

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

DENNIS DUFFY, RICHARD SULLIVAN,
DANIEL BAPTIST, DENNIS SPEERLY,
MICHAEL PLAFKER, JOHN IASIELLO,
and BENJY TOMPKINS individually and
on behalf of others similarly situated,

Plaintiffs,

v.

GENERAL MOTORS, INC.,

Defendant.

CLASS ACTION

CASE NO.

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Dennis Duffy, Richard Sullivan, Daniel Baptist, Dennis Speerly, Michael Plafker, John Iasiello, and Benjy Tompkins, individually and on behalf of all others similarly situated, hereby file suit against the Defendant listed above and allege the following:

INTRODUCTION

1. Plaintiffs and class members purchased or leased new and used vehicles manufactured by General Motors (“GM”) between 2015 and 2018. Each of these vehicles is equipped with one of two models of eight-speed automatic transmissions, both manufactured by GM: the GM 8L90 or the 8L45.¹

2. These transmissions have a common defect. Drivers attempting to accelerate or decelerate their cars feel a hesitation, followed by a significant shake, shudder, jerk, clunk, or “hard shift” when the vehicle’s automatic transmission changes gears. Said shudder, shake and

¹ Vehicles equipped with one of these transmissions (the “Subject Vehicles”) include the 2015-2019 Chevrolet Silverado; the 2017-2019 Chevrolet Colorado; the 2015-2019 Chevrolet Corvette; the 2016-2019 Chevrolet Camaro; the 2015-2019 Cadillac Escalade and Escalade ESV; the 2016-2019 Cadillac ATS, ATS-V, CTS, CT6, and CTS-V; the 2015-2019 GMC Sierra, Yukon, and Yukon XL, and Yukon Denali XL; and the 2017-2019 GMC Canyon.

hesitation also occurs while the subject vehicles are accelerated in a single gear, and not actively shifting gears. Drivers have reported that the shift is sometimes so violent, they feel as though they have been hit by another vehicle. In fact, one purchaser reported that the transmission shifted from “reverse” to “drive” so harshly that he almost drove through his garage door.

3. The problem (hereafter the “Transmission Defect”) does not merely result in an uncomfortable driving condition. The shuddering, shaking, jerking and hesitation is related to internal issues within the transmission and/or torque converter causing friction surfaces, hydraulic systems, and gears to not function properly, and resulting in metal shavings being circulated throughout the transmission. Over time, damage to the transmission and torque converter occurs. Consumers face escalating repairs that can include flushing the transmission of metal shavings caused by the defective transmission operation, and which eventually necessitate the replacement of components such as the torque converter, valve body, or the entire transmission. As such, the Transmission Defect endangers the drivers and passengers of the vehicles, and diminishes the value of the vehicles. GM’s deliberate non-disclosure of these defects artificially inflated the purchase and lease price for these vehicles.

4. GM has known about the Transmission Defect for years, since right after introduction of the transmission. Since 2015, GM has issued thirteen versions of a “technical service bulletin,” or “TSB,” related to this shifting issue alone. A TSB is an alert to dealerships, informing them of a potential problem in a GM product and advising them how to address the problem when customers complain to GM dealerships. The TSBs related to the transmission issue have advised dealerships to, among other things: complete the “clutch drive learn procedure,” replace the valve body, replace the entire transmission, flush the cooler lines and cooler, remove debris from and clean the transmission pan, replace the transmission filter, replace the transmission fluid, and flush the transmission.

5. While the problem is known, the solution is not. None of GM’s suggested repairs

have remedied the problem. Some recent repair orders found by Plaintiffs' counsel note that "GM is aware of concern and a release date of late January/February to correct issue." Another noted, "no repair available until quarter 1 in 2019." But current purchasers and lessees should not have to cross their fingers for a fix, and prospective customers should be told of GM's awareness of a defect. Presently, it appears GM is merely biding time until its warranty expires.

6. GM has not disclosed the Transmission Defect to purchasers or lessees like Plaintiffs at the point of purchase or through advertisements. Such disclosures would have impacted purchase decisions and purchase price. GM's omissions artificially inflated the market price for the Subject Vehicles equipped with defective transmissions. GM could have and should have warned consumers about the Transmission Defect through advertisements, on its website, and through communications from its authorized dealers. However, GM failed to do so.

7. The GM 8L90 and GM 8L45 transmission defect is a latent defect that presents a safety risk to riders, causes damage to components over time, and makes vehicles equipped with the defective transmissions dangerous and uncomfortable to ride. It makes the Subject Vehicles unfit for their ordinary use. As such, the Transmission Defect presents a breach of the implied warranty of merchantability.

8. GM had knowledge of the Transmission Defect before it sold cars equipped with GM 8L90 or GM 8L45 transmissions. As such, GM's durational and mileage limitations on its express warranty and the implied warranty of merchantability are unconscionable.

9. Plaintiffs seek six statewide classes on behalf of purchasers and lessees of GM vehicles equipped with GM 8L90 or GM 8L45 transmissions purchased within the applicable statute of limitations of the respective state. These states include Florida, California, Illinois, New York, Oklahoma, and Texas. Plaintiffs bring claims under each state's consumer protection statutes, and express and implied warranty law of their respective states of purchase or lease.

PARTIES

10. Plaintiff Dennis Duffy is a citizen and resident of Florida, over the age of eighteen years. Plaintiff purchased a new 2016 Yukon Denali, manufactured by GM and containing an 8L90 transmission, on or about August 10, 2016.

11. Plaintiff Richard Sullivan is a citizen and resident of Florida, over the age of eighteen years. Plaintiff Sullivan purchased a new 2015 Chevrolet Corvette Stingray, manufactured by GM and containing an 8L90 transmission, on or about November 1, 2015.

12. Plaintiff Daniel Baptist is a citizen and resident of California, over the age of eighteen years. Plaintiff purchased a used 2015 Chevrolet Silverado, manufactured by GM and containing an 8L90 transmission, on or about August 26, 2018.

13. Plaintiff Dennis Speerly is a citizen and resident of Illinois, over the age of eighteen years. Plaintiff Speerly purchased a new 2017 GMC Canyon, manufactured by GM and containing an 8L45 transmission, on or about April 14, 2017.

14. Plaintiff Michael Plafker is a citizen and resident of New York, over the age of eighteen years. Plaintiff Plafker leased a 2017 GMC Sierra Denali, manufactured by GM and containing an 8L90 transmission, on or about September 8, 2017.

15. Plaintiff John Iasiello is a citizen and resident of Oklahoma, over the age of eighteen years. Plaintiff Iasiello purchased a new 2017 GMC Sierra, manufactured by GM and containing an 8L90 transmission, on August 15, 2017.

16. Plaintiff Benjy Tompkins is a citizen and resident of Texas, over the age of eighteen years. Plaintiff Tompkins bought a used 2016 Chevrolet Camaro SS, manufactured by GM and containing an 8L90 transmission, in November 2017.

17. Defendant General Motors Inc., (“GM”) is a citizen and resident of Michigan which regularly does business in Florida and all over the United States. GM is headquartered in Delaware, and its principal office is located at 300 Renaissance Center, Detroit, Michigan 48265.

JURISDICTION AND VENUE

18. This Court has jurisdiction for this case pursuant to 28 U.S.C. § 1332(d), as it is a class action for damages that exceed \$5,000,000, exclusive of interest and costs. Because named Plaintiffs are residents of six different states (California, Florida, Illinois, New York, Oklahoma, and Texas), many members of the classes are from states different from Defendant, who is incorporated in Delaware and headquartered in Michigan.

19. This Court has personal jurisdiction over Defendant because of its continuous and systematic business contacts with the State of Florida, the fact that GM maintains numerous authorized dealers in Florida, and derives substantial revenue from sales of its products in Florida, with knowledge that its products are being marketed and sold for use in this State.

20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to these claims occurred in this district.

FACTUAL ALLEGATIONS

A. GM and the GM 8L45 and GM 8L90 Eight-Speed Automatic Transmissions

21. GM is a designer, manufacturer, marketer, and distributor of cars, trucks, and other passenger vehicles, as well as vehicle parts. GM is the largest American automobile manufacturer and is the tenth largest United States corporation by revenue. GM sells vehicles under a variety of brand names, including Chevrolet, Buick, GMC, and Cadillac. GM sold approximately 9.6 million vehicles in 2017, earning \$145.588 billion in revenue. GM has thousands of official dealerships across the United States, all of which are under GM's control.

22. In late 2014, GM began advertising a new feature for certain models of vehicle: the eight-speed automatic transmission.

23. A vehicle's transmission is an integral component of a vehicle's driveline that channels power from the vehicle's engine to its wheels, resulting in vehicle movement. It also controls the power distribution of the engine and multiplies the torque of the vehicle's engine

across a range of gears. Without a properly functioning transmission, a vehicle's horsepower and torque cannot be used effectively and efficiently to accelerate and stop the vehicle.

Moreover, without a properly functioning transmission, a vehicle cannot efficiently convert a vehicle's power into both forward and rearward movement. A transmission aids the driver's ability to adjust the vehicle's speed, and distributes power from the engine to different sets of gears inside the transmission, each of which corresponds to a different range of speed. For instance, a driver who wanted his vehicle to move slowly would likely need the transmission to channel the engine's power to a lower set of gears within the transmission corresponding to a lower speed—such as first or second gear. A driver who wanted her vehicle to move faster would need the transmission to deliver more power from the engine to a set of gears corresponding to a higher speed, such as fifth or sixth gear. Automatic transmissions, like the 8-speed transmissions at issue in this case, are intended (and designed) to automatically “change gears,” and/or determine which transmission gear receives power from the engine, without input from the driver. Thus, by automatically shifting gears, an automatic transmission allows a vehicle to accelerate, decelerate, and remain at constant speeds depending upon throttle input from the driver, which keeps the vehicle's speed consistent and controllable.

24. The automatic transmission at issue also uses a torque converter, which is a fluid-filled coupler between the engine and transmission. The torque converter multiplies the engine's torque depending upon the rotational speed of the engine. In theory, the more sets of gears that are available to receive power from the engine, the more precisely and efficiently a transmission can convert engine power into usable vehicle speed.

25. Prior to 2015, GM-brand vehicles were equipped with 6-speed transmissions. When GM announced that it would begin manufacturing 8-speed transmissions and installing them in GM-brand vehicles, GM advertised that the 8-speed transmissions would be able to distribute power more efficiently than their 6-speed predecessors.

26. GM further touted the eight-speed transmissions' reduced weight, which, combined with the more efficient power distribution, promised to deliver better fuel mileage for drivers.² The eight-speed transmissions came in two models: the GM 8L90 and the GM 8L45.

27. GM also marketed the transmissions to consumers. For example, in an August 20, 2014 press release, GM wrote about the 8-speed transmissions:

“GM’s new 8L90 eight-speed automatic represents a rare win-win-win scenario for customers,” said Kavoos Kaveh, global chief engineer for eight-speed automatic transmissions. “It offers greater performance and efficiency, while weighing less than the transmission it replaces. That’s a rare accomplishment in the industry today – and one for which GM has been awarded more than two dozen patents.”

“The Corvette’s new eight-speed automatic delivers the comfort and drivability of a true automatic transmission, as well as lightning-fast shifts and the manual control that enhance the performance-driving experience,” said Kaveh. “It was designed to enhance the driving experience, with performance on par with dual-clutch designs, but without sacrificing refinement.”

Smaller steps between gears, compared to the previous six-speed automatic (see chart above), keep the engine within the sweet spot of the rpm band, making the most of its horsepower and torque to optimize performance and efficiency. Additionally, a torque converter design with a turbine damper complements performance with excellent refinement at low engine speeds.

28. Similarly, in a March 9, 2015 press release,³ GM wrote:

The new-generation transmission delivers an optimal blend of efficiency, power, performance, durability and NVH suppression that’s never been offered, one uniquely suited to the engines and vehicles with which it will be paired and the demands of 21st-century drivers and advanced automotive engineering.

² <https://gmserviceinsights.com/2015/03/shifting-into-higher-gear-next-generation-8-speed-automatic-transmissions-rolling-out-more-extensively-with-2015-gm-model-year/>.

³ *Id.*

The March 9, 2015 press release also showed an image of the 8L90 transmission:



29. GM viewed the eight-speed automatic transmission as a selling point to many consumers, as it promised more efficient power distribution and manipulability.

30. In a July 27, 2017 press release, GM advertised that the 8L90 transmission had the following features:

- Increased efficiency, up to five percent, over the previous 6-speed model
- A lighter design that fits in the same physical space as a 6-speed
- Integral, die-cast aluminum bell housing for reduced NVH
- Rated turbine torque capacity of 1000 Nm (738 lb·ft)

- VFS control components to monitor clutch pressures with optimum accuracy, producing fast and precise shifts
- Five clutch design that uses three at a time, leaving only two open clutches in each gear state
- A microcontroller that executes instructions at a rate of 120 million per second and wide-open-throttle upshifts up to eight-hundredths of a second quicker than those of the dual-clutch transmission offered in the Porsche 911.⁴

31. GM manufactured and sold several different models of cars and trucks which came equipped with either the 8L90 or 8L45. These include: the 2015-2019 Chevrolet Silverado; the 2017-2019 Chevrolet Colorado; the 2015-2019 Chevrolet Corvette; the 2016-2019 Chevrolet Camaro; the 2015-2019 Cadillac Escalade and Escalade ESV; the 2016-2019 Cadillac ATS, ATS-V, CTS, CT6, and CTS-V; the 2015-2019 GMC Sierra, Yukon, and Yukon XL, and Yukon Denali XL; and the 2017-2019 GMC Canyon. GM has sold hundreds of thousands of these vehicles throughout the United States.

B. Vehicles Equipped with 8L45 or 8L90 Transmissions Came With a GM Warranty

32. Each of the affected vehicles came with a warranty booklet, explaining the terms of the warranty. The warranty booklet stated in pertinent parts:

New Vehicle Limited Warranty

Bumper-to-Bumper (Includes Tires).

Coverage is for the first 3 years or 36,000 miles, whichever comes first.

What Is Covered
Warranty Applies

This warranty is for [GM] vehicles registered in the United States and normally operated in the United States, and is provided to the original and any subsequent owners of the vehicle during the warranty period.

Repairs Covered

The warranty covers repairs to correct any vehicle defect, not slight noise, vibrations, or other normal characteristics of the vehicle due to materials or workmanship occurring during the warranty period. Needed repairs will

⁴ <https://gmserviceinsights.com/2017/07/gms-8190-transmission-makes-news-again-as-companys-first-8-speed-reman/>

be performed using new, remanufactured, or refurbished parts.

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Obtaining Repairs

To obtain warranty repairs, take the vehicle to a Chevrolet dealer facility within the warranty period and request the needed repairs. Reasonable time must be allowed for the dealer to perform necessary repairs.

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period. Bumper-to-Bumper Coverage The complete vehicle is covered for 3 years or 36,000 miles, whichever comes first, except for other coverages listed here under "What Is Covered" and those items listed under "What Is Not Covered" later in this section.

Powertrain Component Warranty Coverage.

Coverage is provided for 5 years or 60,000 miles, whichever comes first.

Transmission/Transaxle Coverage includes: All internally lubricated parts, case, torque converter, mounts, seals, and gaskets as well as any electrical components internal to the transmission/ transaxle. Also covered are any actuators directly connected to the transmission (slave cylinder, etc.). Exclusions: Excluded from the powertrain coverage are transmission cooling lines, hoses, radiator, sensors, wiring, and electrical connectors. Also excluded are the clutch and pressure plate as well as any Transmission Control Module and/or module programming.

Other Terms: This warranty gives you specific legal rights and you may also have other rights which vary from state to state. GM does not authorize any person to create for it any other obligation or liability in connection with these vehicles. Any implied warranty of merchantability or fitness for a particular purpose applicable to this vehicle is limited in duration to the duration of this written warranty. Performance of repairs and needed adjustments is the exclusive remedy under this written warranty or any implied warranty. GM shall not be liable for incidental or consequential damages, such as, but not limited to, lost wages or vehicle rental expenses, resulting from breach of this written warranty.⁵

⁵ See, e.g.,

<https://www.chevrolet.com/content/dam/chevrolet/na/us/english/index/owners/warranty/02-pdfs/2018-chevrolet-limited-warranty-and-owner-assistance-information.pdf>, at 2, 3, 5, and 13.

C. GM 8L90 and GM 8L45 Eight-Speed Automatic Transmissions Suffer from a Common Defect that Causes Unsafe Driving Conditions and Damage to the Transmissions.

33. The Subject Vehicles have a Transmission Defect that endangers the drivers and passengers of the vehicles that use them. Drivers attempting to accelerate or decelerate their cars encounter a hesitation, followed by a significant shake, shudder, jerk, clunk, or “hard shift” when the automatic transmission changes the vehicles’ gears.

34. Drivers have reported that the shift is sometimes so violent, they feel as though they have been hit by another vehicle. Many drivers have reported that, when they try to accelerate into traffic, their vehicles hesitate and then abruptly jerk into gear, creating a traffic safety hazard. Other drivers have reported that the transmission shifts gears so hard that it slams the car forward, leading drivers to believe they have been rear-ended. At least one consumer has complained that the transmission shifted from “reverse” to “drive” so harshly that he almost drove through his garage door.

35. In addition to creating dangerous uncertainty for drivers, the hard-shifting defect in the eight-speed transmissions wears away at the components of the transmissions, wearing them out prematurely.

D. GM Was Aware of the Transmission Defect Through Extensive Customer Complaints on the National Highway Traffic Safety Administration Website

36. Besides whatever internal testing GM likely conducted, GM must have learned of the Transmission Defect through customer complaints. These include extensive complaints on the National Highway Traffic Safety Administration (“NHTSA”) website.

37. NHTSA is the federal agency responsible for ensuring safe roadways and enforcing federal motor vehicle safety standards.⁶ Consumers may file vehicle safety-related complaints through the NHTSA website, where they are logged and published. They may be

⁶ <https://www.nhtsa.gov/about-nhtsa>, last accessed November 30, 2018.

sorted by make, model, and year of vehicle. Upon information and belief, GM personnel would review NHTSA's website for complaints.

38. A search for "2017 Chevrolet Silverado" on the NHTSA website yields a significant number of complaints from consumers experiencing the transmission defect.⁷ For instance:

A consumer in **Kings Park, NY** wrote on **May 1, 2017**:

WHEN DRIVING VEH[ICLE] SHIFTS HARD CAUSING A JUMP OR UNEXPECTED ACCELERATION. BROUGHT IT TO HUNTINGTON CHEVROLET THEY STATED IT WAS NORMAL. I DO NOT FEEL SAFE IN THIS VEHICLE.

A consumer in **Elk River, MN** wrote on **July 20, 2018**:

8 SPEED TRANSMISSION CLUNKS WHEN SHIFTING INTO 2 GEAR AND AT TIMES FEELS LIKE YOU GOT REAR ENDED. WHEN IT DOWN SHIFTS INTO THE LOWER GEARS ITS ALSO CLUNKS AND IS NOT SMOOTH. THIS IS HAPPENING WHEN GOING AT SLOW SPEEDS AND IS WORSE AFTER A COLD START. THE VEHICLE SHIFTS FINE AT HWY SPEEDS. I HAVE ALREADY BROUGHT IT TO THE DEALERSHIP TWICE AND PROBLEM IS STILL THERE. TALKING TO OTHER PEOPLE WITH GM 8 SPEED TRANSMISSION AND THEY ARE HAVING THE SAME ISSUE. 8 SPEED TRANSMISSION NEEDS RECALL.POSSIBLY TORQUE CONVERTER.

A consumer in **Coalton, WV** wrote on **July 18, 2018**:

ENGINE HESITATION, OR MISFIRING. JERKING, OR TRANSMISSION SHUTTERING WHEN ENGINE IS AT LOW RPM AND ON INCLINE. (I.E. WHEN TRAVELING ABOUT 45MPH AND START UP A HILL, THE RPM'S ARE ABOUT 1300 AND THE TRANSMISSION DOESN'T GEAR DOWN, SO IT STARTS SHUTTERING UNTIL YOU GIVE IT MORE ACCELERATION THAN USUAL.) AFTER DEALING WITH THIS ISSUE FOR NEARLY 8 MONTHS AND 15K MILES, I BELIEVE THIS SAFETY ISSUE SHOULD BE RECALLED. DEALER ORIGINALLY ACKNOWLEDGE THE PROBLEM BUT WAS UNSURE OF THE CAUSE. AFTER 5 REPAIR ATTEMPTS THE DEALER SAY THEY CAN'T DUPLICATE AND THE VEHICLE PERFORMS AS DESIGNED.

A consumer in **Clovis, CA** wrote on **May 9, 2018**:

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<https://www.nhtsa.gov/vehicle/2017/CHEVROLET/SILVERADO%2525201500/PU%25252FC/C/4WD>, last accessed November 30, 2018.

TRANSMISSION ABRUPTLY SHIFTING. FEEL LIKE THE TRUCK IS BEING HIT BY ANOTHER VEHICLE. I DON'T KNOW WHEN IT'S GONNA DO IT BUT WHEN IT DOES, ITS SCARY. THE OTHER DAY WHILE TRYING TO BACK UP INTO MY DRIVE WAY, THE WOULD NOT MOVE WHEN I PUSHED ON THE PEDAL. THEN ON IT'S OWN, THE TRUCK BURNED RUBBER BACKWARDS WHEN I TOOK MY FOOT OFF OF THE GAS PEDAL. I ALMOST DROVE INTO MY GARAGE! THIS TRUCK IS NOT SAFE AND NEEDS TO BE REMOVED FROM SERVICE! THIS IS AN ONGOING PROBLEM THAT YOU NEVER KNOW WHEN IT'S GOING TO HAPPEN DURING YOU DRIVE.

A consumer in **Morgantown, PA** wrote on **March 27, 2018**:

VEHICLE HESITATION AND SURGES IN ACCELERATION. THIS CONDITION IS A SAFETY ISSUE AS IT HESISTATES PULLING INTO TRAFFIC, SURGES IN ACCELERATION HAVE CAUSED LOSS OF TIRE TRACTION ON ICE COVERED ROADWAYS NEARLY RESULTING IN A COLLISION. DEALERS HAVE ACKNOWLEDGED AN ISSUE BUT ADVISE THEY ARE STILL WAITING ON A FIX FROM GM.

A consumer in **Sophia, NC** wrote on **March 22, 2018**:

PURCHASED MY 17 CHEVROLET SILVERADO 1500 ON 11/28/17 AND RETURNED IT TO THE DEALERSHIP ON 12/1/17. THIS WAS DUE TO A SEVERE SHUDDERING & SHIFTING IN THE TRANSMISSION & SEVERE SHAKE IN THE FRONT END AT 70-90MPH. THEY BALANCED & ROTATED THE TIRES, SAYING THE ISSUE WAS FIXED, I PICKED THE VEHICLE BACK UP ON 12/4/17 BUT THE ISSUE WAS NOT FIXED & AN ELECTRICAL ISSUE HAD ALSO OCCURRED. I TOOK THE VEHICLE BACK ON 12/7 /18 WITH THE SAME COMPLAINTS REGARDING THE TRANSMISSION & SHAKING IN THE FRONT END, AS WELL AS THE ELECTRICAL ISSUE. THE DEALERSHIP CALLED ME ON 12/8/17, TOLD ME THEY HAD BEEN UNABLE TO DUPLICATE THE ISSUES, FINDING NOTHING WRONG. I LEFT IT OVER THE WEEKEND, WENT IN MONDAY MORNING & SPOKE TO THE SERVICE MANAGER DIRECTLY. HE TOLD ME HE HAD PURCHASED THE SAME VEHICLE WITH THE SAME TRANSMISSION ISSUES. SAID THERE WAS A POSSIBLE FIX BY EXCHANGING THE TRANSMISSION FLUID & THEY WOULD USE A NEW MACHINE PICO TO CHECK IT OUT. THEY HAD TO REPLACE THE TORQUE CONVERTER DUE TO MALFUNCTIONING & PERFORM A PROGRAMMING MODULE UPDATE ON RADIO, I PICKED IT UP ON 12/22/17, ISSUE WITH THE TRANSMISSION WAS STILL NOT RESOLVED. I TOOK IT TO A DIFFERENT DEALERSHIP FOR TRANSMISSION SHUDDER, SHIFT & SHAKE ISSUE MOST NOTICEABLE AT 70-90MPH, & RADIO ISSUE. THEY WERE ADVISED TO PERFORM A MODULE UPDATE ON THE TRANSMISSION & GIVEN 2 OPTIONS ON THE RADIO, THEY CHOSE TO REPLACE THE SCREEN. I TOOK IT BACK TO THAT SAME DEALERSHIP, MODULE UPDATE MADE TRANSMISSION/FRONT

END ISSUE WORSE, ESPECIALLY COMING OUT OF A CURVE. THEY'VE REPLACED MY 2 BACK TIRES SAID THEY WERE BAD & SHOULD FIX THE SHAKING ISSUE IN THE FRONT END. UNABLE TO DUPLICATE TRANSMISSION ISSUES THUS THEY CANNOT REPAIR IT. OWNERS WITH THE SAME ISSUES ARE BEING TOLD GM KNOWS BUT CAN'T FIX TRANSMISSION ISSUE.

A consumer in **Parker, CO** wrote on **February 27, 2018**:

TRUCK EXHIBITS A ROUGH IDLE AFTER TRUCK IS DRIVEN AND WARM. IDLE CAUSES TEH TRUCK TO SHAKE AND FEELS LIKE IT WILL DIE AT STOPS. RPM DROPS BELOW 300 RPM THEN GOES BACK TO 490 RPM. IN ADDITION THE TRUCK WILL START TO SHAKE AND VIBRATE AT HIGHWAY SPEEDS OF 75-80 MPH. GMC SERVICE PERFORMED TSB CHANGING OUR ENGINE MOUNTS BUT THAT HAS NOT FIXED THE ISSUE. THIS IS A KNOWN ISSUE ON SILVERADOS AND NO FIX IN SITE. CONCERNED WITH SEAT VIBRATION THIS IS A SAFETY ISSUE DUE TO POTENTIAL DRIVE TRAIN PART FAILURE.

A consumer in **Edmond, OK** wrote on **February 26, 2018**:

8 SPEED TRANSMISSION SHIFT VERY ROUGH FROM 1-2 AND 2-1 GEARS, FREQUENTLY HESITATES, MAKES CLUNKING SOUND. HAVE TAKEN IT TO GM DEALER AND AM INFORMED THAT YES, THAT'S THE WAY THE 8 SPEEDS ARE. THIS IS A \$50K+ TRUCK. THIS TRANSMISSION ISSUE CAUSES AND CAN CAUSE HESITATION WHEN NEEDING TO ACCELERATE, THUS CREATING A SAFETY HAZARD.

A consumer in **Suwanee, GA**, wrote on **February 13, 2018**:

TRANSMISSION SHIFTS HARD AND VEHICLE SURGES AT LOW SPEED WITH ACCOMPANING "CLUNK". PROBLEM OCCURS IN BOTH UPSHIFT AND DOWN SHIFT. DEALER INFORMS ME THAT IS A "LEARNING" CURVE FOR VEHICLE TO UNDERSTAND MY DRIVING HABITS. HOWEVER I SEE ON SEVERAL AUTOMOTIVE FORUMS THAT THIS HAS BEEN AN ISSUE FOR SOME TIME AND HAS YET TO BE RESOLVED.

A consumer in **Iron Mountain, MI** wrote on **February 1, 2018**:

THE CONTACT OWNS A 2017 CHEVROLET SILVERADO 1500. WHILE DRIVING 25 MPH, THE VEHICLE SHIFTED HARD FROM FIRST TO SECOND GEAR. THE FAILURE OCCURRED EVERYDAY SINCE THE VEHICLE WAS PURCHASED IN APRIL OF 2017. THE VEHICLE WAS TAKEN TO O'REILLY CHEVROLET (6160 E BROADWAY BLVD, TUCSON, AZ 85711) WHERE IT WAS DIAGNOSED THAT THE TRANSMISSION CONTROL MODULE FAILED. THE DEALER REPROGRAMMED THE TRANSMISSION, WHICH FAILED TO REMEDY THE FAILURE. THE VEHICLE WAS BROUGHT BACK TO THE DEALER AND THE VALVE BODY FOR THE TRANSMISSION WAS REPLACED

AND THE TRANSMISSION FLUID WAS CHANGED. THE FAILURE RECURRED. THE MANUFACTURER WAS NOTIFIED OF THE FAILURES. THE FAILURE MILEAGE WAS 16,000.

A consumer in **Temple Hills, MD** wrote on **January 6, 2018**:

NOTICED AFTER PURCHASE THAT THERE IS VIBRATION LIKE A BAD TIRE 35-42 MPH.

VIBRATION FELT IN SEAT, CONSOLE AND STEERING WHEEL 58-65 MPH. TRANSMISSION DOWN SHIFTS HARD SOMETIMES FEELS LIKE BEING BUMPED FROM BEHIND, IT ALSO HESITATES AND JERKS AFTER LETTING OFF THE ACCELERATOR AND ACCELERATING AGAIN BETWEEN 25-45 MPH.

WHEN ACCELERATING IT SURGES, JERKS AND STUMBLES. SOMETIMES WHEN ACCELERATING THE TRANSMISSION DOWNSHIFTS AND HANGS IN THAT GEAR UNTIL YOU LET OFF THE ACCELERATOR.

UNDER HEAVY ACCELERATION THERE IS VIBRATION IN THE POWER TRAIN AND THE TRANSMISSION SEEM NOISY. AT 25 MPH IT SHUTTERS LIKE THE TRANSMISSION IS IN TO HIGH OF A GEAR UNDER LIGHT ACCELERATION.

RETURNED TO WALDORF CHEVROLET WHERE I PURCHASED IT AND WAS TOLD THEY BALANCED 2 TIRES AND RESET THE ROAD FORCE. SCANNED TRANSMISSION NO CODES TRANSMISSION OK AFTER SHOP FOREMAN ROAD TESTED FOR 21 MILES NO OTHER REPAIRS NEEDED.

PICKED IT UP DRIVING HOME NOTICED ALL THE PROBLEMS WERE STILL THERE AND AFTER INSPECTION OF MY WHEELS NOTICED THAT THE WHEELS WERE BALANCED STILL HAD THE OLD WEIGHTS STILL ON THE WHEELS WITH NEW WEIGHTS ALSO.

MADE ANOTHER APPOINTMENT THIS TIME TO HAVE SHOP FOREMAN (RICK) RIDE WITH ME TO SHOW HIM WHAT IT WAS DOING WHICH WE DID AND LEFT MY TRUCK AGAIN.

AFTER 8 DAYS I AM TOLD IT WAS READY I WAS TOLD THEY DID A PICO SCOPE TEST AND THE DRIVESHAFT WAS BEING REPLACED THEN ONLY TESTED IT WAS OK. CHECKED RUN OUT ON FLANGES ALL WITHIN SPECS. FOUND THE RIGHT REAR TIRE BAD. THEY PUT STEEL WHEEL FROM ANOTHER TRUCK ON AND ROAD TESTED WITH NO CHANGE. THEY DROVE ANOTHER TRUCK AND IT RIDES THE SAME. EVEN HAS THE SHUTTERS ON HARD ACCELERATION. SAID

THEY CALLED GM TAC BACK AND THEY DONT SEE A PROBLEM WITH THIS.

WRITTEN DOCUMENTS BE SENT VIA MAIL.

MADE ANOTHER APPOINTMENT

A consumer in **Kerman, CA** wrote on **October 27, 2017**:

TRANSMISSION ON MY NEW 2016 Z71 LT 4X4 JUMPS INTO LOW GEAR WHEN SLOWING DOWN. I TOOK IT TO THE DEALERSHIP MULTIPLE TIMES, BUT KEEP GETTING TOLD IT SHIFTS FINE. TOOK IT AGAIN AND HAD A MANAGER DRIVE THE TRUCK WITH ME INSIDE AND AGREED THE TRANSMISSION WAS NOT GETTIN INTO GEAR IN A NORMAL WAY. TOON IT BACK TO GET IT FIXED AND WAS TOLD TRANSMISSION IS FINE. I NEED THIS FIXED OR I WILL BE RETURNING HE TRUCK AS A LEMON TITLE.

A consumer in **Moultonboro, NH** wrote on **April 5, 2017**:

THE CONTACT OWNS A 2017 CHEVROLET SILVERADO 1500. WHILE DRIVING 45 MPH, THE TRANSMISSION FAILED TO SHIFT PROPERLY AND MADE A CLUNKING SOUND. THE FAILURE RECURRED MULTIPLE TIMES. THE VEHICLE WAS TAKEN TO A DEALER WHERE IT WAS DIAGNOSED THAT THE TRANSMISSION FAILED AND NEEDED TO BE REPROGRAMMED. THE VEHICLE WAS REPAIRED, BUT THE FAILURE RECURRED. THE MANUFACTURER WAS MADE AWARE OF THE ISSUE. THE APPROXIMATE FAILURE MILEAGE WAS 30.

39. A search for “2016 GMC Sierra” on the NHTSA website also yields a significant number of complaints from consumers experiencing the transmission defect.⁸ For instance:

A consumer in **Kingston, MA** wrote on **November 6, 2018**:

THE CONTACT OWNS A 2016 GMC SIERRA 1500. WHILE DRIVING 65 MPH IN STOP AND GO TRAFFIC, THE CONTACT DETECTED A SHUTTER AND HEARD AN ABNORMAL NOISE WHEN SHIFTING GEARS. THE VEHICLE WAS TAKEN TO MARTY'S BUICK GMC ... WHERE THE TRANSMISSION WAS REPROGRAMMED AND FLUSHED. THE VEHICLE WAS THEN TAKEN TO BEST CHEVROLET . . . WHERE THE CONTACT WAS INFORMED THAT THE CAUSE OF THE FAILURE COULD NOT BE DETERMINED. THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE. THE FAILURE MILEAGE WAS 96,794.

8

<https://www.nhtsa.gov/vehicle/2016/GMC/SIERRA%2525201500/PU%25252FRC/4WD>, last accessed November 30, 2018.

A consumer in **Franklin, TN** wrote on **October 27, 2018**:

TRANSMISSION SHIFTS ABRUPTLY AND TORQUE CONVERTER CAUSES SHUDDER AT HIGHWAY SPEEDS. TRUCK HAS BEEN SERVICED TWICE FOR THE SAME ISSUE BY DEALER AND DEALER RECENTLY TOLD ME PROBLEM IS UNRESOLVABLE.

A consumer in **San Jose, CA** wrote on **September 21, 2018**:

TRANSMISSION - WHEN DRIVING THE VEHICLE IT DOES A HARD SHIFT WHEN ACCELERATING AND DECELERATING. I HAVE TAKEN THE VEHICLE INTO THE DEALER TWICE. THEY ARE SAYING THAT IS A "STATE OF THE ART" COMPUTER THAT NEEDS TO BE RESET!!! I AM TAKING IT BACK IN FOR A 3RD TIME. THE CARE IS 2 YEARS OLD WITH 31 K MILES.

A consumer in **Middleville, MI** wrote on **August 8, 2018**:

8 SPEED TRANSMISSION BUCKS, HESITATES, LURCHES FORWARD, CLUNKS, WHILE STARTUNG ACCELERATION OR COMING TO A STOP. I TRY TO KEEP A BIG GAP BETWEEN MY TRUCK AND CARS IN FRONT OF ME AT STOP SIGNS BECAUSE IT RANDOMLY LURCHES FORWARD AND I ALMOST HAVE BUMPED CARS IN FRONT OF ME. I HAVE HAD THE TRUCK INTO THE DEALER SO MANU TIMES TO FIX THE VIBRATION ISSUES AS WELL, THEY SAID 3 TIRES THAT CAME IN THE BRAND NEW TRUCK WERE DEFECTIVE SO I HAD TO REPLACE THEM ALL AND THE SHAKE IS STILL THERE, THE BALANCED, REBALANCED, ROAD FORCE BALANCE AND NOTHING WORKS. LAST TIME AT THE DEALER SAID IT IS PROBABLY THE TIRES, HE SAID DON'T ROTATE THEM AGAIN AND WHEN THEY WEAR OUT HE WILL PUT ME IN A BETTER TIRE. I AM PAST MY WARRANTY SO THE DEALER SAYS ANY COSTS ARE MY RESPONSIBILITT, IF THE NHTSA COULD PLEASE STEP IN TO ASSIST US TO MAKE GM FIC THEAE VEHICLES WHICH ARE A SAFETY HAZARD.

A consumer in **Bradley, IL** wrote on **July 30, 2018**:

TRUCK SHIFTS REALLY HARD AND IS UNPREDICTABLE. I ALMOST DROVE THROUGH MY GARAGE DOOR THE OTHER DAY SHIFTING TO DRIVE FROM REVERSE. TRUCK WILL LUNGE FORWARD OR DELAY IN SHIFTING. THERE HAVE BEEN A FEW TIMES IVE HAD TO SLAM ON THE BRAKES BEFORE I BACKED INTO SOMETHING. I HAVE BROUGHT IT IN 3-4 TIMES FOR THE ISSUE AND GMC WONT REMEDY THE PROBLEM.

A consumer in **Litchfield, IL** wrote on **March 20, 2018**:

PLEASE MAKE GM RESOLVE THE ISSUES WITH THE 8 SPEED TRANSMISSIONS IN THE TRUCKS. 2016 SL T Z71. I PURCHASED THE TRUCK NEW. IT'S NEVER SHIFTED PROPERLY. HESITATIONS, CLUNKING, JERKING, SHUTTER, HARD DOWN SHIFTS EVERYTIME I TAKE IT IN, THEY SAY IT'S DUE FOR AN UPDATE. THE TRUCK HAS HAD 4 UPDATES AND NONE OF THEM HAVE FIXED A THING. I HAD IT IN BEFORE THE 36,000 MILE BUMPER TO BUMPER WARRANTY WAS UP AND WAS TOLD IT WAS UP TO DATE. THEN LAST WEEK, I TOOK IT IN AND WAS TOLD IT WAS "SEVERAL UPDATES BEHIND." (54,XXX) MILES. TO TOP IT OFF, GENERAL MOTORS WOULDN'T PAY FOR THE \$400 UPDATE, WHICH DIDN'T FIX ANYTHING AT ALL!!! THE TRUCK JERKED BEFORE WE GOT A BLOCK FROM THE DEALERSHIP. GM SAYS THAT EVEN THOUGH THE TRUCK IS STILL UNDER A FACTORY 60,000 MILE POWERTRAIN WARRANTY, TRANSMISSION UPDATES AREN'T COVERED. THE 120,000 EXTENDED WARRANTY WOULDN'T COVER IT BECAUSE THEY SAY IT SHOULD BE COVERED UNDER THE FACTORY POWERTRAIN WARRANTY! I ABSOLUTELY LOVE THE TRUCK OTHER THAN THE JUNK TRANSMISSION IN IT. I DON'T THINK IT'S SAFE OR MUCH FUN HAVING A VEHICLE THAT STARTS TO GO THEN FALLS FLAT ON ITS FACE FOR A FEW SECONDS BEFORE SLAMMING INTO THE NEXT GEAR. THIS IS A MAJOR PROBLEM WITH A HUGE NUMBER OF TRUCKS. DON'T BELIEVE ME? GOOGLE "2016 SIERRA TRANSMISSION ISSUE" OR ANYTHING OF THE SORT. YOU'LL SEE. I'M REALLY NOT ASKING FOR MUCH. I DIDN'T WANT TO PUT MY FAMILY IN A POTENTIALLY UNSAFE VEHICLE YET HERE WE ARE. LIKE I SAID, I'M NOT ASKING FOR MUCH. ALL I WANT IS FOR MY TRUCK TO SHIFT NORMAL. TO GO WHEN IT NEEDS OR HAS TO. MY TRUCK HAS HAD 4 UPDATES AND WAS SEVERAL UPDATES BEHIND LAST TIME, THAT'S ROUGHLY AN UPDATE EVERY 10,000 MILES AND NOW THEY'RE NOT COVERED? ON TWO SEPARATE OCCASIONS, IT'S SHIFTED SO HARD THAT IT JARRED MY NECK AND MADE IT SORE FOR A FEW DAYS IVE EVEN PULLED OVER ON THE SIDE OF THE ROAD THINKING WE WERE REAR-ENDED. SO HAS MY WIFE. NOT SAFE-NOT NECESSARY!

A consumer in **White House, TN** wrote on **September 15, 2017**:

THIS ISSUE STARTED A FEW MONTHS AFTER I PURCHASED THE TRUCK TOOK IT TO TWO DEALERS THEY SAY ITS NORMAL. CALLED GMC & THEY HAVE NO RECALL. WHEN DRIVING THE TRUCK & HAVE TO SLOW DOWN IN TRAFFIC THE AUTOMATIC TRANSMISSION DOWN SHIFTS & HAS A VERY NOTICABLE JERK. WILL ACTUALLY JERK THE HOLE TRUCK. PEOPLE WHO HAVE RODE WITH ME TELL ME I HAVE A TRANSMISSION PROBLEM. WHAT CAN I DO

A consumer in **Dayton, OH** wrote on **May 4, 2017**:

8 SPEED TRANSMISSION BUCKS, HESITATES, LURCHES FORWARD, CLUNKS, WHILE IN DRIVE. THE CONTINENTAL TIRES ARE CUPPING,

WHICH GM SAYS IS CHARACTERISTIC OF THE BRAND. THE TRUCK VIBRATES WHILE AT 25MPH, AROUND 50MPH AND 65-75MPH. WHILE IN AWD/4WD AT 30 AND 50MPH, THE DRIVELINE MAKES A WHINING NOISE AND VIBRATES SOMETIMES.

A consumer in **Grovetown, GA** wrote on **May 3, 2017**:

GM 8 SPEED TRANSMISSION IS FULL OF PROBLEM. IT CONSTANTLY HESITATES, HANG GEARS, BUCKS, AND POSES VARIOUS SAFETY CONCERNS. FOR INSTANCE IF MERGING ONTO THE HIGHWAY THE TRANSMISSION WILL HESITATE AND THE TRUCK WILL BE UNRESPONSIVE TO GAS PEDAL INPUT FOR A PERIOD OF TIME SOMETIMES UP TO 12 SECS. THIS HESITATION CAUSES A SAFETY CONCERN WHEN ATTEMPTING TO MERGE INTO TRAFFIC. GM ACKNOWLEDGES THESE CONCERNS BUT STATES THAT IT IS OPERATING AS DESIGNED BUT ARE WORKING ON SOFTWARE UPDATES TO IMPROVE TRANSMISSION PERFORMANCE. THIS HAS BEEN A CONSTANT ISSUE SINCE I PURCHASED THE TRUCK.

E. GM Was Aware of the Transmission Defect Through Extensive Customer Complaints on GM-Related Websites and Online Discussion Boards

40. Consumers have posted extensively on websites dedicated to discussions of GM vehicles regarding the transmission defect in vehicles equipped with the 8L90 and 8L45 8-speed transmissions.⁹ Upon information and belief, GM employees have seen these complaints. For example, **Brendan of New Hampshire** posted an initial complaint on gm-trucks.com, and followed up with several updates. Brendan wrote:

On Mar. 1, 2016

I wanted to post up my own experience with my 8 speed transmission in my 2015 SILVERADO HIGH COUNTRY 6.2L 8 SPEED 8L90

I bought the truck brand new in July 2015. Manufactured date of April 2015. I purchased it from a dealer in NH and they have been great to deal with.

So here is the story-->

July 2015 --> At first the truck was flawless. It shifted butter smooth and on a very rare occasion (once a week maybe) it would clunk slightly when downshifting. It was totally negligible.

⁹ <https://www.gm-trucks.com/forums/topic/184117-my-own-8-speed-problems-resolution/>, last accessed November 28, 2018.

***As time went on and the mileage increased it got worse. Here is a list and description of what it was doing once I hit about 3500~ miles. It didn't clunk and act sloppy all the time. HOWEVER, there is a good 65% chance the truck was going to shift poorly.

- It clunks (HARD) into lower gears when slowing down/downshifting. This is the biggest issue and has continued to happen up to now.
- Taking off from a stop with smooth, consistent acceleration, it has trouble deciding the correct gear and vibrates.
- Same scenario as above, the rpm's fluctuate.
- It makes clicking noises constantly when shifting. If you manually shift it, you can hear clicks in almost every gear.
- I can MAKE it clunk hard if I coast in gear 7 and manually shift it into gear 6. **NO RELATION TO AFM/DoD WITH THIS.**
- For some reason, turning into another road or turning in a slight corner and accelerating will make it downshift and clunk hard.
- Going from Park to Reverse either cold or after driving it would slight clunk, then engage a second or two after the initial clunk is heard/felt.

December 2015 --> I took it to my dealer at the 5000 mile oil change/scheduled maintenance and I had the service manager ride with me to hear the clunking. The truck was really acting up that day, and it was clunking like crazy. The service manager said he heard the noises clear as day. He told me the 8 speeds have some clunks, and because they are so new people need to get used to them. He gave me the whole they need to learn and EPA demands greater fuel mileage talk. I disagreed with him and we had a long conversation. I mentioned to him when the truck was new it did not do this.

When we returned to the dealership, this is exactly what he told me: "this is normal operation, we are not going to do anything about this issue"

I asked him to at least check for updates and go over the truck top to toe and check motor mounts, transmission mounts, spring shackles, etc. Just to rule out any possible 'looseness' that could cause the clunks. The work order said they checked for updates and looked the truck over. They found nothing out of place and no updates available.

Around two weeks later, with 7200~ miles on the truck, I was talking to my uncle about the transmission issues and he called his local Chevy dealer on my behalf. The service manager said the 8 speeds have a couple updates available, and to bring my truck up to see if they apply to it. He said the update had really helped a couple 8 speeds they had recently sold. So I drove up to their dealer (an hour in the opposite direction of MY dealer) and they hooked my truck up. I figured MY dealer had done the updates, but there was an available update. They updated it and it really didn't help much. It seemed to make the truck hold a little higher RPM cruising, but I didn't notice anything besides that.

March 2016 --> Just yesterday I dropped my truck off at my purchasing dealership with 9800~ miles. I asked them to do the scheduled maintenance, and

look into the transmission one more time. Especially considering it hasn't gotten better, it got worse. I specifically asked them to drop the pan and look at the fluid, valve body, etc. They called me Monday afternoon and told me they took an extensive look at my transmission and **they are going to put a new transmission in it**. They said after driving it/taking a look that it is "A GM candidate for a new transmission" because of the "symptoms it exhibits"

In 5-8 days the transmission will arrive from Detroit and then they will put in a new transmission.

I will keep you all posted on the results and we will see if over the next 10k miles the new transmission stays smooth.

...

I am giving GM a chance to fix the problem. Out of all the 8 speeds they have manufactured, they can't ALL be bad.

If this doesn't fix it I will ask them to buy it back. If they wont buy it back, then I will trade it in. Lesson learned.

On March 22, 2016

I just dropped the truck off at the dealer this evening. I just hit 10000 miles. The tech wanted to hear it. I drove, and I got it clunking quite a bit. He told me the way my transmission was clunking was NOT normal. He also said they have had a lot of concerns with 8 speeds. He said most of the 8 speeds have slight clunking that is due to tolerances/backlash which is understandable. He also mentioned the torque converters have been known to 'shred' themselves and create a lot of debris. Either way the 8 speed is not doing so hot. GM is working on it a permanent fix, but no absolute fix yet.

I can't say enough good things about my dealer though. They told me if it can't be fixed, or it comes back from GM I 'have to live with the clunk' that they will help with either trade assistance or buy it back. I really hope they can figure out a fix. It's a damn nice truck.

To those of you having any kind of doubt, bring it in to the dealer and at least have them document it. I live an hour away from the dealer, so I know how much of a pain it is going to the dealer. These trucks cost too much to settle for these transmission issues.

On March 24, 2016

[In response to the question "Are people with 2016 models and the 8 speed transmission having the same issues?"] Not sure if the 2016 8 Speeds are quite as bad. The tech told me the transmissions currently being put into the trucks have an updated torque converter. That was one problem. My tech was very friendly and did say they have had a 'slew' of problems with the 8 Speed.

HERE IS ANOTHER UPDATE:

I picked the truck up last night after a 24hr turn around from my dealership. They took the truck for a four hour drive as they called it and did the relearn adapt while driving around. They had one guy drive, and another with the computer monitoring the transmission.

The drive home seemed to be much smoother. I will let you all know how it goes. I have spoken with the service manager, my sales man, and the manager of my dealer and if this doesn't meet my satisfaction they have agreed to buy it back. I have been ultra patient with this whole thing, and they have been more than willing to help me this. At least there are some dealers out there that care about the customer. Believe me, I have had my fair share of different dealerships treat you like crap.

I hope this fixes it because I do enjoy driving this truck around.

On April 12, 2016

Alright everybody. Here is the verdict.

I have an appointment tomorrow morning to bring the truck back to my dealer. The 'reprogram' did not help at all. They told me to drive 500 miles after the program to help it 'learn' further. I drove it 1000 and it still does the same clunks. All low speed clunks. I know exactly when it will clunk now, so riding with my dealer should show them my issues.

At this point I am planning on getting rid of the truck. I tried multiple times to have GM fix this damn 8 speed/clunk fiasco and they have failed so far. Really disappointing as this was my first new truck.

I know I am not the only one with this issue, and I know not every truck built has this issue. I wish all of you luck with your trucks moving forward.

41. Others on the gm-trucks.com forum complained about the same problem. For

instance:

Matt of Texas on March 14, 2016

I'm having problems with my 8 speed as well. Tranny doesn't engage well especially going from park to reverse and if you give it gas before it's ready, it will hammer into reverse and jerk the whole truck violently. Makes you look like an idiot driver when it happens. Truck just lurches backwards. Also clunks when stopping or starting from stop. Also clanks between most shifts. This tranny was definitely not ready for prime time. If it had done this when I test drove it.. I would not have bought the truck.

Robert of Pensacola, FL on April 16, 2016, and April 20, 2016

Well I'm another victim of GM's great 8sp. trans. Actually mine wasn't really giving me too much trouble until I took it in for the TCS update and my truck went crazy. I think they corrupted my computer. Drivers assist back up and all went bad. My RPM's were jumping 1500 to 2000 rpms at 45 mph with the cruise. Not 5 miles down the road it shuttered so bad it jerked the steering wheel out of my hand.

Now my truck has been in the shop all week with no reply except they tried to blame it on me for putting Denali 22in wheels on the truck. Said it would change the dynamics of the transmission. Needless to say my words weren't that great. Its a 4 wheel drive what the hell has happened. Wanted to know if I had a programmer for changing the tire size. I know what they are trying too pull on me, and told them so. They are really reaching for any excuse.

I could be another lemon victim. Really sucks I love the truck. I have a 30ft off shore racing boat and the 6.2 pulls it with ease.

I know now my truck will never be the same. I'm getting too old for this crap. Also heard the Dodge 8sp was having issues also. An older gentleman I work with told me they are cramming too many gears in a small case and it won't work. Kinda makes since. I will keep updates if or when I get my \$60,000 rolling turd back.

...

Lets face it all lie's and deception. My dealer is trying everything in the book to blame me. Its really pathetic they would stoop so low for GM.

They still have my truck, this is week 2. So lets think about that, truly how long does it take to program the computer. That just tells me that there is NOT a cure for our transmissions. It's going to take us the consumer to stand up for our rights and make GM figure something out. I smell a recall but the only one's suffering is us. Who knows how long it will take. Folks don't settle push it to the end, they expect us to give up and walk away. Lets face it the easy solution is to trade it in on something else but that's not the cure. I will ride my dealers ass till something is done. I don't give up.

I have no clue when I'm getting my truck back, but I told the service manager I want my truck shifting like it was right off the lot, that's what I paid for not a test machine. I'm 6' 6" and they gave me a regular cab with no gas at all. I'm so glad their on my side. The 2016 truck I'm driving around in shutters, not sure the tranny size but its a v6. So that tells me there's no fix in sight. My dealer says its a software problem and not the trans. Humm!!!!!!

I will let everyone know what happens if I ever get my truck back.

"wetcoaster" on May 13, 2016

I'm taking my truck in for the second time with 8 speed transmission issues. I took it in about 2 weeks ago and the performed all of the TSB updates for the programming and it shifted worse than ever. Clunking on upshifts like it was a 1980 Camaro with a stage 25,839,874,329,876,443 shift kit.

The last straw which made me call in for a second service appointment was me starting from a stop on a 3% decline at less than 5mph it felt like I was rear ended

hard. I looked back behind me and there was no car. I'm guessing there was no pre-load on the pinion gear and it was between shifts when I started to roll forward and then locked up with some backlash. This is strike #2. If I get it back next Tuesday and I have one more tranny fart, I'm going to be looking to do the same as the OP.

Tom of New York, on November 2, 2016

2016 gmc sierra 6.2 8 speed. I too am big gm fan. Have had many. This truck with the exception to the power of 6.2 is a p.o.s ... transmission is garbage. Engine is very noisy and idles like it wants to stall. Rides like a hosre. All for almost 60 grand. I'm sure it's not all of them but too many where there is a big problem here. On my second converter. Many relearns. I too would rather drive my old car than this new one. Headed for lemon law. Gm has had their shot.

Eric Ward of Texas, on July 25, 2017

OK truck has been at dealership (not from where truck was purchased) for about a week now because of steering wheel vibration and clunky transmission and also when left over night you start up in the morning it takes a few seconds for the reverse to grab. The dealership allowed me to drive a brand spanking new Tahoe Platinum so guess I cant complain. So the first time me and service personal talked he said the Torque Converter would be replaced and that GM wanted them to empty out the transmission fluid and refill with different type. I will let him know about the 16-NA-014 Bulletin. I am sure he knows about it. Since I'm not going to mention the dealership at this point the technician told me they were have alot of issues with the 8 speeds. I love my truck and the power of the 6.2.

“hotrdlx” on September 1, 2017

I just had my torque converter replaced for shutter for the 2nd time. Both time they lasted roughly 16k miles. Does anyone have high miles on their 8sp as i am very concerned about long term reliability. I see now why they decreased the powertrain warranty.

“MD11G200” on October 20, 2017

My 2017 GMC sierra 1500 6.2/ 8 speed with 4k miles just had TSB done on relearn of C3 return spring, i took it in because of the clunky noise on downshifts when coming to a stop. At first i thought it was fixed only to discover it wasn't, still clunky. It seems to downshift normally half the time and clunky the other half UNDER THE SAME EXACT DRIVING CONDITIONS. Also took in for rough idle, they adjusted the motor mounts then replaced them, no fix either, giving the truck some more time then I'm trading it in and never buying a GM truck again, what a damn joke this is for the amount i paid for this truck. Also forgot to mention they had my truck 14 days, i got lucky and they gave me a little Buick car for loaner, talked with others who had to endure longer times without getting a loaner. i hope eventually a class action lawsuit against GM is created for this transmission mess and the way they are handling it.

42. Consumers also posted on cadillacforums.com.¹⁰ In a thread dedicated to “GM’s 8L45 Cadillac Automatic Transmission,” consumer “**NewYorkBill**” posted on June 19, 2017:

GM’s 8L45 Eight-Speed Cadillac CT6 Automatic Transmission: Recall, Replace, Re-tune or Deny

GM’s 8L45 Eight Automatic Transmission is a clunker. GM’s customer assistance center acknowledges that the reviews are ‘mixed’ and one service bulletin has been issued. The ‘mixed’ aspect of the feedback shows that this 8L45 works normally for a while for some owners. Internet forums are heating up with discussions about otherwise fine cars cursed with this crude, confused and embarrassingly bad 8 speed lemon.

General Motors has managed to take its customers back several decades to an unpleasant time in the early development of the automatic transmission. The GM 8L45 Hydramatic Transmission is part of the powertrain in the Cadillac CT6, CTS, ATS, Chevrolet Camaro and perhaps more vehicles under a different name. This questionable feat of backwards design and engineering was accomplished with variable force solenoid technology, speed sensors and a processor executing hundreds of calculations and commands every 6.25 milliseconds. Clearly, this is not often enough, as evidenced by the ride experience inflicted on the driver and passengers when the thing desperately hunts for the proper gear and any gear will do ... to lurch forward. With all that technology it performs far worse than the bands and torque converters of that our grandparents enjoyed in the 1960’s and later. In 2016, General Motors was simply not ready to evolve past the 6 speed transmission but that didn’t stop it from going ahead and cursing entire fleets of its new vehicles with the crudest powertrain component in its history. And yes indeed, it weighs over 30 lbs. less than its predecessor (one that actually works, though evidently grossly overweight). Perhaps the elusive 2nd, 3rd and 4th gears each weigh 10 lbs., accounting for both the weight loss and crude performance.

The 8L45 is a mess. Its crude state of performance sometimes rears its ugly head on a new GM vehicle on its way home from the dealership, or lurks deep inside its innards for a later outbreak of hard shifts, flares, thunks, and head jerking downshifts at random times in the early lives of the fleet. GM’s confidence with this clunker drove it to install it in the Cadillac CT6, CTS and ATS models. Dealerships are forced to appease customers with such phrases as ‘performs as designed’ and ‘performed adaptive fast learn’ as a way to force owners to get used to it. The other line of defense is that the transmission is learning and adapting to the driver’s style. Enduring the explanations and excuses of GM service technicians and service managers can be tiring. Confidentially, they’ll admit that the thing is a disaster.

* * *

The owner of a vehicle cursed with this clunker will know there’s a problem when passengers ask why the brakes are being pumped when coasting to a stop. That’s the 8L45’s attempt at downshifting. When the driver gingerly feathers the accelerator to coax the thing into gear after an auto-stop shutdown it may skip several gears and slam into 4th

¹⁰ <https://www.cadillacforums.com/forums/cadillac-forum/t-974121.html>, last accessed November 29, 2018.

or 5th with a violent shutter. The driver and passengers all feel it as the entire vehicle shutters. At times it may seem like the driveshaft is going to come up through the cupholder and cellphone battery charger. Its performance is indefensible. If it's shifting like an average GM vehicle and it hasn't yet slipped into this confused state, it soon will. No amount of learning, adaptive fast learns or software tunes can apparently help it find the right gears, other than reverse or park, which, luckily seem to work. Dealer lots are filling up with unsold inventory and returned vehicles, many with less than 2000 troubled miles on the odometer. Apparently, frustrated owners were not able to adapt and learn along with the car's stuttering, clunking, and confused transmission.

So, what is the future of the 8L45? Maybe a software tune can bring it under control. If this is not possible, and clearly, GM is in no hurry to resolve this issue, the fate of the 8L45 has these possible futures:

1. It will quietly disappear in 2018, leaving the current fleet in an abyss of wildly unpopular clunkers. The CT6 is becoming known as the shimmying, stuttering, lurching flagship that looks nice.

2. It can finally break in at 40,000 miles or so and can then find the correct gears at appropriate times after a few years of learning and adapting.

3. Third party after-market companies will offer a way to replace and retrofit it with a nicely functioning transmission, like the 6L45, thus salvaging the resale value of the CT6 and others.

Corporate denial doesn't help the brand. Blaming the customer for expecting better shifting insults the brand loyalists. It's clear that the 8L45 was rushed into production without quality engineering and design. Hopefully, GM and its Cadillac division can conjure up a solution that can make its attractive CT6 flagship drive as nicely as it looks parked.

Consumer "Maxplot" responded on June 21, 2017:

The 8L90 is not any better. My 8L90 in my CT6 with turbo 3.0 is terrible. Worst transmission I have ever had. The 1-2 shift is hard. It also depends on outside temperature whether it acts up to a greater extent. I think the 8L90 could use better fluid or better pressure sensors. []

"NewYorkBill" added on June 25, 2017:

To be clear, my article is not about those barely perceptible quivers and shift sequences experienced with most of the 8 speed transmissions in the market. What I am addressing are the violent shifts, head lurching downshifts and abysmal performance of GM's 8L45 transmission that is the curse of the Cadillac CT6.

The perspective formed, as presented in my post is based on two 8L45's, one exhibiting all of its faults on the day of delivery and the second one performing relatively normally until mile number 2435, when all hell broke loose. Again, this pertains to the 8L45 in two Cadillac CT6's that I have owned. Additionally, an internet search of other GM discussion forums brings up similar complaints wherever the same transmission is part of the powertrain. Following through with Cadillac customer support and GM corporate discussions it's clear that the customer base is not universally pleased with this crude transmission. As one would expect, the people in these two GM areas are very polite,

helpful and proactive and admit there are concerns. It's not about customers who not quite ready for fuel saving technology that needs to shift constantly. My issue with GM is its slowness in dealing with the CT6's problems and the pompous pre-sale promotion of a transmission that 'makes the driver unaware that it's shifting.' Believe me, when your CT6 issues loud thunks, can barely get through a busy intersection after an auto start/stop lurch as it searches for a gear, you'll want to get rid of the thing. The CT6, with its eye-catching edgy design, can be an extremely unpleasant car to drive when its transmission can't shift correctly, in a violent fashion.

The notion that these things are highly sophisticated and require a long break-in period is silly. Some arrive from the factory in a confused state while others don't lapse into their failure mode until much later. And again, it's not about those common 8 speed transmissions' slight quivers and shakes. Apparently 8, 9 and 10 speed transmission technology is driven by fuel economy and acceptable performance from a piddly little 4 or 6 cylinder engine. I realize that the current fleet of Cadillacs are budget luxury cars and expectations have to be adjusted to these price points, but can you imagine telling this to customers in the real luxury car market? 'Get used to it! or You're not driving it right', 'Performs as designed' or 'You're expecting too much' and other arguments would not set well with affluent owners.

□

Consumer Eric Kline commented on June 27, 2017:

My 2016 CTS now has 20K miles on it, and the transmission is totally unpredictable. At times, especially first thing in the morning, the car drives great - quick smooth shifts and excellent acceleration. However, after the car sits for a few hours, most of the time the transmission is terrible. Harsh shifts and a bogged down feeling like the car is in too high of a gear. Give it some gas, and it lurches forward to the point that the car is hard to control. Usually I will then put the car in manual mode and use the shift paddles, and this helps a bit. I recently drove 2 Malibus with the 2.0L turbo and 9 speed transmission, and these cars drove MUCH better than the CTS (with a sticker price of \$20K less). I will never buy a GM vehicle with the 8 speed again...

In response to the question "So at this time there has not been a complete resolution to this problem?" **"NewYorkBill" further posted on October 15, 2017:**

Well, GM is still in the 'Deny' stage. There's no word on any recalls, unit re-design, or retuning. This poorly designed cheap piece of crap called a transmission is providing headaches for service departments and owners. I've been told that service departments are giving up on the 'performs as designed' excuse, along with the 'relearning shift adapts' attempts and complete fluid changes. The current solution is a complete transmission replacement, which is an extensive gut of these relatively new vehicles. It's a \$4,300 (dealer cost) warranty claim. The problem is that when the trauma is complete, this otherwise nice vehicle is cursed with another 8L45 transmission. I have now owned three (yes, 3) of these transmissions over the past 10 months and the most recent replacement is shifting the best it can. Transmissions #1 and #2 failed at 1480 and 2500 miles respectively, with harsh flares, clunky 1-2 upshifts and NO gear after coasting through turns and intersections. When in that state, it's an unsafe vehicle.

□

Consumer MHT posted on April 1, 2018 and July 4, 2018:

Today the shift was so hard I actually thought I had been rear ended. This is the first time that I have ever experience the shift being this hard and yes it was so rough that it jerked my body. Cadillac really needs to address this issue in the 8L45 8 Speed before they

venture off into a 10 Speed as my guess is at this rate it will be no better.

...

[W]hat may come back to haunt GM/Cadillac is how this transmission was promoted and advertised. There are also Cadillac models that cost less than the CT6 whose transmission do not exhibit this sometimes harsh shift issue.

The last word I received from the Cadillac Customer service rep is that Cadillac Quality Brand is pursuing this issue and something still may yet get done.

My advice to all who are reporting this issue is to keep the pressure on and do not back off. IMO Cadillac/GM needs to find a permanent fix, replace with a better transmission or consider financial compensation, to do other wise IMO is not acceptable

43. Other consumers posted their complaints about the transmission defect in vehicles equipped with the 8L90 and 8L45 8-speed transmissions on carcomplaints.com.¹¹ In a thread dedicated to the 2015 Chevrolet Corvette, consumers posted complaints including:

8 speed automatic transmission down shifts at a stop with such force it feels as you have been hit from behind by another car while coming to a stop. Transmission also will not always engage properly and will over rev and slam into gear possibly causing an accident. Transmission at times will disengage while going forward then slam into gear with great force. I was told by a GM insider that GM is aware some transmissions are defective and is working on a kit to fix the fluid starvation problem internally but has done nothing to inform owners of the potential dangers of erratic shifting that it's causing while driving. This also causes the transmission to over heat and to illuminate a warning lamp.

- Downers Grove, IL, USA

8-speed automatic transmission always shifts erratically when starting out cold (lazy shift, slow shift, etc.) and occasionally does not downshift when car comes to a stop, only to slam hard into 1st when gas pedal is pressed to resume travel. Dealer says GM claims this is "normal, " but no car I've ever owned behaves like this. Appears to be fluid starvation internally. Any fix/replacement would be costly for GM, so given their history w/faulty ignition switches, not surprised they're trying to avoid it. Transmission is definitely not normal and behavior is unpredictable + unacceptable -- especially at this price. When car is moving & transmission is in drive and trying to lazily shift gears, you temporarily lose ability to apply power, which is both dangerous and unnerving. Clearly, this transmission was put into production w/inadequate testing & development. A recall is necessary to fix properly.

- Kansas City, MO, USA

Automatic 8 speed transmission had to be replaced at 2000 miles on the odometer due to hard shifts and shifting automatically to low gear at highway speeds nearly bringing the car to a stop in interstate traffic, now 700 miles and 4 months later the transmission is stuck in second gear and you cant drive fast enough to get out of the way of traffic. And I know of several other cars like it that have similar problems. This is a real safety problem

¹¹ https://www.carcomplaints.com/Chevrolet/Corvette/2015/drivetrain/power_train.shtml, last accessed November 29, 2018.

and GM seems to ignore it, probably until someone gets hurt or killed.

- Lexington, KY, USA

The A8 automatic transmission in the 2015 Corvette is prone to occasional hard downshifts from 2nd to 1st gear when driving at slow speeds (less than 10 mph). Sometimes the downshifts are so violent that the car jerks forward several feet. The first time it happened I thought I had been rear ended by another car. The unpredictable behavior of the transmission is especially dangerous in proximity to pedestrians or other vehicles.

- Salado, TX, USA

Automatic A8 transmission has the following issues: 1) morning shift from reverse to drive severely delayed, bangs in eventually. 2) erratic shifting in normal traffic 3) the 2-1 downshift when coming to a stop results in severe bang, lurches forward and is very unsafe in a parking lot situation. Also in stop and go traffic, same lurching forward. Feels as if someone hit you from behind 4) torque converter lockup in 5th and 6th gear. Dealer tore apart the car to replace the stator, performed software update - neither solution worked.

-Murphy, TX, USA

I had my vehicle serviced at dan vaden Chevrolet in savannah, ga on 16 Oct 2017 at (12,200 miles). My main concern was a shudder and jerky motion the car starts demonstrating while in motion, accompanied by fluctuating engine rpms. After researching on the internet there are 1000's of issues with these torque converters and who knows what accidents these failures have caused. There should be a total recall on these transmissions. A service department technician test drove my vehicle and confirmed and documented my concerns and stated it was okay to drive ? I am scheduling another service at (13000 miles). A search of the internet will fill you full of facts on these failures. Problems with the torque converters with these high end vehicles are well on the way to become another Corvette issue of epidemic proportions. Please assist.

- Hinesville, GA, USA

2015 Corvette stingray Z51 - 8 speed automatic transmission torque converter. With only 7,500 miles on the car it started to run jerky and rpms would fluctuate for no reason (especially at highway speeds when fully warmed up). Often felt like driving on a washboard dirt road. After a cold start, there was a delay after shifting into drive. When it engaged after several seconds it would do so violently, lurching the car forward suddenly. Dealer diagnosed faulty torque converter as defective and a known problem with these transmissions. After less than 2,000 miles the symptoms returned and the dealer again replaced the torque converter. So now I'm on my 3rd defective tc. After 1,700 miles, symptoms returned again! dealer said that Chevrolet and GM have ordered a stop on replacing the tc's since no fix was available. GM advised to drain and flush tranny, refilling with mobil1 transmission fluid. This seemed to work (only for a little longer) but is worrisome because in the future service, a technician will likely refill with GM fluid, not mobil1. Especially if a second owner. Now at 16,100 miles the symptoms are returning! jerkiness, slamming into gear after a delay on cold starts. GM seems to have turned their back on stingray owners by kicking the can down the road beyond warrantee (with the mobil1 "band-aid fix"). on the forums there are so many owner complaining

about this same issue. I am amazed that there is no official investigation resulting in a recall. This Z51 LT3 stingray was \$75,000 otd! for this cost we should be able to expect a quality vehicle and a motor company that stands behind it! can somebody please help us with this serious and potentially dangerous problem?

- Wellington, FL, USA

44. Consumers have posted very similar complaints on gmauthority.com.¹² For instance, consumer **“padrino14” posted on February 1, 2016:**

I took delivery of a 2016 Sierra Denali (5.3 V8, 8-Spd, 3.42) in November and had to take it into the dealer a week later for a transmission issue (coming to a stop the truck would shudder as though the transmission was shifting hard into first gear or as though the engine was about to stall). 3 weeks after taking it into the shop, GMC engineers determined that there was a torque converter problem that was staying engaged too long causing the engine to nearly stalling out when coming to a stop. They okay'd replacing the entire transmission for a new one. I finally got the truck back (a MONTH after first taking it into the shop – and yes, the truck spent 30 days of its first 39 days of ownership in the hands of my dealer) and figured that would be the last of my problems. Since then, I've noticed that when yielding – or in traffic/congestion – when I'm slowing down almost to a stop (around 5 mph or lower), then stepping on the accelerator, there will be a long (1 to 2 seconds) delay between me stepping on the accelerator to move and the truck shifting into first and beginning to accelerate. I took it to the dealer again, and they claimed the delay and even “hard” little shifts are normal for this transmission because it is “adaptive” and constantly learning... What? I at first bought it (they are the pros), but I'm beginning to hate not having the confidence of pulling out of a driveway, side street, etc. and being able to immediately get the power and acceleration I need to get out of the way (or better yet to get on my way). Is anyone else here having similar issues with their new GM 8-spd?

Consumer **rham22 posted on February 11, 2016:**

First post. Hate to see you are having problems. Thought I might be the only one after hearing what service department is telling me. I just bought a 2016 Silverado LTZ with an eight speed and it shifts horrible. Love the truck but not fun to drive while taking off and stopping. Truck has 1400 miles on it because according to service department I have to get my truck to learn my driving habits. I am either a bad driver or have a truck with a learning disability. When truck sits over night or going home from work it always jerks a couple times taking off. Never fails. When I first bought, every time I would stop it would do something that felt like it was still shifting down when I should be stopped and actually feel like a double stop or surge forward. May sound crazy but really is the only way I can explain. There has been a couple times when I pulled into a parking spot to where it felt like I hit a curb because of the way it would stop. I have never experienced anything like this with any vehicle I have ever had. Seems like the computer is not in sync with the transmission at all. I will make turns and vehicle don't seem to downshift

¹² <http://gmauthority.com/blog/topic/2016-sierra-8-spd-issue/>, last accessed November 29, 2018.

when it should. I truly feel like I am driving a manual shift truck without using clutch. Love the truck and hope enough people speak up so this problem can be fixed. According to my service department vehicle runs as it should. If this is the case I wish I would have kept my perfect running 2013 Ford F-150 4x4.

F. GM Was Aware of the Transmission Defect Through Trade Publications

45. Trade publications also described the transmission defect in vehicles equipped with the 8L90 and 8L45 8-speed transmissions in articles posted online. For example, an article on motortrend.com reported:

And now's about the time we get to the part where I tell you why the Silverado could do with another 10 minutes in the oven, so to speak. Simply put, test numbers aside, we were unimpressed by how the Silverado's volume 5.3-liter DFM V-8 and its eight-speed automatic performed. We're disappointed to find that GM didn't fix the old 5.3's biggest flaws: its sloppy throttle response at low speeds and its transmission's over eagerness to get to its top gear. The truck feels powerful enough once it's moving, but getting there is frustrating. "The engine has power, but it's being tag-teamed by the unholy GM duo of a lazy throttle pedal and a transmission that hates to downshift," features editor Scott Evans said. "Every time you want to move, you've got to get deep into the throttle before anything useful happens. The shifts aren't as smooth as the 10-speed automatic, either, so you notice every time it's forced to drop two gears to maintain speed up a hill."

The 6.2-liter V-8 and its 10-speed auto, which is only available as an option on the top-level Silverado LTZ and Silverado High Country, improves things immensely. The big V-8 has plenty of power on tap, and it sounds especially great when you bury your foot into the throttle. The 10-speed automatic is worlds better than the eight-speed, too. It feels modern and well sorted—basically the polar opposite of the eight-speed automatic. Its shifts are seamless and nearly unnoticeable, and it doesn't display the hunting behavior of the other transmission, either.¹³

46. An article published on thetruthaboutcars.com reported:

The 1-2 shift sounds and feels like it's going to rip the diff out of the axle, which is a common complaint about the eight-speed transmission in these vehicles. The AWD mode, which lives between 2WD and 4-High and which is basically the "4WD" in the Escalade/Denali, is laughably slow to respond to spinning rear wheels.¹⁴

¹³ Christian Seabaugh, September 14, 2018 <https://www.motortrend.com/cars/chevrolet/silverado-1500/2019/2019-chevrolet-silverado-first-test-review/>

¹⁴ Jack Baruth, January 11, 2018 <https://www.thetruthaboutcars.com/2018/01/long-term-test-2017-silverado-ltz-10000-miles/>

G. GM's Knowledge of the Transmission Defect is Demonstrated by its Technical Service Bulletins

47. Over the three-year period beginning around October 2015 and up to as recently as October 2018, GM issued a variety of additional PIs, TSBs, and other bulletins related to the same issue: GM eight-speed automatic transmissions—and specifically the GM 8L45 and 8L90—delayed and lurched, shuddered, jerked, and chunked when the automatic transmission shifted gears.

48. Whether through customer complaints, dealer complaints, or its own testing, GM's recognition of the Transmission Defect can be pinpointed to as at least as early as October 13, 2015. GM issued a preliminary information ("PI") bulletin to GM service personnel regarding issues with vehicles equipped with 8L90 transmissions. The PI, #PIP5337, entitled "Shake or Shudder on Acceleration Excessive Engine RPM Fluctuation," informed service personnel that this issue would affect 2015-2016 Cadillac Escalades and Escalade ESVs; 2015-2016 Chevrolet Silverados; and 2015-2016 GMC Sierras, Yukons, and Yukon XLs. All of these vehicles models are equipped with a GM 8L90 transmission. According to the PI, service personnel could expect customers to report, among other things, "A shudder feeling that may be described as driving over rumble strips or rough pavement." GM's recommendation to service personnel was as follows: "These conditions may be caused by an internal torque converter issue. A revised torque converter that addresses these conditions will be available soon."

49. Next, GM issued on June 28, 2016 TSB #16-NA-014, entitled "Delayed Engagement After Sitting With Engine Off." This TSB advised service personnel that drivers of a variety of GM-brand vehicles equipped with either the 8L45 or 8L90 might complain of "Vehicle delaying into gear," "Not wanting to move," "Feeling like the transmission is slipping," or "Delayed engagement followed by a harsh engagement." GM further stated, "This condition may be caused by the torque converter draining the transmission fluid back into the transmission

pan.” GM recommended that service personnel address the problem by replacing parts of the transmission and/or the transmission pan.

50. By at least May 31, 2016, GM knew that the 8L90 transmissions were wearing away prematurely, causing metal shavings and debris to build up in the transmission pan. In TSB #16-NA-175, entitled “Shake and/or Shudder During Light Throttle Acceleration, Between 48 and 104 KM/H (30 and 65 MPH) at a Steady State,” GM advised service personnel that when drivers brought in cars equipped with 8L90 transmissions and experiencing “A shudder feeling that may be described as driving over rumble strips or rough pavement,” they should flush the transmission with new fluid and “clean the pan/magnet if any metallic particles present and replace filter if debris is found.”

51. On February 27, 2017, GM issued another TSB about the Transmission Defect. In an update to TSB #16-NA-175, GM reiterated that service personnel should address complaints of “A shudder feeling that may be described as driving over rumble strips or rough pavement,” by flushing the transmission with new fluid and “clean[ing] the pan/magnet if any metallic particles present and replac[ing] filter if debris is found.”

52. On December 1, 2017, GM issued another TSB noting that the shudder defect was present in all “GM passenger cars and trucks” from model year 2015 through 2018 that were equipped with 8L45 or 8L90 transmissions.

53. In the October 11, 2018 version of TSB #16-NA-175 (version #13), GM continues to recommend that service personnel flush the transmission with new fluid and clear the transmission pan of any “metallic particles” that may have built up. GM further noted to service personnel, “Do NOT replace the torque converter or transmission assembly for this condition. Engineer reviews have proven that replacing the torque converter does not provide a long-term solution to TCC [torque converter clutch] shudder.” The bulletin further advised, “A revised service procedure will be released in Q1 of 2019. If the vehicle experiences a repeat

shudder condition, this document should be followed again.”

54. For a period of time, GM advised its service personnel that because the 8-speed automatic transmissions are “adaptive,” they needed to “learn” the drivers’ individual driving habits in order to shift smoothly and predictably. But by October 11, 2018, GM admitted to its dealers that it has not yet developed a permanent solution to the Transmission Defect that affects all passenger cars and trucks equipped with the 8L45 or 8L90 transmissions, despite having been aware of the problem since at least October 2015.

H. Despite Opportunities, GM Failed to Inform Potential Purchasers or Lessees of the Transmission Failure.

55. GM has a wide variety of options for informing potential purchasers or lessees of the Transmission Defect. For example, GM has an extensive website for consumers interested in GM-brand vehicles. Under the tab “SHOP,” consumers can select the make and model of GM-brand car they wish to investigate. The webpages displayed when the consumer clicks on a particular type of vehicle do not inform consumers of the transmission defect.

56. Within the “SHOP” tab, consumers can click on an “FAQ” tab. The FAQs contain no references to the Transmission Defect.

57. The website also contains links to the websites of GM-owned brands, such as Chevrolet, GMC, and Cadillac. These websites do not contain any warnings to consumers or information about the Transmission Defect.

58. The websites for individual GM-owned brands contain tabs for consumers to locate a dealer. These dealers also have information about the 8L45 and 8L90 transmissions, provided to them by GM. As detailed below, these dealers did not apprise Plaintiffs or similarly situated consumers about the Transmission Defect.

59. The websites for individual GM-owned brands also contain links to brochures to

vehicle protection plans.¹⁵ While these protection plans list “transmission” as one of the car parts potentially covered under a warranty, the brochures do not and did not apprise Plaintiffs or similarly situated consumers about the Transmission Defect.

60. Individual GM-owned brands, including Chevrolet and Cadillac, also have YouTube channels displaying their vehicles in action.¹⁶ These videos provide information about vehicles equipped with 8L45 and 8L90 transmissions that prospective purchasers could review. The videos on the GM-owned brand channels do not disclose any information about the Transmission Defect.

I. Plaintiffs’ Experiences

1. **Dennis Duffy**

61. Plaintiff Dennis Duffy purchased his 2016 Yukon Denali at an authorized GMC dealership—Delray Buick GMC in Delray Beach, Florida—on or about August 10, 2016. At the time of his purchase he had reviewed GMC marketing materials, and also discussed his purchase with an authorized GMC dealer.

62. Within a couple of months of purchasing his Yukon Denali, Mr. Duffy’s vehicle began to shutter intermittently in city traffic. Mr. Duffy’s vehicle also had trouble when shifting in lower gears—the vehicle would slam hard into those gears.

63. Mr. Duffy notified his dealer, who minimized his concerns, shrugging off the symptoms Duffy described were to be expected of a truck. The dealership further advised him that the transmission’s computer had to learn his driving habits, and that the symptoms of the

¹⁵ See, e.g., <https://www.chevrolet.com/content/dam/chevrolet/na/us/english/index/owners/warranty/02-pdfs/gmqd16clx70-chevy-protection-plan-brochure.pdf>

¹⁶ See, e.g., <https://www.youtube.com/user/cadillac>

Transmission Defect would resolve themselves as the transmission adapted to Mr. Duffy's driving. However, this did not resolve the Transmission Defect.

64. When the Transmission Defect did not resolve itself, on February 14, 2018, Mr. Duffy brought his vehicle in to another authorized GMC dealership—Schumacher Buick GMC, in West Palm Beach, Florida—to have the transmission examined. The service personnel at this second dealership noted that the “cause” of the transmission issue was “excessive trans shutter, #16-NA-175.” Service personnel also noted that they “follow[ed] strategy based diagnostics per PIP5504 and roadtested as decribed [sic] evaluating transmission shudder and removed exhaust to access and drop pan and inspect[ed] then replaced fluid and drove on rack for 10 minutes and repeated 3 times and replaced filter and flushed cooler lines on 3rd drop...”. However, flushing and draining the vehicle's transmission fluid this did not resolve the Transmission Defect.

65. Next, Mr. Duffy called GM to explain the trouble he was having with his transmission. A customer service representative at GM said that she would make a note of his call and have someone call him back. He never received a call back from GM.

66. After the warranty expired on Mr. Duffy's vehicle, he paid \$1238.77 out of pocket to try to repair the Transmission Defect. The symptoms remain.

67. Had GM disclosed the transmission defect in its advertising materials, on its websites, or to its dealers, Mr. Duffy would have learned of that material information, and would not have purchased his Yukon Denali, or would have paid less for it.

2. **Richard Sullivan**

68. Plaintiff Richard Sullivan purchased his 2015 Chevrolet Corvette Stingray at an authorized Chevrolet dealership--Schumacher Automotive, Inc. in Lake Park, Florida--on November 1, 2015. At the time of his purchase he had reviewed Chevrolet marketing materials, and also discussed his purchase with an authorized Chevrolet dealer.

69. A few months after purchasing his Corvette Stingray, Mr. Sullivan's vehicle began to shutter and shake while he was driving. Mr. Sullivan also found it difficult to shift after he started his car, before it had an opportunity to warm up.

70. Mr. Sullivan has given his authorized Chevrolet dealership abundant notice of the Transmission Defect. He first brought his vehicle back to the dealership where he purchased it within four months of his purchase. The first time he brought his car in to have the transmission inspected, his service advisor told him that the dealership knew about the issue he was describing. The dealership's service personnel proceeded to change his transmission fluid. However, within a few more months, the Transmission Defect began to cause the vehicle to shutter and shake again.

71. Mr. Sullivan repeatedly brought the vehicle back to the same dealership. In total, Mr. Sullivan has brought his vehicle back to the dealership as a result of the transmission defect eight times since purchasing his vehicle, including on July 8, 2016; August 23, 2016; September 18, 2017; on or around September 25, 2017; and October 10, 2018.

72. When Mr. Sullivan brought his vehicle to the dealership for servicing on July 8, 2016, the dealership noted that it "found a shudder between 30 and 65 MPH." Following PIP5337D, the dealership removed and cleaned the transmission pan. The dealership also replaced the torque converter. However, this did not resolve the Transmission Defect.

73. When Mr. Sullivan brought his vehicle to the dealership for servicing on August 23, 2016, the dealership diagnosed the issue as a problem with the valve body, which the dealership replaced. However, this did not resolve the Transmission Defect.

74. When Mr. Sullivan brought his vehicle to the dealership for servicing on September 18, 2017, the dealership stated that it did not detect a shutter, and instead told Mr. Sullivan that his car was performing to factory design.

75. When Mr. Sullivan brought his vehicle to the dealership for servicing on or around September 25, 2017, the dealership followed TSB #16-NA-175. Per that bulletin, the dealership inspected the vehicle's transmission fluid and found debris. Also per that bulletin, the dealership replaced the transmission filter and flushed the cooler and cooler lines, which help regulate the temperature of the transmission and prevent it from overheating. The dealership also advised Mr. Sullivan that he needed to drive another 200 miles to feel the effects of these transmission services. However, this did not resolve the Transmission Defect.

76. When Mr. Sullivan brought his vehicle to the dealership for servicing on October 10, 2018, the dealership followed TSB #16-NA-175. Per that bulletin, the dealership inspected the vehicle's transmission fluid and found debris. The dealership noted that the vehicle shuttered when the torque converter clutch was enabled. Also per TSB #16-NA-175, the dealership drained the transmission oil, cleaned the magnets and the fluid pan, and flushed the cooler and cooler lines. The dealership also advised Mr. Sullivan that he needed to drive another 200 miles to feel the effects of these transmission services. However, this did not resolve the Transmission Defect.

77. Had GM disclosed the Transmission Defect in its advertising materials, on its websites, or to its dealers, Mr. Sullivan would have learned of that material information, and would not have purchased his Corvette Stingray or paid the price he paid for it.

3. **Daniel Baptist**

78. Plaintiff Daniel Baptist purchased his 2015 Chevrolet Silverado at an authorized Chevrolet dealership—Victory Chevrolet in Petaluma, California--on or about August 26, 2018. At the time of his purchase he had reviewed Chevrolet marketing materials and also discussed his purchase with an authorized Chevrolet dealer.

79. Two days after purchasing his Silverado, Mr. Baptist's vehicle began to shutter harshly while he was driving, and the check engine light illuminated on his dashboard.

80. Mr. Baptist has given his authorized Chevrolet dealership notice of the Transmission Defect. On October 16, 2018, Mr. Baptist brought his Silverado back to the Platinum Chevrolet dealership where he bought his vehicle to have the transmission inspected and the check engine light investigated. On the service invoice, the dealership noted that the vehicle displayed a “P0711 Temp Sensor Code,” which is a code indicating a problem with the circuit that measures transmission fluid temperature. The dealership also noted Mr. Baptist’s concern that “Now transmission shudders through all gears.” The dealership further noted, “Road test vehicle confirmed customer’s concern.” The dealership’s service personnel proceeded to remove and replace the transmission fluid temperature sensor, flush the transmission fluid, add new transmission fluid, and perform “relearn” procedures on the vehicle’s transmission. After performing these services, the dealership noted, “Road test vehicle ok at this time.” However, the dealership also added, “Slight shudder on 3rd gear that should go away after 200 miles – if issue persist [sic] another fluid exchange required[.]” However, the vehicle has continued to shutter, and the work performed by the dealership did not resolve the Transmission Defect.

81. Had GM disclosed the Transmission Defect in its advertising materials, on its websites, or to its dealers, Mr. Baptist would have learned of that material information, and would not have purchased his Silverado or paid the price he paid for it.

4. **Benjy Tompkins**

82. Plaintiff Benjy Tompkins purchased his 2016 Chevrolet Camaro at an authorized Chevrolet dealership—Alford Motors in Louisiana--in November 2017. At the time of his purchase he had reviewed Chevrolet marketing and online materials.

83. The day that Mr. Tompkins picked up his Camaro from the Louisiana dealership, the vehicle began to vibrate, as though it were driving over uneven road. The vibration became progressively worse, especially when the vehicle was driving around 60-65 MPH.

84. Mr. Tompkins has given his authorized Chevrolet dealership notice of the Transmission Defect. On June 11, 2018, Mr. Tompkins' son brought his Camaro into the Classic Chevrolet dealership in Beaumont, Texas. The dealership's personnel noted that they test drove the vehicle to verify that the vehicle shuddered at highway speeds. The dealership also noted that it consulted TSB 16-NA-175. Ultimately, dealership personnel drained and flushed the vehicle's transmission fluid. However, this did not resolve the Transmission Defect.

85. Mr. Tompkins recently brought his Camaro in to another authorized Chevrolet dealer to attempt to fix the transmission. This dealership advised Mr. Tompkins that they couldn't repair his transmission, and that he would need to bring the car back to Classic Chevrolet for any further work on his vehicle's transmission system.

86. Had GM disclosed the Transmission Defect in its advertising materials, on its websites, or to its dealers, Mr. Tompkins would have learned of that material information, and would not have purchased his Camaro or paid the price he paid for it.

5. **John Iasiello**

87. Plaintiff John Iasiello purchased his 2017 GMC Sierra at an authorized GMC dealership—Ferguson GMC in Norman, Oklahoma—on August 15, 2017. At the time of his purchase he had reviewed GMC marketing materials and also discussed his purchase with an authorized GMC dealer.

88. Immediately after purchasing his vehicle, Mr. Iasiello's Sierra had trouble downshifting at slow highway speeds, or approximately 45 miles per hour. His vehicle also downshifted hard from 3rd to 1st gears, and he noticed a significant "flare," or increased engine RPMs, when the transmission upshifted.

89. Mr. Iasiello has given his authorized GMC dealership notice of the Transmission Defect. Since purchasing his Sierra, Mr. Iasiello has twice brought his vehicle back to the dealership where he purchased it in order to have the transmission inspected. The first time he

brought in his vehicle to have the transmission assessed, he rode with the dealership's service manager in order to road-test the transmission. The second time, he rode with the shop manager in order to road-test the transmission. Both times, the service personnel at the dealership advised him that his Sierra was driving normally. Mr. Iasiello's vehicle still suffers from the Transmission Defect, which has not been resolved.

90. Had GM disclosed the Transmission Defect in its advertising materials, on its websites, or to its dealers, Mr. Iasiello would have learned of that material information, and would not have purchased his Sierra or paid the price he paid for it.

6. **Michael Plafker**

91. Plaintiff Michael Plafker leased his 2017 GMC Sierra Denali at an authorized GMC dealership—Vanburen GMC in Garden City, NY—on September 8, 2017.

92. Shortly after leasing his vehicle, Mr. Plafker's Sierra Denali began vibrating and surging forward, particularly in low speeds, when the vehicle shifts into first or second gear. The transmission would also clunk.

93. Mr. Plafker has given his authorized GMC dealership notice of the Transmission Defect. Since leasing his Sierra Denali, Mr. Plafker has brought his vehicle back to an authorized GMC dealership to have the transmission inspected. He first brought his vehicle to Van Buren Buick GMC in Garden City Park, New York, where he asked service personnel to look into his transmission issue, and further asked whether there was a service bulletin that might address the problem. Dealership personnel drove Mr. Plafker's Sierra Denali and advised him that the vehicle was driving normally. Mr. Plafker also raised the issue of the transmission when he next brought his vehicle to the dealership for an oil change, but the dealership did not offer any solutions. Mr. Plafker's vehicle still suffers from the Transmission Defect, which has not been resolved.

7. *Dennis Speerly*

94. Plaintiff Dennis Speerly purchased his 2017 GMC Canyon at an authorized Chevrolet dealership—Dekalb Sycamore Chevrolet in Sycamore, IL—on or around April 14, 2017.

95. Approximately 4 months after purchasing his vehicle, Mr. Speerly's GMC Canyon began vibrating, shuttering, and surging, especially when the vehicle was driven at about 50 to 60 MPH. The vehicle would also make a knocking noise when Mr. Speerly began to drive after the engine had been off. The vehicle also hesitated upon acceleration, as though it were stuck in gear.

96. Mr. Speerly has given his authorized Chevrolet dealership notice of the Transmission Defect. On January 13, 2018, Mr. Speerly brought his vehicle back to the authorized dealership where he purchased it in order to have the transmission inspected. Upon assessing Mr. Speerly's vehicle, the dealership noted that it "verified" Mr. Speerly's concern, and that service personnel consulted TSB 16-NA-175. Pursuant to that bulletin, the dealership flushed and drained the transmission fluid in Mr. Speerly's Canyon. Dealership personnel also noted that they removed the transmission pan and changed the filter. However, this did not resolve the Transmission Defect.

97. Mr. Speerly brought his vehicle back to Dekalb Sycamore Chevrolet to have his transmission inspected again on September 4, 2018. Dealership personnel noted that they could confirm that the transmission vibrated, and that it "feels like TCC [torque converter clutch] shudder." Dealership personnel also noted that when they "enable and disable TCC," the "fault goes away." Dealership personnel then replaced the torque converter and the filter. However, this did not resolve the Transmission Defect.

98. Mr. Speerly brought his vehicle back to Dekalb Sycamore Chevrolet to have his transmission inspected again on December 3, 2018. Dealership personnel noted that they

“Inspect[ed] for vibration starting at 20 MPH, can feel it in shift knob.” Personnel further noted that the vehicle’s computers did not display any diagnosis codes. Finally, personnel noted, “No repair available until quarter 1 in 2019.” This also did not resolve the Transmission Defect.

CLASS ALLEGATIONS

99. Plaintiffs re-allege and incorporate by reference herein all of the allegations contained in paragraphs 1 through 98.

100. Pursuant to the Fed. R. Civ. P. 23(b)(2) and (b)(3), Plaintiffs assert six state-wide classes:

- a) California Class: All residents of California who purchased or leased a GM passenger vehicle equipped with a GM 8L45 or 8L90 transmission from December 18, 2014 to the present.
- b) Florida Class: All residents of Florida who purchased or leased a GM passenger vehicle equipped with a GM 8L45 or 8L90 transmission from December 18, 2013 to the present.
- c) Illinois Class: All resides of Illinois who purchased or leased a GM passenger vehicle with a GM 8L45 or 8L90 transmission from December 18, 2013 to the present.
- d) New York Class: All residents of New York who purchased or leased a GM passenger vehicle equipped with a GM 8L45 or 8L90 transmission from December 18, 2014 to the Present.
- e) Oklahoma Class: All residents of Oklahoma who purchased or leased a GM passenger vehicle equipped with a GM 8L45 or 8L90 transmission from December 18, 2014 to the present.
- f) Texas Class: All residents of Texas who purchased or leased a GM passenger vehicle equipped with a GM 8L45 or 8L90 transmission from December 18, 2014 to the present.

101. Excluded from the Classes are the Defendant, any entity in which Defendant has a controlling interest, and Defendant's officers, directors, legal representatives, successors, subsidiaries, and assigns. Also excluded from the Classes is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

102. This action has been brought and may properly be maintained as a class action as it satisfies the numerosity, commonality, typicality, adequacy, and superiority requirements. Plaintiffs seek to represent ascertainable Classes, as determining inclusion in each class can be done through the Defendant's own records, or that of Defendant's dealers.

103. Plaintiffs reserve the right to amend the Class definitions if discovery and further investigation reveal that the Classes should be expanded, divided into subclasses, or modified in any other way.

104. Although the precise number of Class members is unknown and can only be determined through appropriate discovery, Plaintiffs believe, and on that basis allege, that the proposed Classes are so numerous that joinder of all members would be impracticable as Defendant has sold hundreds of thousands of affected vehicles nationwide during the proposed class periods.

105. Questions of law and fact common to the Plaintiff Classes exist that predominate over questions affecting only individual members, including *inter alia*:

- a. Whether the GM 8L45 and 8L90 transmissions suffer from a common defect;
- b. When Defendant knew of the transmission defect;
- c. Whether Defendant omitted material facts about the transmission defect at the time of sale;
- d. Whether the transmission can be fixed or must be replaced;
- e. Whether Defendant breached the implied warranty of merchantability by selling vehicles equipped with transmissions that created uncomfortable and unsafe driving conditions

and that eroded prematurely due to the defect;

f. Whether the Defendant's conduct was unconscionable, nullifying durational limits in the express warranties; and

g. Whether the Defendant's conduct was purposefully or recklessly indifferent to class members purchasing or leasing vehicles equipped with GM 8L45 or 8L90 transmissions.

106. Plaintiffs are members of the putative Classes. The claims asserted by the Plaintiffs in this action are typical of the claims of the members of the putative Classes, as the claims arise from the same course of conduct by the Defendant and the relief sought is common.

107. Plaintiffs will fairly and adequately represent and protect the interests of the members of the putative Classes, as their interests coincide with, and are not antagonistic to, the other Class members. Plaintiffs have retained counsel competent and experienced in both consumer protection and class action litigation.

108. Certification of the Classes are appropriate pursuant to Fed. R. Civ. P. 23(b)(3) because questions of law or fact common to the respective members of the Classes predominate over questions of law or fact affecting only individual members. This predominance makes class litigation superior to any other method available for the fair and efficient adjudication of these claims including consistency of adjudications. Absent a class action it would be highly unlikely that the members of the Classes would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed the expected recovery.

109. A class action is a superior method for the adjudication of the controversy in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense, and the burden of the courts that individual actions would create.

110. The benefits of proceeding as a class action, including providing a method for

obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of the class action.

111. Plaintiffs also seek class certification under Fed. R. 23(b)(2) to hold that the warranty limitation on the express and implied warranty is unconscionable in light of Defendant's knowledge of the latent defect, and the likelihood of it to continue to manifest after the 5 year/60,000 mile limitation powertrain warranty. A class-wide ruling striking that limitation would allow class members to obtain additional relief from Defendant resulting from the Transmission Defect.

CAUSES OF ACTION

COUNT I

**VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES
ACT - Florida Stat. §§ 501.201-.213.**

(By Plaintiffs Sullivan and Duffy on Behalf of All Florida Purchasers)

112. Florida Plaintiffs and the Florida Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

113. GM's business acts and practices alleged herein constitute unfair, unconscionable and/or deceptive methods, acts or practices under the Florida Deceptive and Unfair Trade Practices Act, § 501.201, *et seq.*, Florida Statutes ("FDUTPA").

114. At all relevant times, Florida Plaintiffs and all members of the Florida Class were "consumers" within the meaning of the FDUTPA. § 501.203(7), Fla. Stat.

115. GM's conduct, as set forth herein, occurred in the conduct of "trade or commerce" within the meaning of the FDUTPA. § 501.203(8), Fla. Stat.

116. The practices of GM, described above, violate the FDUTPA for, *inter alia*, one or more of the following reasons:

- a. GM represented that goods or services have sponsorship, approval, characteristics, uses, and benefits that they do not have;
- b. GM provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements, technical data and other information to consumers regarding the performance, reliability, quality and nature of the 8L45 and 8L90 transmissions;
- c. GM represented that goods or services were of a particular standard, quality, or grade, when they were of another;
- d. GM engaged in unconscionable commercial practices in failing to reveal material facts and information about the 8L45 and 8L90 transmissions, which

- did, or tended to, mislead Florida Plaintiffs and the Florida Class about facts that could not reasonably be known by the consumer;
- e. GM failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;
 - f. GM caused Florida Plaintiffs and the Florida Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations, and/or remedies by and through its conduct;
 - g. GM failed to reveal material facts to Florida Plaintiffs and the Florida Class with the intent that Florida Plaintiffs and the Florida Class members rely upon the omission;
 - h. GM made material representations and statements of fact to Florida Plaintiffs and the Florida Class members that resulted in Florida Plaintiffs and the Florida Class reasonably believing the represented or suggested state of affairs to be other than what they actually were;
 - i. GM intended that Florida Plaintiffs and the other members of the Florida Class members rely on their misrepresentations and omissions, so that Florida Plaintiffs and other Florida Class members would purchase vehicles equipped with the 8L45 and 8L90 transmissions.

117. GM's actions impact the public interest because Florida Plaintiffs and members of the Florida Class were injured in exactly the same way as thousands of others purchasing and/or leasing the vehicles with 8L45 and 8L90 transmissions as a result of and pursuant to GM's generalized course of deception.

118. Had Florida Plaintiffs and other members of the Florida Class known of the defective nature of the 8L45 and 8L90 transmissions, they would not have purchased or leased vehicles equipped with the 8L45 and 8L90 transmissions or would have paid less for them.

119. The foregoing acts, omissions and practices proximately caused Florida Plaintiffs and the other members of the Florida Class to suffer actual damages in the form of, *inter alia*, overpaying for the vehicles, as well as diminution in value of the vehicles equipped with 8L45 and 8L90 transmissions, and they are entitled to recover such damages, together with all other appropriate damages, attorneys' fees and costs of suit.

COUNT II

BREACH OF EXPRESS WARRANTY

Fla. § 672.313

(By Plaintiffs Sullivan and Duffy on Behalf of all Florida Purchasers)

120. Florida Plaintiffs and the Florida Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

121. As an express warrantor and manufacturer and merchant, GM had certain obligations under § 672.313, Florida Statutes, to conform the 8L45 and 8L90 transmissions to the express warranties.

122. When Florida Plaintiffs and the members of the Florida Class purchased and/or leased their vehicles equipped with 8L45 or 8L90 transmissions (either as new vehicles or as used vehicles with remaining warranty coverage), GM expressly warranted under its Warranty that it would correct any correct any vehicle defect found within the warranty period, and cover all towing, parts, and labor needed to correct the defect.

123. The defect at issue in this litigation was present at the time vehicles equipped with the 8L45 or 8L90 transmissions were sold and leased to Florida Plaintiffs and members of the Florida Class.

124. GM breached its express warranties (and continues to breach these express warranties) because it did not (and has not) corrected the defect with the 8L45 and 8L90 transmissions.

125. Pursuant to its express warranties, GM was obligated to correct the defects in the

8L45 and 8L90 transmissions in the vehicles owned or leased by the Florida Plaintiffs and the Florida Class members.

126. Although GM was obligated to correct the defect with the 8L45 and 8L90 transmissions, none of the purported, attempted fixes to the emissions system are adequate under the terms of the Warranty, as they did not cure the defect.

127. GM and its agent dealers have failed and refused to conform the 8L45 and 8L90 transmissions to the express warranties. GM's conduct, as discussed throughout this Complaint, has voided any attempt on its part to disclaim liability for its actions.

128. Florida Plaintiffs and the members of the Florida Class have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of GM or by operation of law in light of GM's conduct as described throughout this Complaint.

129. GM received timely notice regarding the Transmission Defect when the Florida Plaintiffs brought their vehicles into service at authorized dealerships. Plaintiff Duffy also called GM to provide notice of breach. GM also received notice through other customer complaints described herein. Notwithstanding such notice, GM has failed and refused to offer an effective remedy.

130. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by GM to limit its express warranties in a manner that would enforce the 5 year/60,000 mile limit would be unconscionable. GM's warranties were adhesive, and did not permit negotiation, or the inclusion of design defects. GM possessed superior knowledge of the defects in the 8L45 and 8L90 transmissions prior to offering the vehicles equipped with these transmissions for sale. GM concealed and did not disclose this defect, and GM did not remedy the defect prior to sale (or afterward). Any effort to otherwise limit liability for the design defect is null and void.

131. Further, because GM has not been able remedy the Transmission Defect, the limitation on remedies included in the warranty fails its essential purpose and is null and void.

132. Florida Plaintiffs and the Florida Class members have suffered damages caused by GM's breach of its express warranties and are entitled to recover damages, including but not limited to diminution of value.

COUNT III

BREACH OF IMPLIED WARRANTY (By Plaintiffs Sullivan and Duffy on Behalf of All Florida Purchasers)

133. Florida Plaintiffs and the Florida Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

134. GM is and was at all relevant times a merchant with respect to vehicles equipped with the 8L45 and 8L90 transmissions. GM directly sold and marketed vehicles equipped with the 8L45 and 8L90 transmissions to customers through authorized dealers, like those from whom Plaintiffs and the California Class members bought or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. GM knew that the vehicles equipped with 8L45 and 8L90 transmissions would and did pass unchanged from the authorized dealers to Florida Plaintiffs and the Florida Class members, with no modification to the transmission.

135. A warranty that vehicles equipped with the 8L45 and 8L90 transmissions were in merchantable quality and condition is implied by law pursuant to Sec. 672.314 of the Florida Statutes.

136. GM impliedly warranted that vehicles equipped with the 8L45 and 8L90 transmissions were of good and merchantable condition and quality – fit and safe for their ordinary intended use, namely providing reliable transportation.

137. Vehicles equipped with the 8L45 and 8L90 transmissions were defective at the time they left the possession of GM. GM knew of this defect at the time these transactions occurred.

Thus, vehicles equipped with the 8L45 and 8L90 transmissions, when sold and at all times thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.

138. By virtue of the conduct described herein and throughout this Complaint, GM breached the implied warranty of merchantability.

139. Florida Plaintiffs and the Florida Class members have been damaged as a direct and proximate result of GM's breach of the implied warranty.

140. Florida Plaintiffs and the Florida Class members have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of GM or by operation of law in light of GM's unconscionable conduct.

141. GM received timely notice regarding the problems at issue in this litigation through presentation of Plaintiffs' vehicles at GM technicians for warranty repair work. Notwithstanding such notice, GM has failed and refused to offer an effective remedy.

142. Florida Plaintiffs and the members of the Florida class have had sufficient dealings with either GM or its agents (authorized GM repair facilities) to establish privity of contract. Notwithstanding this, privity is not required in this case because Florida Plaintiffs and the Florida Class members are intended third-party beneficiaries of contracts between GM and its dealers; specifically, they are intended beneficiaries of GM's implied warranties. The dealers were not intended to be the ultimate consumers of the defective transmissions and have no rights under the warranty agreements provided with the transmissions. The warranty agreements were designed for and intended to benefit the ultimate consumers only.

143. As a direct and proximate result of GM's breach of warranties, Florida Plaintiffs and the Florida Class members were caused to suffer economic damage, including loss attributable to the diminished value of their vehicles equipped with 8L45 or 8L90 transmissions, as well as the monies spent and to be spent to repair and/or replace their vehicles.

COUNT IV

**BREACH OF EXPRESS WARRANTY, CALIFORNIA COMMERCIAL CODE § 2313
(By Plaintiff Baptist for All California Purchasers)**

144. Plaintiffs re-allege and incorporate by reference herein all of the allegations contained in paragraphs 1 through 98.

145. As an express warrantor and manufacturer and merchant, GM had certain obligations under California Commercial Code § 2313 to conform the 8L45 and 8L90 transmissions to the express warranties.

146. When California Plaintiff and the members of the California Class purchased and/or leased their vehicles equipped with 8L45 or 8L90 transmissions (either as new vehicles or as used vehicles with remaining warranty coverage), GM expressly warranted under its Warranty that it would correct any correct any vehicle defect found within the warranty period, and cover all towing, parts, and labor needed to correct the defect.

147. The Transmission Defect at issue in this litigation was present at the time vehicles equipped with 8L45 or 8L90 transmissions were sold and leased to California Plaintiff and members of the California Class.

148. GM breached its express warranties (and continues to breach these express warranties) because it did not and has not corrected the Transmission Defect affected vehicles equipped with 8L45 or 8L90 transmissions.

149. Pursuant to its express warranties, GM was obligated to correct any defect in the 8L45 and 8L90 transmissions in the vehicles owned or leased by the California Plaintiff and the California Class members.

150. Although GM was obligated to correct the defect with the 8L45 and 8L90 transmissions, none of the purported, attempted fixes to the Transmission Defect are adequate under the terms of the Warranty, as they did not cure the Defect.

151. GM and its agent dealers have failed and refused to conform the 8L45 and 8L90 transmissions to the express warranties. GM's conduct, as discussed throughout this Complaint, has voided any attempt on its part to disclaim liability for its actions.

152. California Plaintiff and the members of the California Class have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of GM or by operation of law in light of GM's conduct as described throughout this Complaint.

153. GM received timely notice regarding the problems from Plaintiff Baptist when he brought his vehicle to his dealership. GM also received notice through complaints made by other consumers. Notwithstanding such notice, GM has failed and refused to offer an effective remedy.

154. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by GM to limit its express warranties in a manner that would enforce the 5 year/60,000 mile limit would be unconscionable. GM's warranties were adhesive, and did not permit negotiation, or the inclusion of design defects. GM possessed superior knowledge of the defects in the 8L45 and 8L90 transmissions prior to offering the vehicles equipped with these transmissions for sale. GM concealed and did not disclose this defect, and GM did not remedy the defect prior to sale (or afterward). Any effort to otherwise limit liability for the design defect is null and void.

155. Further, because GM has not been able remedy the Transmission Defect, the limitation on remedies included in the warranty fails its essential purpose and is null and void.

156. California Plaintiff and the California Class members have suffered damages caused by GM's breach of its express warranties and are entitled to recover damages, including but not limited to diminution of value.

COUNT V

VIOLATION OF UNFAIR COMPETITION LAW
Cal. Bus. & Prof. Code - § 17200, *et seq.*
(By Plaintiff Baptist on Behalf of All California Purchasers)

157. Plaintiffs re-allege and incorporate by reference herein all of the allegations contained in paragraphs 1 through 98.

158. California Business and Professions Code § 17200, *et seq.* prohibits “any unlawful, unfair or fraudulent business act or practice.” CAL. BUS. & PROF. CODE § 17200. GM has engaged in unlawful, fraudulent, and unfair business acts and practices in violation of this Law.

159. GM has violated the unlawful prong of § 17200 by its violations of the various warranty statutes, as set forth in Paras. 1-98 and Counts IV and VI.

160. GM has violated the fraudulent prong of § 17200 because the omissions regarding the defective nature of the 8L45 and 8L90 transmissions, as set forth in this Complaint, were likely to deceive a reasonable consumer, and the information would be material to a reasonable consumer.

161. GM has violated the unfair prong of § 17200 because the acts and practices set forth in the Complaint, including the manufacture and sale of the defective 8L45 and 8L90 transmissions, GM’s failure to adequately disclose and remedy that defect, and GM’s misrepresentations regarding the defective nature of the 8L45 and 8L90 transmissions offend established public policy, and because the harm these acts and practices cause to consumers greatly outweighs any benefits associated with those practices. GM’s conduct has also impaired competition within the heavy duty on-highway vehicles market and has prevented California Plaintiffs and the California Class from making fully informed decisions about whether to purchase or lease vehicles equipped with 8L45 and 8L90 transmissions and/or the price to be paid to purchase or lease those vehicles.

162. California Plaintiffs have standing to pursue this claim on behalf of the California Class because they have suffered an injury in fact, including the loss of money or property, as a result of and in reliance on GM's unfair, unlawful, and deceptive practices. As set forth above regarding California Plaintiffs, had GM disclosed the defect with the 8L45 and 8L90 transmissions prior to their purchases, they would not have purchased vehicles equipped with 8L45 and 8L90 transmissions or not have paid as much for those vehicles. In addition, the California Plaintiffs have expended money related to the Transmission Defect and have suffered a diminution in value of their vehicles.

163. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of GM's business. GM's wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated in the State of California

164. California Plaintiffs and the California Class request that this Court enter such orders or judgments as may be necessary to enjoin GM from continuing its unfair, unlawful, and/or deceptive practices and to restore to California Plaintiffs and the California Class any money GM acquired by unfair competition, including restitution and/or restitutionary disgorgement, as provided in California Business and Professions Code § 17203 and California Civil Code § 3345, and for such other relief set forth below.

COUNT VI

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (By Plaintiff Baptist on Behalf of All California Purchasers)

165. California Plaintiff and the California Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

166. GM is and was at all relevant times a merchant with respect to vehicles equipped with the 8L45 and 8L90 transmissions. GM directly sold and marketed vehicles equipped with the 8L45 and 8L90 transmissions to customers through authorized dealers, like those from whom

Plaintiffs and the California Class members bought or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. GM knew that the vehicles equipped with 8L45 and 8L90 transmissions would and did pass unchanged from the authorized dealers to California Plaintiff and the California Class members, with no modification to the transmission.

167. A warranty that vehicles equipped with the 8L45 and 8L90 transmissions were in merchantable quality and condition is implied by law pursuant to California Commercial Code § 2314.

168. GM impliedly warranted that vehicles equipped with the 8L45 and 8L90 transmissions were of good and merchantable condition and quality – fit and safe for their ordinary intended use, namely providing reliable transportation.

169. Vehicles equipped with the 8L45 and 8L90 transmissions were defective at the time they left the possession of GM. GM knew of this defect at the time these transactions occurred. Thus, vehicles equipped with the 8L45 and 8L90 transmissions, when sold and at all times thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.

170. By virtue of the conduct described herein and throughout this Complaint, GM breached the implied warranty of merchantability.

171. California Plaintiff and the California Class members have been damaged as a direct and proximate result of GM's breach of the implied warranty.

172. California Plaintiff and the California Class members have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of GM or by operation of law in light of GM's unconscionable conduct.

173. GM received timely notice regarding the problems at issue in this litigation through presentations of Plaintiff Baptist's vehicle at his dealer for repair. GM also received noticed of

breach of warranty through the numerous additional complaints noted in Paras. 1-98 above, and additional comments made in online forums, to the NHTSA, to dealers, or directly to GM. Notwithstanding such notice, GM has failed and refused to offer an effective remedy.

174. Plaintiff Baptist and the California Class members have had sufficient dealings with either GM or its agents (authorized GM repair facilities) to establish privity of contract. Notwithstanding this, privity is not required in this case because California Plaintiff and the California Class members are intended third-party beneficiaries of contracts between GM and its dealers; specifically, they are intended beneficiaries of GM's implied warranties. The dealers were not intended to be the ultimate consumers of the 8L45 and 8L90 transmissions and have no rights under the warranty agreements provided with vehicles equipped with the transmissions. The warranty agreements were designed for and intended to benefit the ultimate consumers only.

175. As a direct and proximate result of GM's breach of the implied warranty of merchantability, California Plaintiff and the California Class members were caused to suffer economic damage, including loss attributable to the diminished value of their vehicles equipped with 8L45 or 8L90 transmissions, as well as the monies spent and to be spent to repair and/or replace their vehicles.

COUNT VII

BREACH OF EXPRESS WARRANTY, 810 Ill. Comp. Stat. 5/2-313 (By Plaintiff Speerly on Behalf of All Illinois Purchasers)

176. Illinois Plaintiff and the Illinois Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

177. As an express warrantor and manufacturer and merchant, GM had certain obligations under 810 Ill. Comp. Stat. 5/2-313 to conform the 8L45 and 8L90 transmissions to the express warranties.

178. When Illinois Plaintiff and the members of the Illinois Class purchased and/or leased their vehicles with 8L45 or 8L90 transmissions (either as new vehicles or as used vehicles with remaining warranty coverage), GM expressly warranted under its Warranty that it would correct any correct any vehicle defect found within the warranty period, and cover all towing, parts, and labor needed to correct the defect.

179. The Transmission Defect at issue in this litigation was present at the time vehicles equipped with 8L45 or 8L90 transmissions were sold and leased to Illinois Plaintiff and members of the Illinois Class.

180. GM breached its express warranties (and continues to breach these express warranties) because it did not and has not corrected the defect with the 8L45 and 8L90 transmissions.

181. Pursuant to its express warranties, GM was obligated to correct the defect in the 8L45 and 8L90 transmissions in the vehicles owned or leased by the Illinois Plaintiff and the Illinois Class members.

182. Although GM was obligated to correct the defect with the 8L45 and 8L90 transmissions, none of the purported, attempted fixes to the transmissions are adequate under the terms of either the Warranty, as they did not cure the defect.

183. GM and its agent dealers have failed and refused to conform the 8L45 and 8L90 transmissions to the express warranties. GM's conduct, as discussed throughout this Complaint, has voided any attempt on its part to disclaim liability for its actions.

184. Illinois Plaintiff and the members of the Illinois Class have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of GM or by operation of law in light of GM's conduct as described throughout this Complaint.

185. GM received timely notice regarding the problems at issue in this litigation and, notwithstanding such notice, GM has failed and refused to offer an effective remedy.

186. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by GM to limit its express warranties in a manner that would exclude or limit coverage for the design defect in the 8L45 and 8L90 transmissions would be unconscionable. GM's warranties were adhesive, and did not permit negotiation, or the inclusion of defects. GM possessed superior knowledge of the Transmission Defect prior to offering vehicles equipped with the 8L45 or 8L90 transmissions for sale. GM concealed and did not disclose this defect, and GM did not remedy the defect prior to sale (or afterward). Any effort to otherwise limit liability for the design defect is null and void.

187. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by GM to limit its express warranties in a manner that would result in replacing parts into its 8L45 and 8L90 transmissions causes the warranty to fail its essential purpose and is null and void.

188. Illinois Plaintiff and the Illinois Class members have suffered damages caused by GM's breach of its express warranties and are entitled to recover damages, including but not limited to diminution of value.

COUNT VIII

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY, 801 Ill. Comp. Stat. 5/2-314 and 5/2A-212. (By Plaintiff Speerly on Behalf of All Illinois Purchasers)

189. Illinois Plaintiff and the Illinois Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

190. GM is and was at all relevant times a merchant with respect to vehicles equipped with the 8L45 and 8L90 transmissions. GM directly sold and marketed vehicles equipped with the 8L45 and 8L90 transmissions to customers through authorized dealers, like those from whom

Plaintiffs and the Illinois Class members bought or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. GM knew that the vehicles equipped with 8L45 and 8L90 transmissions would and did pass unchanged from the authorized dealers to Illinois Plaintiff and the Illinois Class members, with no modification to the transmission.

191. A warranty that vehicles equipped with the 8L45 and 8L90 transmissions were in merchantable quality and condition is implied by law pursuant to 801 Ill. Comp. Stat. 5/2-314 and 5/2A-212.

192. GM impliedly warranted that vehicles equipped with the 8L45 and 8L90 transmissions were of good and merchantable condition and quality – fit and safe for their ordinary intended use, namely providing reliable transportation.

193. Vehicles equipped with the 8L45 and 8L90 transmissions were defective at the time they left the possession of GM. GM knew of this defect at the time these transactions occurred. Thus, vehicles equipped with the 8L45 and 8L90 transmissions, when sold and at all times thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.

194. By virtue of the conduct described herein and throughout this Complaint, GM breached the implied warranty of merchantability.

195. Illinois Plaintiff and the Illinois Class members have been damaged as a direct and proximate result of GM's breach of the implied warranty.

196. Illinois Plaintiff and the Illinois Class members have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of GM or by operation of law in light of GM's unconscionable conduct.

197. GM received timely notice regarding the problems at issue in this litigation through presentations of plaintiffs' vehicles at GM technicians for warranty repair work. Notwithstanding such notice, GM has failed and refused to offer an effective remedy.

198. Illinois Plaintiff and the Illinois Class members have had sufficient dealings with either GM or its agents (authorized GM repair facilities) to establish privity of contract. Notwithstanding this, privity is not required in this case because Illinois Plaintiff and the Illinois Class members are intended third-party beneficiaries of contracts between GM and its dealers; specifically, they are intended beneficiaries of GM's implied warranties. The dealers were not intended to be the ultimate consumers of the 8L45 and 8L90 transmissions and have no rights under the warranty agreements provided with the vehicles equipped with the 8L45 or 8L90 transmissions. The warranty agreements were designed for and intended to benefit the ultimate consumers only.

199. As a direct and proximate result of GM's breach of warranties, Illinois Plaintiff and the Illinois Class members were caused to suffer economic damage, including loss attributable to the diminished value of their vehicles equipped with 8L45 or 8L90 transmissions, as well as the monies spent and to be spent to repair and/or replace their vehicles.

COUNT IX

**VIOLATION OF ILLINOIS CONSUMER FRAUD AND UNIFORM DECEPTIVE
TRADE PRACTICES ACTS,
815 ILCS 505/2 and 815 ILCS 510/2.
(By Plaintiff Speerly on Behalf of All Illinois Purchasers)**

200. Illinois Plaintiff and the Illinois Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

201. The Illinois Plaintiff and the Illinois Class members are consumers under the Illinois Consumer Fraud Act and Defendant is a "person" within the meaning of 815 Ill. Comp. Stat. 510/1(5).

202. GM engaged, and continues to engage, in the wrongful conduct alleged herein in the course of trade and commerce, as defined in 815 ILCS 505/2 and 815 ILCS 510/2.

203. 815 ILCS 505/2 (Illinois Consumer Fraud Act) prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act,” approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.”

204. 815 ILCS 510/2 provides that a “person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation,” the person does any of the following: “(2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services; ... (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have...; (7) represents that goods or services are of a particular standard, quality, or grade... if they are not; ... [and] (12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.”

205. GM represented that goods or services have sponsorship, approval, characteristics, uses, and benefits that they do not have.

206. GM provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements, technical data and other information to consumers regarding the performance, reliability, quality and nature of the 8L45 and 8L90 transmissions.

207. GM represented that goods or services were of a particular standard, quality, or grade, when they were of another.

208. GM engaged in unconscionable commercial practices in failing to reveal material facts and information about the 8L45 and 8L90 transmissions, which did, or tended to, mislead Illinois Plaintiff and the Illinois Class about facts that could not reasonably be known by the consumer.

209. GM failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner.

210. GM caused Illinois Plaintiff and the Illinois Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations, and/or remedies by and through its conduct.

211. GM deliberately withheld material facts to Illinois Plaintiff and the Illinois Class with the intent that Illinois Plaintiff and the Illinois Class members rely upon the omission.

212. GM made material representations and statements of fact to Illinois Plaintiff and the Illinois Class members that resulted in Illinois Plaintiff and the Illinois Class reasonably believing the represented or suggested state of affairs to be other than what they actually were.

213. GM intended that Illinois Plaintiff and the other members of the Illinois Class members rely on their misrepresentations and omissions, so that Illinois Plaintiff and other Illinois Class members would purchase vehicles equipped with 8L45 or 8L90 transmissions.

214. Had GM disclosed the omitted material, Illinois Plaintiff and other members of the Illinois Class would not have purchased or leased vehicles equipped with 8L45 or 8L90 transmissions or would have paid less for them.

215. The foregoing acts, omissions and practices proximately caused Illinois Plaintiff and the other members of the Illinois Class to suffer actual damages in the form of, inter alia, diminution in value of the vehicles equipped with 8L45 or 8L90 transmissions.

216. GM's conduct was knowing and intentional and with malice and demonstrated a complete lack of care and recklessness and was in conscious disregard for the rights of Illinois Plaintiff and the Illinois Class Members.

217. As a result of this wrongful conduct, Illinois Plaintiff and the Illinois Class have been damaged in an amount to be proven at trial, including, but not limited to, actual damages, punitive damages, equitable relief, diminution of value, and reasonable attorneys' fees.

218. GM's conduct as aforesaid was unfair as offensive to public policy, unscrupulous, unethical and immoral, and caused substantial injury to consumers.

219. As a direct and proximate result of GM's deceptive, misleading, unfair, or unconscionable practices, as set forth above, Plaintiffs and the other Class members sustained substantial and ascertainable damages in an amount to be determined at trial, including interest on all liquidated sums.

COUNT X

BREACH OF EXPRESS WARRANTY, N.Y. U.C.C. § 2-313 (By Plaintiff Plafker on Behalf of All New York Purchasers)

220. New York Plaintiff and the New York Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

221. As an express warrantor and manufacturer and merchant, GM had certain obligations under N.Y. U.C.C. § 2-313 to conform the 8L45 and 8L90 transmissions to the express warranties.

222. When New York Plaintiff and the members of the New York Class purchased and/or leased their vehicles with 8L45 and 8L90 transmissions (either as new vehicles or as used vehicles with remaining warranty coverage), GM expressly warranted under its Warranty that it would correct any correct any vehicle defect found within the warranty period, and cover all towing, parts, and labor needed to correct the defect.

223. The defect at issue in this litigation was present at the time vehicles equipped with 8L45 or 8L90 transmissions were sold and leased to New York Plaintiff and members of the New York Class.

224. GM breached its express warranties (and continues to breach these express warranties) because it did not (and has not) corrected the defect with the 8L45 and 8L90 transmissions.

225. Pursuant to its express warranties, GM was obligated to correct any defect in the 8L45 and 8L90 transmissions in the vehicles owned or leased by the New York Plaintiff and the New York Class members.

226. Although GM was obligated to correct the defect with the 8L45 and 8L90 transmissions, none of the purported, attempted fixes to the transmissions are adequate under the terms of the Warranty, as they did not cure the defect.

227. GM and its agent dealers have failed and refused to conform the 8L45 and 8L90 transmissions to the express warranties. GM's conduct, as discussed throughout this Complaint, has voided any attempt on its part to disclaim liability for its actions.

228. New York Plaintiff and the members of the New York Class have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of GM or by operation of law in light of GM's conduct as described throughout this Complaint.

229. GM received timely notice regarding the problems at issue in this litigation and, notwithstanding such notice, GM has failed and refused to offer an effective remedy.

230. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by GM to limit its express warranties in a manner that would exclude or limit coverage for the defect in the 8L45 and 8L90 transmissions would be unconscionable. GM's warranties were adhesive, and did not permit negotiation, or the inclusion of defects. GM possessed superior

knowledge of the defect in its transmissions prior to offering vehicles equipped with the 8L45 or 8L90 transmissions for sale. GM concealed and did not disclose this defect, and GM did not remedy the defect prior to sale (or afterward). Any effort to otherwise limit liability for the design defect is null and void.

231. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by GM to limit its express warranties in a manner that would result in replacing parts into its defective 8L45 and 8L90 transmissions causes the warranty to fail its essential purpose and is null and void.

232. New York Plaintiff and the New York Class members have suffered damages caused by GM's breach of its express warranties and are entitled to recover damages, including but not limited to diminution of value.

COUNT XI

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

N.Y. U.C.C. § 2-314.

(By Plaintiff Plafker on Behalf of All New York Purchasers)

233. New York Plaintiff and the New York Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

234. GM is and was at all relevant times a merchant with respect to vehicles equipped with the 8L45 and 8L90 transmissions. GM directly sold and marketed vehicles equipped with the 8L45 and 8L90 transmissions to customers through authorized dealers, like those from whom Plaintiffs and the New York Class members bought or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. GM knew that the vehicles equipped with 8L45 and 8L90 transmissions would and did pass unchanged from the authorized dealers to New York Plaintiff and the New York Class members, with no modification to the transmission.

235. A warranty that vehicles equipped with the 8L45 and 8L90 transmissions were in merchantable quality and condition is implied by law pursuant to N.Y. U.C.C. § 2-314.

236. GM impliedly warranted that vehicles equipped with the 8L45 and 8L90 transmissions were of good and merchantable condition and quality – fit and safe for their ordinary intended use, namely providing reliable transportation.

237. Vehicles equipped with the 8L45 and 8L90 transmissions were defective at the time they left the possession of GM. GM knew of this defect at the time these transactions occurred. Thus, vehicles equipped with the 8L45 and 8L90 transmissions, when sold and at all times thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.

238. By virtue of the conduct described herein and throughout this Complaint, GM breached the implied warranty of merchantability.

239. New York Plaintiff and the New York Class members have been damaged as a direct and proximate result of GM's breach of the implied warranty.

240. New York Plaintiff and the New York Class members have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of GM or by operation of law in light of GM's unconscionable conduct.

241. GM received timely notice regarding the problems at issue in this litigation through presentations of Plaintiff Plafker's vehicle at his dealer for repair. GM also received notice of breach of warranty through the numerous additional complaints noted in Paras. 1-91 above, and additional comments made in online forums, to the NHTSA, to dealers, or directly to GM. Notwithstanding such notice, GM has failed and refused to offer an effective remedy.

242. Plaintiff Plafker and the New York Class members have had sufficient dealings with either GM or its agents (authorized GM repair facilities) to establish privity of contract.

Notwithstanding this, privity is not required in this case because New York Plaintiff and the New York Class members are intended third-party beneficiaries of contracts between GM and its dealers; specifically, they are intended beneficiaries of GM's implied warranties. The dealers were not intended to be the ultimate consumers of the 8L45 and 8L90 transmissions and have no rights under the warranty agreements provided with vehicles equipped with the transmissions. The warranty agreements were designed for and intended to benefit the ultimate consumers only.

243. As a direct and proximate result of GM's breach of the implied warranty of merchantability, New York Plaintiff and the New York Class members were caused to suffer economic damage, including loss attributable to the diminished value of their vehicles equipped with 8L45 or 8L90 transmissions, as well as the monies spent and to be spent to repair and/or replace their vehicles.

COUNT XII

VIOLATION OF NY GENERAL BUS. LAW § 349, et seq. (By Plaintiff Plafker on Behalf of All New York Purchasers)

244. New York Plaintiff and the New York Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

245. GM's business acts and practices alleged herein constitute deceptive acts or practices under the New York General Business Law, Deceptive Acts and Practices, N.Y. Gen. Bus. Law § 349 ("NYGBL").

246. The practices of GM, described throughout this Complaint, violate the NYGBL for, *inter alia*, one or more of the following reasons:

- a. GM engaged in deceptive, unfair and unconscionable commercial practices in failing to reveal material facts and information about the 8L45 and 8L90 transmissions, which did, or tended to, mislead New York Plaintiff and the New York Class about facts that could not reasonably be known by the consumers;

- b. GM failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;
- c. GM failed to reveal material facts to New York Plaintiff and the New York Class with the intent that New York Plaintiff and the New York Class members rely upon the omission;
- d. GM intended that New York Plaintiff and the other members of the New York Class rely on its omissions, so that New York Plaintiff and other New York Class members would purchase or lease vehicles equipped with 8L45 or 8L90 transmissions; and
- e. Under all of the circumstances, GM's 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 punitive damages.

247. GM's actions impact the public interest because New York Plaintiff and members of the New York Class were injured in exactly the same way as thousands of others purchasing and/or leasing vehicles equipped with 8L45 or 8L90 transmissions as a result of and pursuant to GM's generalized course of deception.

248. Had New York Plaintiff and other members of the New York Class known of the defective nature of the 8L45 and 8L90 transmissions, they would not have purchased or leased vehicles equipped with these transmissions or would have paid less for them.

249. The foregoing acts, omissions and practices proximately caused New York Plaintiff and the other members of the New York Class to suffer actual damages in the form of, inter alia, diminution in value of the vehicles equipped with 8L45 or 8L90 transmissions, and are entitled to recover such damages, together with all other appropriate damages, attorneys' fees and costs of suit.

COUNT XIII

OKLAHOMA CONSUMER PROTECTION ACT
Okla. Stat. tit. 15, § 751 et seq.
(Brought by Plaintiff Iasiello on Behalf of All Oklahoma Purchasers)

250. Oklahoma Plaintiff Iasiello and the Oklahoma Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

251. GM's business acts and practices alleged herein constitute unlawful practices under the Oklahoma Consumer Protection Act, Okla. Stat. tit. 15, § 751 et seq. ("OCPA").

252. The sale of vehicles equipped with 8L45 or 8L90 transmissions by GM to Oklahoma consumers constitutes a "consumer transaction" within the meaning of the OCPA, where the vehicles equipped with 8L45 or 8L90 transmissions are the subject of the consumer transaction.

253. The practices of GM, described above, violate the OCPA for, inter alia, one or more of the following reasons:

- a. GM knowingly or with reason to know represented that vehicles equipped with 8L45 or 8L90 transmissions had characteristics, uses, and/or benefits that they did not have;
- b. GM represented that vehicles equipped with 8L45 or 8L90 transmissions were of a particular standard, style, or model, when they were of another; and
- c. GM advertised, knowingly or with reason to know, vehicles equipped with 8L45 or 8L90 transmissions, with intent not to sell it as advertised.

254. GM is therefore liable to Oklahoma Plaintiff and the Oklahoma Class for damages under the OCPA. GM's actions also constitute an unconscionable action or course of conduct under the OCPA.

255. The foregoing acts, omissions and practices proximately caused Oklahoma Plaintiff and the other members of the Oklahoma Class to suffer actual damages in the form of, inter alia,

diminution in value of the vehicles equipped with 8L45 or 8L90 transmissions, and are entitled to recover such damages, together with all other appropriate damages, attorneys' fees and costs of suit.

COUNT XIV

BREACH OF EXPRESS WARRANTY

Okla. Stat. Ann. tit. 12A, § 2-313

(Brought by Plaintiff Iasiello on Behalf of All Oklahoma Purchasers)

256. Oklahoma Plaintiff and the Oklahoma Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

257. As an express warrantor and manufacturer and merchant, GM had certain obligations under Okla. Stat. Ann. tit. 12A, § 2-313 to conform the 8L45 and 8L90 transmissions to the express warranties.

258. When Oklahoma Plaintiff and the members of the Oklahoma Class purchased and/or leased their vehicles with 8L45 or 8L90 transmissions (either as new vehicles or as used vehicles with remaining warranty coverage), GM expressly warranted under its Warranty that it would correct any correct any vehicle defect found within the warranty period, and cover all towing, parts, and labor needed to correct the defect.

259. The defect at issue in this litigation was present at the time vehicles equipped with 8L45 or 8L90 transmissions were sold and leased to Oklahoma Plaintiff and members of the Oklahoma Class.

260. GM breached its express warranties (and continues to breach these express warranties) because it did not and has not corrected the defect with the 8L45 and 8L90 transmissions.

261. Pursuant to its express warranties, GM was obligated to correct any defect in the 8L45 or 8L90 transmissions in the vehicles owned or leased by the Oklahoma Plaintiff and the

Oklahoma Class members.

262. Although GM was obligated to correct the defect with the 8L45 and 8L90 transmissions, none of the purported, attempted fixes to the transmissions are adequate under the terms of the Warranty, as they did not cure the defect.

263. GM and its agent dealers have failed and refused to conform the 8L45 and 8L90 transmissions to the express warranties. GM's conduct, as discussed throughout this Complaint, has voided any attempt on its part to disclaim liability for its actions.

264. Oklahoma Plaintiff and the members of the Oklahoma Class have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of GM or by operation of law in light of GM's conduct as described throughout this Complaint.

265. GM received timely notice regarding the problems at issue in this litigation. Plaintiff Iasiello provided notice by bringing his vehicle in for service and notifying a GM authorized dealer. GM also received notice of the Transmission Defect through postings made by customers. Notwithstanding such notice, GM has failed and refused to offer an effective remedy.

266. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by GM to limit its express warranties in a manner that would enforce the 5 year/60,000 mile limit would be unconscionable. GM's warranties were adhesive, and did not permit negotiation, or the inclusion of design defects. GM possessed superior knowledge of the defects in the 8L45 and 8L90 transmissions prior to offering the vehicles equipped with these transmissions for sale. GM concealed and did not disclose this defect, and GM did not remedy the defect prior to sale (or afterward). Any effort to otherwise limit liability for the design defect is null and void.

267. Further, because GM has not been able remedy the Transmission Defect, the limitation on remedies included in the warranty fails its essential purpose and is null and void.

268. Oklahoma Plaintiff and the Oklahoma Class members have suffered damages caused by GM's breach of its express warranties and are entitled to recover damages, including but not limited to diminution of value.

COUNT XV

**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
Okla. Stat. Ann. tit. 12A, § 2-314
(Brought by Plaintiff Iasiello on Behalf of All Oklahoma Purchasers)**

269. Oklahoma Plaintiff and the Oklahoma Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

270. GM is and was at all relevant times a merchant with respect to vehicles equipped with the 8L45 and 8L90 transmissions. GM directly sold and marketed vehicles equipped with the 8L45 and 8L90 transmissions to customers through authorized dealers, like those from whom Plaintiffs and the Oklahoma Class members bought or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. GM knew that the vehicles equipped with 8L45 and 8L90 transmissions would and did pass unchanged from the authorized dealers to Oklahoma Plaintiff and the Oklahoma Class members, with no modification to the transmission.

271. A warranty that vehicles equipped with the 8L45 and 8L90 transmissions were in merchantable quality and condition is implied by law pursuant to Okla. Stat. Ann. tit. 12A, § 2-314.

272. GM impliedly warranted that vehicles equipped with the 8L45 and 8L90 transmissions were of good and merchantable condition and quality – fit and safe for their ordinary intended use, namely providing reliable transportation.

273. Vehicles equipped with the 8L45 and 8L90 transmissions were defective at the time they left the possession of GM, as described herein. GM knew of this defect at the time these transactions occurred. Thus, vehicles equipped with the 8L45 and 8L90 transmissions, when sold

and at all times thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.

274. By virtue of the conduct described herein and throughout this Complaint, GM breached the implied warranty of merchantability.

275. Oklahoma Plaintiff and the Oklahoma Class members have been damaged as a direct and proximate result of GM's breach of the implied warranty.

276. Oklahoma Plaintiff and the Oklahoma Class members have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of GM or by operation of law in light of GM's unconscionable conduct.

277. GM received timely notice regarding the problems at issue in this litigation through presentations of plaintiffs' vehicles at GM technicians for warranty repair work. Notwithstanding such notice, GM has failed and refused to offer an effective remedy.

278. Oklahoma Plaintiff and the Oklahoma Class members have had sufficient dealings with either GM or its agents (authorized GM repair facilities) to establish privity of contract. Notwithstanding this, privity is not required in this case because Oklahoma Plaintiff and the Oklahoma Class members are intended third-party beneficiaries of contracts between GM and its dealers; specifically, they are intended beneficiaries of GM's implied warranties. The dealers were not intended to be the ultimate consumers of the 8L45 and 8L90 transmissions and have no rights under the warranty agreements provided with vehicles equipped with 8L45 or 8L90 transmissions. The warranty agreements were designed for and intended to benefit the ultimate consumers only.

279. As a direct and proximate result of GM's breach of the implied warranty of merchantability, Oklahoma Plaintiff and the Oklahoma Class members were caused to suffer economic damage, including loss attributable to the diminished value of their vehicles equipped

with 8L45 or 8L90 transmissions, as well as the monies spent and to be spent to repair and/or replace their vehicles.

COUNT XVI

BREACH OF EXPRESS WARRANTY

Tex. Bus. & Com. Code § 2.313

(Brought by Plaintiff Tompkins on Behalf of All Texas Purchasers)

280. Texas Plaintiff and the Texas Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

281. As an express warrantor and manufacturer and merchant, GM had certain obligations under Texas Bus. Comm. Code § 2.313 to conform the 8L45 and 8L90 transmissions to the express warranties.

282. When Texas Plaintiff and the members of the Texas Class purchased and/or leased their vehicles with 8L45 or 8L90 transmissions (either as new vehicles or as used vehicles with remaining warranty coverage), GM expressly warranted under its Warranty that it would correct any correct any vehicle defect found within the warranty period, and cover all towing, parts, and labor needed to correct the defect.

283. The defect at issue in this litigation was present at the time vehicles equipped with 8L45 or 8L90 transmissions were sold and leased to Texas Plaintiff and members of the Texas Class.

284. GM breached its express warranties (and continues to breach these express warranties) because it did not and has not corrected the defect with the 8L45 and 8L90 transmissions.

285. Pursuant to its express warranties, GM was obligated to correct any defect in the 8L45 or 8L90 transmissions in the vehicles owned or leased by the Texas Plaintiff and the Texas Class members.

286. Although GM was obligated to correct the defect with the 8L45 and 8L90 transmissions, none of the purported, attempted fixes to the transmissions are adequate under the terms of the Warranty, as they did not cure the defect.

287. GM and its agent dealers have failed and refused to conform the 8L45 and 8L90 transmissions to the express warranties. GM's conduct, as discussed throughout this Complaint, has voided any attempt on its part to disclaim liability for its actions.

288. Texas Plaintiff and the members of the Texas Class have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of GM or by operation of law in light of GM's conduct as described throughout this Complaint.

289. GM received timely notice regarding the problems at issue in this litigation and, notwithstanding such notice, GM has failed and refused to offer an effective remedy.

290. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by GM to limit its express warranties in a manner that would enforce the 5-year/60,000 mile limit would be unconscionable. GM's warranties were adhesive, and did not permit negotiation, or the inclusion of design defects. GM possessed superior knowledge of the defects in the 8L45 and 8L90 transmissions prior to offering the vehicles equipped with these transmissions for sale. GM concealed and did not disclose this defect, and GM did not remedy the defect prior to sale (or afterward). Any effort to otherwise limit liability for the design defect is null and void.

291. Further, because GM has not been able remedy the Transmission Defect, the limitation on remedies included in the warranty fails its essential purpose and is null and void.

292. Texas Plaintiff and the Texas Class members have suffered damages caused by GM's breach of its express warranties and are entitled to recover damages, including but not limited to diminution of value.

COUNT XVII

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
Tex. Bus. & Com. Code § 2.314
(Brought by Plaintiff Tompkins on Behalf of All Texas Purchasers)

293. Texas Plaintiff and the Texas Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

294. GM is and was at all relevant times a merchant with respect to vehicles equipped with the 8L45 and 8L90 transmissions. GM directly sold and marketed vehicles equipped with the 8L45 and 8L90 transmissions to customers through authorized dealers, like those from whom Plaintiffs and the Texas Class members bought or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. GM knew that the vehicles equipped with 8L45 and 8L90 transmissions would and did pass unchanged from the authorized dealers to Texas Plaintiff and the Texas Class members, with no modification to the transmission.

295. A warranty that vehicles equipped with the 8L45 and 8L90 transmissions were in merchantable quality and condition is implied by law pursuant to Texas Bus. & Com. Code § 2.314.

296. GM impliedly warranted that vehicles equipped with 8L45 or 8L90 transmissions were of good and merchantable condition and quality – fit and safe for their ordinary intended use, namely providing reliable transportation.

297. Vehicles equipped with the 8L45 and 8L90 transmissions were defective at the time they left the possession of GM. GM knew of this defect at the time these transactions occurred. Thus, vehicles equipped with the 8L45 and 8L90 transmissions, when sold and at all times thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.

298. By virtue of the conduct described herein and throughout this Complaint, GM breached the implied warranty of merchantability.

299. Texas Plaintiff and the Texas Class members have been damaged as a direct and proximate result of GM's breach of the implied warranty.

300. Texas Plaintiff and the Texas Class members have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of GM or by operation of law in light of GM's unconscionable conduct.

301. GM received timely notice regarding the problems at issue in this litigation through presentations of plaintiffs' vehicles at GM technicians for warranty repair work. Notwithstanding such notice, GM has failed and refused to offer an effective remedy.

302. Texas Plaintiff and the Texas Class members have had sufficient dealings with either GM or its agents (authorized GM repair facilities) to establish privity of contract. Notwithstanding this, privity is not required in this case because Texas Plaintiff and the Texas Class members are intended third-party beneficiaries of contracts between GM and its dealers; specifically, they are intended beneficiaries of GM's implied warranties. The dealers were not intended to be the ultimate consumers of the 8L45 and 8L90 transmissions and have no rights under the warranty agreements provided with vehicles equipped with 8L45 or 8L90 transmissions. The warranty agreements were designed for and intended to benefit the ultimate consumers only.

303. As a direct and proximate result of GM's breach of the implied warranty of merchantability, Texas Plaintiff and the Texas Class members were caused to suffer economic damage, including loss attributable to the diminished value of their vehicles equipped with 8L45 or 8L90 transmissions, as well as the monies spent and to be spent to repair and/or replace their vehicles.

COUNT XVIII

TEXAS DECEPTIVE TRADE PRACTICES ACT
Tex. Bus. & Com. Code § 17.41 et seq.
(Brought by Plaintiff Tompkins on Behalf of All Texas Purchasers)

304. Texas Plaintiff and the Texas Class incorporate the allegations set forth above in paragraphs 1 through 98 as if fully set forth herein.

305. GM's business acts and practices alleged herein constitute unfair, unconscionable and/or deceptive methods, acts or practices under the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code § 17.41 et seq. ("TDTPA").

306. At all relevant times, Texas Plaintiff and all members of the Texas Class were "consumers" within the meaning of the TDTPA.

307. GM's conduct, as set forth herein, occurred in the conduct of "trade or commerce" within the meaning of the TDTPA.

308. The practices of GM, described above, violate the TDTPA for, inter alia, one or more of the following reasons: GM breached express and implied warranties to Texas Plaintiff and the Class, as set forth herein, and is therefore liable to Texas Plaintiff and the Texas Class for damages under the TDTPA. GM's actions also constitute an unconscionable action or course of conduct under the TDTPA.

309. GM's actions impact the public interest because Texas Plaintiff and members of the Texas Class were injured in exactly the same way as thousands of others purchasing and/or leasing the vehicles with 8L45 or 8L90 transmissions as a result of and pursuant to GM's generalized course of deception.

310. Had Texas Plaintiff and other members of the Texas Class known of the defective nature of the 8L45 and 8L90 transmissions, they would not have purchased or leased vehicles equipped with the Engines or would have paid less for them.

311. The foregoing practices proximately caused Texas Plaintiff and the other members of the Texas Class to suffer actual damages in the form of, inter alia, diminution in value of the vehicles equipped with 8L45 or 8L90 transmissions, and are entitled to recover such damages, together with all other appropriate damages, attorneys' fees and costs of suit.

WHEREFORE, Plaintiffs request judgment against the Defendant for themselves and the members of the class as follows:

- A. Certification of the requested Classes pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3);
- B. Restitution of all charges paid by Plaintiffs and the Class;
- C. Disgorgement to Plaintiffs and the Class of all monies wrongfully obtained and retained by Defendant;
- D. Compensatory and actual damages in an amount according to proof at trial;
- E. Statutory damages, penalties, treble damages, as provided by law;
- F. Prejudgment interest commencing on the date of payment of the charges and continuing through the date of entry of judgment in this action;
- G. Costs and fees incurred in connection with this action, including attorney's fees, expert witness fees, and other costs as provided by law;
- H. Equitable Relief;
- I. Punitive Damages; and
- J. Granting such other relief as the Court deems proper.

JURY TRIAL DEMAND

Plaintiffs hereby request a jury trial for all issues so triable.

DATED this 18th Day of December, 2018.

Respectfully submitted,

s/Theodore J. Leopold _____

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