)**

18 52. Plaintiff incorporates by reference all preceding allegations as though
19 fully set forth herein. Plaintiff brings this Count on behalf of the Class.

20 53. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code
21 § 17200, *et seq.*, proscribes acts of unfair competition, including "any unlawful,
22 unfair or fraudulent business act or practice and unfair, deceptive, untrue or
23 misleading advertising."

24 54. Beginning at an exact date unknown to Plaintiff but at least since
25 sometime beginning in 2009, Defendants committed and continue to commit acts of
26 unfair competition as defined by the UCL.

1 55. As specifically alleged herein, Defendants’ acts and practices violate
2 the California Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and
3 the California False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*, and
4 consequently constitute “unlawful” business acts and practices within the meaning
5 of Cal. Bus. & Prof. Code § 17200.

6 56. Defendants’ acts and practices also constituted “unfair” business acts
7 and practices within the meaning of the UCL in that: (i) they violated the policy and
8 spirit of such laws; (ii) they were immoral, unethical, oppressive, unscrupulous, and
9 substantially injurious to consumers; (iii) the harmed consumers in a manner that
10 substantially outweighs any legitimate benefits of Defendants’ conduct; and (iv) the
11 injury was not one that consumers reasonably could have avoided.

12 57. GM’s conduct, as described herein, was and is in violation of the UCL.
13 GM’s conduct violates the UCL in at least the following ways:

- 14 a. By representing the Affected Vehicles as having higher fuel
15 economy than they could be expected to achieve;
- 16 b. By concealing from Plaintiff and the Class members that the
17 Affected Vehicles were sold based on misrepresentations about
18 these vehicles’ fuel economy ratings while obtaining money
19 from Plaintiff and the Class;
- 20 c. By marketing and advertising the Affected Vehicles as being
21 able to achieve fuel economy of 17/24/19 mpg when they did
22 not;
- 23 d. By violating other federal and state laws in addition to those set
24 forth above.

25 58. Defendants’ acts and practices are likely to deceive, and did deceive
26 Plaintiff and the Class members, and consequently also constitute “fraudulent” or
27 deceptive business acts and practices within the meaning of Cal. Bus. & Prof. Code
28

1 § 17200. Through the untrue and misleading statements and omissions contained in
2 Defendants' advertising, marketing, and other promotional materials, Defendants
3 likely misled Plaintiff and the Class Members about the actual fuel economy of the
4 Affected Vehicles.

5 59. Defendants' advertising, marketing, and other promotional materials
6 also constitute unfair, deceptive, untrue and misleading advertising. As alleged
7 herein, Defendants' advertising, marketing and other promotional materials, a
8 sample of which is set forth above, contained claims, statements, omissions, and
9 representations that were false, misleading and/or likely to deceive the public
10 targeted by such promotional materials.

11 60. GM's misrepresentations and omissions alleged herein were a
12 substantial factor in Plaintiff and the other Class members making their decisions to
13 purchase or lease their Affected Vehicles. Absent Defendants' misrepresentations
14 and omissions, Plaintiff and the other Class members in all reasonable probability
15 would not have purchased or leased these vehicles at the prices they paid.

16 61. As a direct and proximate result of Defendants' conduct, Defendants
17 have received ill-gotten gains and have been unjustly enriched at the expense of
18 Plaintiff and the Class members.

19 62. Plaintiff requests that this Court enter such orders or judgments as may
20 be necessary to enjoin GM from continuing its unfair, unlawful, and/or deceptive
21 practices and to restore to Plaintiff and members of the Class any money
22 Defendants may have acquired by unfair competition, including restitution and/or
23 restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code § 17203, and for
24 such other relief set forth below.

25 **COUNT II**

26 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**
27 **(CAL. CIV. CODE § 1750, *et seq.*)**

1 63. Plaintiff incorporates by reference all preceding allegations as though
2 fully set forth herein. Plaintiff brings this Count on behalf of the Class.

3 64. California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ.
4 Code § 1750, *et seq.*, proscribes “unfair methods of competition and unfair or
5 deceptive acts or practices undertaken by any person in a transaction intended to
6 result or which results in the sale or lease of goods or services to any consumer.”

7 65. The Affected Vehicles are “goods” as defined in Cal. Civ. Code §
8 1761(a).

9 66. Plaintiff and the members of the Class are “consumers” as defined by
10 Cal. Civ. Code § 1761(d).

11 67. Defendants are “persons” as defined in Cal. Civ. Code § 1761(c).

12 68. As alleged above, Defendants concealed, omitted, and/or
13 misrepresented material facts regarding the gas mileage of the Affected Vehicles
14 that were misleading.

15 69. GM’s conduct, as described herein, was and is in violation of the
16 CLRA, including but not limited to California Civil Code § 1770 subsections (a)(5),
17 (a)(7), and (a)(16). Through the conduct set forth herein, Defendants have violated,
18 and continue to violate the CLRA by among other things:

19 a. Representing that goods have characteristics, uses, and benefits
20 which they do not have, in violation of Cal. Civ. Code §
21 1770(a)(5);

22 b. Representing that goods are of a particular standard, quality, or
23 grade, if they are of another, in violation of Cal. Civ. Code §
24 1770(a)(7); and

25 c. Representing that goods have been supplied in accordance with
26 a previous representation when they have not, in violation of Cal.
27 Civ. Code § 1770(a)(16).
28

1 property ... to induce the public to enter into any obligation relating thereto, to
2 make or disseminate or cause to be made or disseminated ... from this state before
3 the public in any state, in any newspaper or other publication, or any advertising
4 device, ... or in any other manner or means whatever, including over the Internet,
5 any statement ... which is untrue or misleading, and which is known, or which by
6 the exercise of reasonable care should be known, to be untrue or misleading.”

7 74. Through advertising, marketing, publications and other promotional
8 materials, examples of which are set forth in detail above, Defendants caused to be
9 made or disseminated throughout California statements that were untrue or
10 misleading with the intent to induce consumers like Plaintiff and the Class members
11 to purchase Affected Vehicles. Defendants’ statements regarding the fuel economy
12 of the Affected Vehicles were untrue or misleading, and likely to deceive the public.
13 In making and disseminating such statements, including the advertising, marketing
14 and other promotion materials described herein, Defendants knew, or by the
15 exercise of reasonable care should have known, the statements were untrue or
16 misleading.

17 75. Defendants violated Bus. & Prof. Code § 17500 because the
18 misrepresentations and omissions of material fact set forth above regarding the fuel
19 economy of the Affected Vehicles as set forth in this Complaint were material and
20 likely to deceive a reasonable consumer.

21 76. As a direct and proximate result of Defendants’ false advertising,
22 Plaintiff and Class members lost money or property in that they bought or leased
23 Affected Vehicles they otherwise would not have or paid more for the Affected
24 Vehicles than they otherwise would have. As a direct and proximate result of
25 Defendants’ false and misleading advertising, Plaintiff and the Class members have
26 also incurred, and will continue to incur, fuel costs in excess of what they
27
28

1 reasonably expected to pay for fuel, and their Affected Vehicles have decreased
2 value.

3 77. Plaintiff, individually and on behalf of the other Class members,
4 requests that this Court enter such orders or judgments as may be necessary to
5 enjoin GM from continuing their unfair, unlawful, and/or deceptive practices and to
6 restore to Plaintiff and the other Class members any money GM acquired by unfair
7 competition, including restitution and/or restitutionary disgorgement, and for such
8 other relief set forth below.

9 **COUNT IV**

10 **COMMON COUNTS/ASSUMPSIT**

11 78. Plaintiff incorporates by reference all preceding allegations as though
12 fully set forth herein. Plaintiff brings this Count on behalf of the Class.

13 79. As Plaintiff and the Class show just grounds for recovering money to
14 pay for benefits Defendants received from them, they have a right to restitution at
15 law through an action derived from the common-law writ of *assumpsit* by implying
16 a contract at law, or a quasi-contract as an alternative to a claim for breach of
17 contract.

18 80. Plaintiff and members of the Class conferred a benefit upon
19 Defendants by purchasing the Affected Vehicles from Defendants.

20 81. Defendants had knowledge that this benefit was conferred upon them.

21 82. Defendants, having received such benefits, are required to make
22 restitution as the circumstances here are such that, as between the two, it is unjust
23 for Defendants to retain such monies based on the illegal conduct described above.
24 Such money or property belongs in good conscience to Plaintiff and Class Members
25 and can be traced to funds or property in Defendants' possession. Plaintiff and
26 Class Members have unjustly enriched Defendants through such payments and the
27 resulting profits enjoyed by Defendants as a direct result of such payments.
28

1 Plaintiff's and Class Members' detriment and Defendants' enrichment were related
2 to and flowed from the conduct challenged in this Complaint.

3 83. An entity that has been unjustly enriched at the expense of another is
4 required to make restitution to the other. Under common law principles recognized
5 in claims of common counts, *assumpsit*, and quasi-contract, as well as principles of
6 unjust enrichment, under the circumstances alleged herein it would be inequitable
7 for Defendants to retain such benefits without paying restitution or damages
8 therefor. Defendants should not be permitted to retain the benefits conferred via
9 payments to be received from and/or paid by Plaintiff and Class members as a result
10 of such transactions, and other remedies and claims may not permit them to obtain
11 such relief, leaving them without an adequate remedy at law.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, individually and on behalf of all persons similarly
14 situated, prays for judgment against Defendants, and each of them, as follows:

- 15 (a) That the Court enter an order certifying the Class, appointing Plaintiff as
16 representative of the Class, and appointing Plaintiff's counsel as Class
17 counsel;
- 18 (b) That the Court enter judgment against Defendants for the causes of
19 action alleged against them;
- 20 (c) That the Court enter an order temporarily and permanently enjoining
21 Defendants from continuing the unlawful, deceptive, fraudulent, and
22 unfair business practices alleged herein;
- 23 (d) For an order requiring restitution or restitutionary disgorgement of all
24 amounts obtained by Defendants as a result of their misconduct in an
25 amount according to proof at trial, plus pre and post-judgment interest
26 thereon;
- 27 (e) For other appropriate equitable relief;
- 28

- 1 (f) For reasonable attorneys' fees and costs as permitted by law including
2 under C.C.P. Section 1021.5; and
3 (g) For such other and further relief as may be appropriate.
4

5 **JURY DEMAND**

6 Plaintiff hereby demands a jury trial for all claims so triable.
7

8 Date: June 14, 2016

Respectfully submitted,

9 /s/Natasha N. Serino
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