



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued : 14-Sep-2020  
Délivré par voie électronique : 14-Sep-2020  
London

MICHAEL BELL

Plaintiff

and

GENERAL MOTORS OF CANADA COMPANY and GENERAL MOTORS,  
LLC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date September 14, 2020 Issued by \_\_\_\_\_  
Local Registrar

Address of London Courthouse  
court office: 80 Dundas Street  
London, ON N6A 6A3

**TO: GENERAL MOTORS OF CANADA COMPANY**  
Purdy's Wharf Tower II  
1300-1969 Upper Water St  
Halifax, NS B3J 3R7

**TO: GENERAL MOTORS, LLC**  
300 Renaissance Ctr L1  
Detroit, MI 48243-1403  
USA

## CLAIM

### DEFINED TERMS

1. The following definitions apply for the purposes of this Notice of Action.

- (a) **“Affected Vehicles”** means all vehicles designed, developed, manufactured, marketed, distributed, leased, and/or sold by the Defendants and equipped with an **Engine**. These vehicles include, but are not limited to, the following:

Model	Model Year(s) Affected
Chevrolet Equinox	2010-2017
Chevrolet Silverado	2010-2013
Chevrolet Suburban	2010-2014
Chevrolet Tahoe	2010-2014
GMC Sierra	2010-2013
GMC Terrain	2010-2017
GMC Yukon	2010-2014
GMC Yukon XL	2010-2014

- (b) **“Class”** and/or **“Class Members”** means all persons, corporations or other entities resident in Canada who are current or former owners and/or lessees of an **Affected Vehicle**;
- (c) **“Engine”** means the 2.4-litre Ecotec LAF engine designed, developed and manufactured by the Defendants, the 2.4-litre Ecotec LEA engine designed, developed and manufactured by the Defendant, and/or the Generation IV 5.3-litre V8 Vortec 5300 LC9 engine designed, developed and manufactured by the Defendants;
- (d) **“GM”** means General Motors, LLC;

---

- (e) **“GM Canada”** means General Motors of Canada Company;
- (f) **“Mr Bell”** means Michael Bell;
- (g) **“Oil Consumption Defect”** means the latent design and/or manufacturing defects in the Affected Vehicles that cause their Engines (a) to be unable to properly utilize the engine oil and (b) to improperly burn off and/or consume abnormally and improperly high amounts of engine oil.

## RELIEF CLAIMED

2. The Plaintiff, Mr Bell, on his own behalf and on behalf of all Class Members, seeks:
  - (a) an order certifying this action as a class proceeding and appointing him as the representative plaintiff of the Class pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6;
  - (b) a declaration that the Defendants, or any of them, were negligent in the design, research, development, testing, manufacturing, marketing, advertisement, promotion, distribution, warning, sale, leasing, warranting, servicing, and/or repair of the Affected Vehicles;
  - (c) a declaration that the Defendants, or any of them, are vicariously liable for the acts and omissions of their officers, directors, agents, employees, and representatives;
  - (d) a declaration that the Defendants, or any of them, breached the express warranties for the Affected Vehicles;
  - (e) a declaration that the Defendants, or any of them, breached the implied warranties for the Affected Vehicles contrary to Part II of the *Consumer Protection Act, 2002*, SO 2002, c 30, Schedule A, the parallel provisions of the consumer protection legislation in other Canadian provinces as described in Appendix 1 hereto, the *Sale of Goods Act*, RSO 1990, c S 1, and the parallel provisions of the sale of goods legislation in other Canadian provinces as described in Appendix 2 hereto;
  - (f) a declaration that the Defendants, or any of them, breached the *Motor Vehicle Safety Act*, SC 1993, c 16, by failing to provide notice of the Oil Consumption Defect to Mr Bell and the Class Members;

- (g) a declaration that the Defendants, or any of them, were unjustly enriched at the expense of Class Members;
- (h) general damages and special damages in the amount of \$100,000,000;
- (i) punitive damages in the amount of \$25,000,000;
- (j) disgorgement of the Defendants' profits and other equitable relief;
- (k) a reference to decide any issues not decided at the trial of the common issues;
- (l) costs of administration and notice, plus applicable taxes, pursuant to s 26(9) of the *Class Proceedings Act, 1992*;
- (m) costs of this action pursuant to the *Class Proceedings Act, 1992*, the *Courts of Justice Act*, and the *Rules of Civil Procedure*, RRO 1990, Reg 194;
- (n) prejudgment interest compounded and post-judgment interest in accordance with ss 128 and 129 of the *Courts of Justice Act*, RSO 1990, c C43, as amended; and
- (o) such further and other relief as to this Honourable Court may seem just.

## **THE PARTIES**

### **The Plaintiff and the Class**

3. Mr Bell is an individual residing in Hamilton, Ontario. He currently owns a 2012 Chevrolet Equinox equipped with a 2.4-litre Ecotec LEA engine. On or around August 15, 2017, Mr Bell experienced repeated engine stalling in his Affected Vehicle while driving to work and while driving home from work. His Affected Vehicle was diagnosed with engine failure shortly thereafter.
  
4. Mr Bell seeks to represent the following Class of which he is a member:

All persons, corporations or other entities resident in Canada who are current or former owners and/or lessees of an Affected Vehicle.

## The Defendants

5. The Defendant GM Canada is a corporation incorporated pursuant to the laws of the province of Nova Scotia, with its registered office located in Halifax, Nova Scotia. GM Canada is and was at all material times a wholly-owned subsidiary of GM.
6. GM Canada imports into Canada for sale or lease newly manufactured GM vehicles, including those of the Affected Vehicles that are not manufactured in Canada, and is responsible for ensuring that those vehicles' designs are compliant with the regulations for import into Canada.
7. GM Canada sells, leases, services and repairs the Affected Vehicles in Canada through its network of dealers who are its agents. Money received by a dealer from the purchase or lease of a GM vehicle flows from the dealer to the Defendants.
8. GM Canada administers the warranties for all Affected Vehicles sold in Canada, representing that they are, *inter alia*, free of defects in material and workmanship.
9. The Defendant GM is a limited liability corporation organized and existing under the laws of Delaware with its principal place of business located in Detroit, Michigan. GM controls and directs GM Canada with respect to virtually all aspects of the Affected Vehicles.
10. The Defendants operated and continue to operate as an integrated unit and are collectively responsible for the design, research, development, testing, manufacture, production, supply, distribution, marketing, leasing and sale of thousands of the Affected Vehicles to residents of Canada. They prepared and participated in the development of

the owner's manuals, warranty booklets, and maintenance recommendations and/or schedules for the Affected Vehicles and continue to provide service and maintenance for the Affected Vehicles through their extensive network of authorized dealers and service providers.

## **THE FACTS**

### **The Importance of Having the Proper Amount of Engine Oil**

11. Engine oil functions as an essential lubricant for the moving parts in internal combustion engines. It creates a film separating surfaces of adjacent moving parts to minimize direct contact, thereby decreasing heat caused by friction and reducing wear. Engine oil also has important cleaning and sealing functions, and serves as an important medium for dissipating heat throughout the engine. As a result, the Affected Vehicles need the proper amount of engine oil in order for their engines and related parts to function properly and safely.
  
12. Modern automobile engines are not engineered to flow substantial quantities of engine oil into combustion chambers. When faulty engines permit excessive amounts of engine oil to the combustion chamber, this leads to a host of serious problems, including prematurely low levels of engine oil, low oil pressure, lack of engine lubricity, engine knock, spark plug fouling and knock, piston ring fouling, and major damage to other critical engine parts, including, but not limited to, timing chains.

**The Nature of this Action**

13. This action concerns the negligent and dangerous design, testing, manufacturing, marketing, distribution, sale, leasing, servicing, and repair of the Affected Vehicles by the Defendants.
14. The Affected Vehicles' Engines consume an abnormally and improperly high quantity of engine oil that far exceeds industry standards for reasonable engine oil consumption. This excessive and improper oil consumption (as high as 0.946 litres of engine oil per 1,600 kilometres of driving) results in low engine oil levels, insufficient engine lubricity, and corresponding internal engine component damage.
15. Multiple latent design and/or manufacturing defects, which typically manifest themselves during the limited warranty period or shortly after its expiration, contribute to the excessive oil consumption problem in the Affected Vehicles. The combination of these latent defects, and the resultant excessive and improper oil consumption, is herein referred to as the "Oil Consumption Defect." It is an inherent defect in each of the Affected Vehicles.
16. The Oil Consumption Defect requires the addition of substantial amounts of engine oil between scheduled oil changes to prevent engine damage. As a result of the Oil Consumption Defect, many Class Members have resorted to purchasing an extra supply of engine oil and carrying it with them at all times when driving the Affected Vehicles.
17. Prior to purchasing the Affected Vehicles, Mr Bell and the Class Members did not know that the Affected Vehicles suffered from the Oil Consumption Defect. Mr Bell and the Class Members therefore did not contemplate that the Affected Vehicles' Engines would



require supplemental engine oil to be added between regularly scheduled oil changes, as well as repairs to address engine damage caused by the Oil Consumption Defect costing hundreds to thousands of dollars.

### **Latent Defect # 1: Defective Piston Rings**

18. As stated above, multiple latent design and/or manufacturing defects contribute to the Oil Consumption Defect in the Affected Vehicles. The primary cause of the Oil Consumption Defect is that the piston rings the Defendants installed within the Engines do not apply or maintain sufficient tension to keep oil in the crankcase. Instead, the defective piston rings allow excessive oil flow into the combustion chamber, fouling spark plugs, and creating harmful carbon build-up in the pistons and cylinders.
19. In the Engines, as is normal in automobile engines, pistons move vigorously up and down inside of cylinders.
20. For the engine to run effectively and without causing engine damage, such as heat and friction wear, the pistons and cylinders require a thin film of engine oil between the opposing metal surfaces. The engine oil reduces friction and heat, prevents surface scarring, and helps the moving components slide freely past each other.
21. To keep engine oil in the crankcase, and to prevent engine oil from travelling around the pistons and into the combustion chamber, pistons are fitted with compression and oil control rings (collectively, “piston rings”). Piston rings must also withstand combustion pressures and hold combustion gases in the combustion chambers, keeping the gases out of the crankcase.

22. Unfortunately for purchasers and lessees of the Affected Vehicles, the piston rings that the Defendants installed in the Engines are not properly coated and/or are not robust enough to withstand the greater pressures generated by the Engines. They fail to achieve their intended purpose of keeping engine oil in the crankcase and out of the combustion chamber. They also fail to achieve their intended purpose of trapping combustion gases in the combustion chamber and out of the crankcase. Specifically, the piston rings do not apply or maintain sufficient tension, with respect to their interaction with the cylinder walls, to keep oil from seeping past and flowing from the crankcase into the combustion chamber. This results in excessive oil consumption that cannot be reasonably anticipated or predicted and causes the following problems.
23. First, in the Affected Vehicles, engine oil travels around the piston rings and reaches the combustion chamber, where it is burned off during the Engine's power stroke, thereby reducing the quantity of engine oil in the vehicle, preventing the Engine from maintaining the proper level of engine oil, reducing engine lubricity, and increasing the risk of corresponding engine damage.
24. Second, the defective piston rings allow for engine oil to constantly foul the spark plugs in the Affected Vehicles. Spark plug electrodes protrude into the combustion chamber and generate the ignition spark. The electrodes must be dry and free of debris to fire properly. When engine oil migrates into the combustion chamber in the Affected Vehicles, it coats the spark plugs' electrodes and either weakens or altogether disables their firing function.

25. Third, the engine oil that seeps past the piston rings in the Affected Vehicles, and that is not burned in the combustion chamber, gathers and hardens, creating carbon build-up. Due to the excessive carbon build-up in the combustion chamber and on top of the pistons, the Affected Vehicles suffer from pre-ignition detonation, or “spark knock” as it commonly called. Pre-ignition detonation disrupts the proper seating of the piston rings in their respective grooves, causing them to wear out prematurely as they grind against the cylinder walls improperly. This results in the piston rings not sealing properly and thus allows for even more engine oil consumption. Pre-ignition detonation also vaporizes the cylinder wall oil film, pushing it past the piston rings and into the crankcase, where it is vacuumed into the intake manifold via the positive crankcase ventilation system (the “PCV System”).

**Latent Defect # 2: Defective Spray Jets that Overload and Foul the Defective Piston Rings**

26. Included in the 2.4-litre Ecotec LAF and LEA Engines and further contributing to the Oil Consumption Defect are spray jets that spray oil onto the piston skirt and cylinder wall. This excessive oil spray, which is not common in other engines with wider piston rings, overloads and fouls the defective piston rings, triggering oil to migrate past the piston rings into other places in the Engine.
27. The excessive oil spray also collects on the piston ring surfaces, forming carbon build-up. The carbon build-up on the piston rings disrupts the proper seating of the piston rings in their respective grooves and interferes with the piston rings’ ability to seal out oil. Once the piston rings lose proper groove seating, they become misaligned with the cylinder bores. Immediate and aggressive ring deterioration occurs as the fragile piston rings scrape against the harder steel cylinder bores at unintended angles.

**Latent Defect # 3: Defective Active Fuel Management System that Overloads and Fouls the Defective Piston Rings**

28. The Defendants' Active Fuel Management system, installed in each of the Affected Vehicles with a Generation IV 5.3-litre V8 Vortec 5300 LC9 Engine, contributes to excessive oil consumption, the Oil Consumption Defect, and engine damage by overwhelming the independently defective piston rings.
29. The Active Fuel Management system's intended function is to deactivate four of the eight engine cylinders for fuel-saving purposes in low-load operating conditions.
30. The Active Fuel Management system includes an oil pressure relief valve that the Defendants installed in the crankcase beneath the crankshaft. This oil pressure relief valve sprays oil directly into the piston skirts (undersides) in quantities that the piston rings cannot control. The excessive oil spray overloads and fouls the defective piston rings, triggering oil to migrate past the piston rings into other places in the Engine and leading to excessive oil consumption.
31. The excessive oil spray also collects on the piston ring surfaces, forming carbon build-up. The carbon build-up on the piston rings disrupts the proper seating of the piston rings in their respective grooves and interferes with the piston rings' ability to seal out oil. Once the piston rings lose proper groove seating, they become misaligned with the cylinder bores. Immediate and aggressive ring deterioration occurs as the fragile piston rings scrape against the harder steel cylinder bores at unintended angles.

**Latent Defect # 4: Defective PCV System**

32. The Defendants' PCV system, installed in each of the Affected Vehicles, also contributes to excessive oil consumption, the Oil Consumption Defect and engine damage by vacuuming engine oil from the valvetrain.
33. The PCV system's intended purpose is to vent valvetrain gas pressures and recirculate the gas pressure into the intake manifold. The intake manifold distributes fresh air pulled through the intake filter, and recirculated air vented from the valvetrain, to the Engines' combustion chambers. The PCV system is not intended to vacuum engine oil from the valvetrain.
34. In the Affected Vehicles, however, the PCV system vacuums engine oil from the valvetrain and feeds it into the intake manifold runners and ultimately into the combustion chambers. By vacuuming engine oil from the valvetrain, the PCV system results in increased oil consumption, carbon build-up and the associated pre-ignition detonation, premature piston ring wear, piston ring failure, piston ring build-up, spark plug fouling, combustion chamber engine oil burn, low engine lubricity levels, internal component wear, internal component damage, and internal component failure.

**Latent Defect # 5: Defective Oil Life Monitoring System**

35. The Defendants' Oil Life Monitoring System, installed in each of the Affected Vehicles, exacerbates the engine oil loss and engine damage problems caused by the Oil Consumption Defect because it fails to advise drivers of a decreased oil level in their Affected Vehicle, even at critically low levels.

36. The Oil Life Monitoring System alerts the driver to the estimated percentage of oil life left before an oil change is required. With respect to the Oil Life Monitoring System, “oil life” means the quality of the engine oil, not the engine oil level. The Oil Life Monitoring System uses varying factors to estimate engine oil health, such as revolutions, temperature and engine running conditions. It does not, however, alert drivers to low engine oil levels or engine oil loss, thereby exacerbating the Oil Consumption Defect by failing to alert owners or lessees of their Affected Vehicle’s engine oil loss until it is much too late.

**Latent Defect # 6: Absence of Warning System to Protect Drivers from the Effects of the Oil Consumption Defect**

37. In addition to the Oil Life Monitoring System – which does not monitor engine oil level – , the Affected Vehicles include an oil pressure gauge on the dash and an oil canister image that ostensibly would illuminate when the vehicle is low on engine oil. However, in the Affected Vehicles, neither the oil pressure gauge nor the oil canister image illuminates to indicate low engine oil level.

38. The oil pressure gauge in the Affected Vehicles fails to provide any indication as to when the vehicle is dangerously low on engine oil. The oil pressure gauges in the Affected Vehicles either have no indicator for low engine oil pressure or they contain a single red hash mark. When the oil pressure gauge displays the single red hash mark, the vehicle’s engine oil pressure is at the zero PSI (pounds per square inch) mark. Thus, the oil pressure gauges in the Affected Vehicles fail to indicate dangerously low engine oil levels until the Affected Vehicles have no oil pressure at all. This is well beyond the

point at which a lack of engine oil and engine oil pressure will damage or destroy the Affected Vehicle's Engine.

39. Similarly, the oil canister symbol in the Affected Vehicles fails to illuminate or provide any indication as to when the vehicle is dangerously low on engine oil until well past the point where the Affected Vehicles are critically low on engine oil.
40. Upon information and belief, the Affected Vehicles communicate no visible or audible warnings of destructive engine oil pressure levels before the Engines are damaged, internally seize, or fail altogether. Because the Affected Vehicles provide no warnings prior to engine seizure or failure, they put the Affected Vehicle's occupants and public safety at risk.
41. Even if the Affected Vehicles did adequately warn drivers of dangerously low engine oil levels (which they do not), any such warnings would do nothing to prevent the full scope of the harms caused by the Oil Consumption Defect. Because the Oil Consumption Defect results in oil migrating past the piston rings, it results in carbon build-up on the piston ring and cylinder surfaces and fouls spark plugs – even when drivers diligently, and constantly, top-up their engine oil. Once the spark plugs in the Affected Vehicles foul, hazardous engine misfire and unanticipated engine shutdowns are unavoidable.

**The Oil Consumption Defect in the Affected Vehicles Causes Excessive Engine Oil Loss, Which Can Lead to Engine Damage**

42. The Oil Consumption Defect in the Affected Vehicles results in excessive oil consumption, pre-ignition detonation, premature piston ring wear, piston ring fouling, piston ring failure, and spark plug fouling. It also results in inadequate engine lubricity,

which creates increased friction, heat, metal-on-metal contact, and corresponding internal engine component wear, damage and failure.

43. The internal engine components subject to premature wear, damage and failure include, but are not limited to: pistons, cylinder walls, piston rings, valves, valve guides, valve stem seals, lifters, push pods, camshafts, rockers, bearings, piston rods, wrist pins, crankshafts, and timing chain components.
44. Due to the Oil Consumption Defect, all of the Affected Vehicles have suffered, and will continue to suffer, excessive oil consumption, creating metal-on-metal friction, heat levels that far exceed the Defendants' specifications, and corresponding engine damage and rapid destruction.
45. Excessive friction and heat expansion will wear the internal steel components of the Engine, sending steel shavings into the crankcase. The steel shavings will travel through the oil passages and will inevitably become lodged in tight spaces, where they will cut into component surfaces moving against them.
46. Once the internal components are scarred and/or worn, they cannot be repaired and must be replaced. In other words, the friction and heat expansion damage caused by the Oil Consumption Defect is irreversible.

### **The Oil Consumption Defect is Dangerous and Life-Threatening**

47. The Oil Consumption Defect in the Affected Vehicles poses a significant risk of personal injury and/or property damage to Mr Bell and the other Class Members, occupants of the Affected Vehicles, and other members of the Canadian public because it prevents the



Engines from maintaining the proper level of engine oil and causes excessive oil consumption that cannot be reasonably anticipated or predicted.

48. In addition to causing engine damage, as described above, the low engine oil conditions that can result from the Oil Consumption Defect present dangerous and life-threatening safety hazards to the Class Members, occupants of the Affected Vehicles, and other members of the Canadian public.
49. With insufficient engine oil and engine lubricity, the Engines in the Affected Vehicles will overheat and has the potential to catch fire (a non-collision engine fire).
50. Low engine oil conditions are also unsafe because, if the Affected Vehicle's Engine experiences enough damage, it will seize and the Affected Vehicle will unexpectedly and suddenly stall, shut down, lose power or experience catastrophic engine failure. This engine stalling, unanticipated engine shutdown, unexpected and sudden loss of power and/or catastrophic engine failure occur while the Affected Vehicle is in operation, at any time and under any driving conditions and/or speed. It could cause a collision or leave Class Members and occupants of the Affected Vehicles stranded in an unsafe situation.
51. The Oil Consumption Defect also poses a safety risk because excessive engine oil seeping past the piston rings and fouling spark plugs causes engine misfires and unanticipated engine shutdown that can leave Class Members and their passengers stranded and without the use of their Affected Vehicle. Additionally, the ignition failure caused by fouled spark plugs results in sluggish throttle response, placing Class Members and occupants of the Affected Vehicles in harm's way as they interact with other traffic. An Affected Vehicle suffering from weakened ignition function cannot accelerate as the

Defendants intended. An Affected Vehicle suffering from total ignition failure will not even run. Both of these conditions place Class Members and occupants of the Affected Vehicles in any number of dangerous, and potentially life-threatening, situations that would not exist but for the Oil Consumption Defect.

52. Numerous current and former owners and lessees of the Affected Vehicles, including Mr Bell, have experienced engine misfires, weakened ignition function, total ignition failure, engine stalling, unanticipated engine shutdown, unexpected and sudden loss of power, catastrophic engine failure, and/or non-collision engine fires while operating the Affected Vehicles, placing them and those around them in immediate danger.
53. As explained above, Class Members are not protected from these risks of personal injury and/or property damage by any timely warning from their Affected Vehicles that their engine oil levels are too low. The Affected Vehicles do not provide any warning of low engine oil levels until the engine oil has already reached a level that is concurrent with engine misfires, weakened ignition function, total ignition failure, engine stalling, unanticipated engine shutdown, unexpected and sudden loss of power, catastrophic engine failure, and non-collision engine fires and therefore unsafe.

#### **The Defendants' Knowledge of the Oil Consumption Defect**

54. The Defendants have long been aware of the Oil Consumption Defect in the Affected Vehicles but have intentionally, negligently and/or recklessly concealed the Oil Consumption Defect from Mr Bell and other Class Members; failed to warn Mr Bell and the other Class Members of the serious personal safety risks from the Oil Consumption

Defect; and, failed to adequately notify the appropriate authorities of the safety risks from the Oil Consumption Defect.

55. Although the Defendants likely became aware of the Oil Consumption Defect in the Affected Vehicles much earlier, the Defendants knew by no later than late 2009 that the Affected Vehicles contained the latent Oil Consumption Defect from the moment they left the factory. This was before the majority of the Affected Vehicles were sold.
56. At all material times, the Defendants had notice and knowledge of the Oil Consumption Defect plaguing the Affected Vehicles through, *inter alia*, (i) numerous complaints they received from consumers, including Class Members; (ii) information received from dealers, including dealership repair records; (iii) Transport Canada and US National Highway Traffic Safety Administration complaints and records; (iv) warranty and post-warranty claims; (v) the high number of replacement parts ordered from the Defendants; and, (vi) their own internal records, including pre-sale durability testing.
57. The Defendants' customer relations departments routinely monitor the Internet for customer complaints and regularly receive and respond to customer calls concerning, *inter alia*, product defects. Through these activities, the Defendants were made aware of the Oil Consumption Defect in the Affected Vehicles and its potential danger.
58. The Defendants also became aware of the Oil Consumption Defect in the Affected Vehicles from the substantial volume of reports of engine problems relating to spark plug fouling, carbon build-up, and reduced engine lubricity.

59. For example, GM Canada's customer relations department works closely with GM-authorized service technicians to identify potentially widespread vehicle problems and assist in the diagnosis of vehicle issues. GM Canada has received numerous reports of engine problems in the Engines relating to spark plug fouling, carbon build-up, and reduced engine lubricity.
60. The Defendants also collect and analyze field data, including, but not limited to, repair requests made at dealerships and service centres, technical reports prepared by engineers who have reviewed vehicles for which warranty coverage is requested, parts sales reports, and warranty claims data.
61. The Defendants' warranty departments similarly review and analyze warranty claims data submitted by their dealerships, agents and authorized service technicians to identify defect trends in their vehicles.
62. The Defendants knew or ought to have known about the Oil Consumption Defect in the Affected Vehicles because of the high number of replacement parts ordered from the Defendants.
63. In Canada, GM service centres are required to order replacement parts, including engines, piston assemblies, spark plugs, and timing chains, directly from GM Canada. Other independent vehicle repair shops that service Affected Vehicles also order replacement parts directly from GM Canada. GM Canada routinely monitors part sales reports and is responsible for the shipping of parts requested by dealerships and technicians.

64. GM Canada had detailed, accurate, and real-time data regarding the number and frequency of replacement part orders. The sudden increase in orders for the Engines and engine components used in the Affected Vehicles was known to GM Canada and ought to have alerted it to the scope and severity of the Oil Consumption Defect.
65. The Defendants also knew or ought to have known about the Oil Consumption Defect in the Affected Vehicles from Transport Canada and US National Highway Traffic Safety Administration complaints and records. The Defendants routinely monitor these complaints and records to identify potential defects in their vehicles.
66. The Defendants are experienced in the design, testing, and manufacturing of passenger vehicles. As an experienced manufacturer, the Defendants conduct testing on incoming batches of components, including the Engines, to verify that the components are free from defects and comply with the Defendants' specifications.
67. In fact, the Defendants represent to its customers and the public that they put their vehicles, their engines and their engine components, through very stringent and tough tests.
68. The Defendants' testing of the Affected Vehicles, their Engines, and their engine components would have revealed the severe and latent Oil Consumption Defect.
69. Accordingly, the Defendants knew or ought to have known that the Affected Vehicles contained the Oil Consumption Defect and were likely to experience engine misfires, weakened ignition function, total ignition failure, engine stalling, unanticipated engine shutdown, unexpected and sudden loss of power, catastrophic engine failure, and/or non-

collision engine fires, costing Mr Bell and the Class Members thousands of dollars in expenses and presenting serious safety risks to Mr Bell, the Class Members and the public.

**The Defendants' Conduct While Knowing About the Latent Oil Consumption Defect**

70. Despite their knowledge of (1) the Oil Consumption Defect in the Affected Vehicles and (2) the risks of personal injury and/or property damage it poses:
- (a) the Defendants continued to market the Affected Vehicles as being safe, reliable, long-lasting and of a high quality;
  - (b) the Defendants led Class Members to believe that the Affected Vehicles would be free from defects that result in excessive and improper engine oil loss and engine damage;
  - (c) the Defendants allowed Class Members to continue driving the Affected Vehicles with the false sense of security provided by the defective Oil Life Monitoring system, and the defective oil pressure gauge and oil canister image;
  - (d) GM Canada routinely refused to repair the Affected Vehicles free of charge when the Oil Consumption Defect manifested – even within the warranty period;
  - (e) GM Canada routinely refused to offer to reimburse its customers who incurred out-of-pocket expenses to repair engine damage caused by the Oil Consumption Defect – even within the warranty period;

- (f) GM Canada and its agents refused to disclose the existence of the Oil Consumption Defect when Affected Vehicles displaying symptoms consistent with the Oil Consumption were brought in for service;
- (g) GM Canada faulted Class Members who experienced engine damage caused by the Oil Consumption Defect for a lack of maintenance;
- (h) the Defendants did not inform Class Members of the true cause of the engine misfires, weakened ignition function, total ignition failure, engine stalling, unanticipated engine shutdown, unexpected and sudden loss of power, catastrophic engine failure, and/or non-collision engine fires experienced;
- (i) the Defendants propagated the falsehood that the excessive and improper oil consumption that Class Members were experiencing in the Affected Vehicles was “normal”;
- (j) GM Canada and its agents ignored the Oil Consumption Defect in Affected Vehicles until it caused significant mechanical problems necessitating costly repairs;
- (k) GM Canada instructed its agents not to repair engine damage caused by the Oil Consumption Defect under warranty unless the Affected Vehicle underwent an onerous and unreliable engine oil consumption test showing that the Affected Vehicle was consuming more than 0.946 litres of engine oil per 3,200 kilometres of driving;

- (l) GM Canada instructed its agents to address the excessive engine oil loss problem in the Affected Vehicles by performing stop-gap fixes of the Engines instead of providing a complete and adequate remedy for the Oil Consumption Defect;
- (m) the Defendants have refused to take any action to correct the Oil Consumption Defect when it manifests in the Affected Vehicles after the expiration of the warranty period; and,
- (n) GM Canada has failed to recall and/or offer adequate engine repairs and/or replacements for every Affected Vehicle.

### **The Plaintiff's Experience**

- 71. On or around April 18, 2017, Mr Bell purchased a used 2012 Chevrolet Equinox with approximately 122,000 km on its odometer from JP Motors in Burlington, Ontario. He purchased this vehicle for personal, family and/or household uses.
- 72. Mr Bell's 2012 Chevrolet Equinox has a 2.4-litre Ecotec LEA Engine.
- 73. In or around June 2017, the Engine in Mr Bell's Affected Vehicle began shuttering and shaking uncontrollably when stopped at intersections and when in park. As a result, Mr Bell took his Affected Vehicle into a Midas, Inc store for an oil change. Mr Bell mentioned the engine shuttering, but the diagnostic tests the Midas, Inc employees carried out on Mr Bell's Affected Vehicle did not reveal any problems. Unbeknownst to Mr Bell, this engine shuttering meant that internal damage was occurring within his Affected Vehicle's Engine.



74. On or around August 15, 2017, Mr Bell experienced engine stalling in his Affected Vehicle while driving to and from work. While driving home from work, the engine stalling became more frequent and the check engine light came on. Mr Bell pulled into the parking lot of a nearby business, as he did not feel he could trust his Affected Vehicle on the highway in order to complete his trip home.
75. Mr Bell had his Affected Vehicle towed to Queenston Chevrolet Buick GMC in Hamilton, Ontario to be diagnosed and repaired. A service technician at Queenston Chevrolet Buick GMC told Mr Bell (1) that the Engine in his Affected Vehicle had failed due to low engine oil levels; (2) that this was because Mr Bell had been negligent in failing to maintain the Affected Vehicle and regularly check the engine oil levels; (3) that Mr Bell's Affected Vehicle was down 3.5 litres of engine oil; and (4) that pistons, timing chains, camshaft actuators, camshafts and the fuel pump in the Affected Vehicle would need to be replaced. The service technician recommended an engine replacement.
76. Mr Bell was not happy to be blamed for the engine failure in his Affected Vehicle or accused of not maintaining his Affected Vehicle. He had just had the oil changed in his Affected Vehicle two months earlier. Furthermore, no light or alert had illuminated or sounded in his Affected Vehicle to warn him of low engine oil levels. In fact, the Oil Life Monitoring System in Mr Bell's Affected Vehicle indicated that the oil life was at 44%. Mr Bell paid Queenston Chevrolet Buick GMC \$161.95 for the diagnosis and then had his Affected Vehicle towed to JP Motors in Burlington, Ontario for an engine replacement.

77. At JP Motors in Burlington, Ontario, Mr Bell had the Engine in his Affected Vehicle replaced with a used 2.4-litre Ecotec LEA Engine at a cost of approximately \$3,616.01. While the Engine was being replaced, Mr Bell was without a vehicle for approximately 10 days (until August 25, 2017). During this time, he rented a vehicle for four days to get to and from work.
78. When the Engine in Mr Bell's Affected Vehicle failed on August 15, 2017, it had 137,435 km on its odometer.
79. Neither the Defendants nor any of their agents, affiliates, predecessors, or subsidiaries informed Mr Bell of the existence of the latent Oil Consumption Defect prior to or subsequent to his purchase of the Affected Vehicle. Had Mr Bell known of the latent Oil Consumption Defect in the 2012 Chevrolet Equinox with the 2.4-litre Ecotec LEA Engine at the time of purchase, he would not have purchased the vehicle or would have paid substantially less to purchase the vehicle.
80. Mr Bell learned about the Oil Consumption Defect in his Affected Vehicle for the first time on or around December 10, 2019 when he read a social media post about the Oil Consumption Defect in certain Chevrolet Equinox and GMC Terrain vehicles.
81. Mr Bell worries that he will experience engine damage caused by the Oil Consumption Defect in his Affected Vehicle again, as the failed Engine in his Affected Vehicle was replaced with another 2.4-litre Ecotec LEA Engine. As a result, Mr Bell frequently manually checks the engine oil levels in his Affected Vehicle and has the engine oil changed more frequently than the maintenance recommendations and/or schedules call for.

## CAUSES OF ACTION

### Negligence

82. The Defendants are and were in a relationship of proximity to Mr Bell and the Class Members. It was reasonable foreseeably that if the Affected Vehicles contained the Oil Consumption Defect, harm to Mr Bell and the Class Members would result.
83. At all material times, the Defendants, or any of them, owed a duty of care to Mr Bell and the Class Members to:
- (a) exercise reasonable care in the design, research, development, testing, manufacturing, marketing, advertisement, promotion, distribution, leasing, sale, warranting, servicing, and repair of the Affected Vehicles;
  - (b) ensure that the Affected Vehicles were fit for intended and/or reasonably foreseeable use;
  - (c) conduct appropriate testing to determine that the Affected Vehicles were fit for intended and/or reasonably foreseeable use;
  - (d) take all reasonable steps necessary to manufacture, promote, lease, and/or sell a product that was not unreasonably dangerous to those who use it;
  - (e) properly, adequately, and fairly warn of the magnitude and scope of the Oil Consumption Defect;
  - (f) ensure that consumers and the public were kept fully and completely informed of defects associated with the Affected Vehicles, including the Oil Consumption Defect, in a timely manner;

- (g) not withhold from consumers and the public material facts concerning the safety, performance, and reliability of the Affected Vehicles;
  - (h) monitor, investigate, evaluate, and follow up on reports of defects, including the Oil Consumption Defect, in the Affected Vehicles; and,
  - (i) provide a timely and effective fix to rectify the Oil Consumption Defect.
84. The reasonable standard of care expected in the circumstances required the Defendants to act fairly, reasonably, honestly, candidly and with due care in the course of designing, developing, testing, and manufacturing the Affected Vehicles and having them certified, imported, marketed and distributed. The Defendants, through their employees, officers, directors and agents, failed to meet the reasonable standard of care in that regard and similarly failed to warn Mr Bell and the Class Members of the latent Oil Consumption Defect.
85. Mr Bell's and the Class Members' damages were caused by the negligence of the Defendants. Such negligence includes, but is not limited to, the following:
- (a) the Defendants failed to adequately design, research, develop, test, and/or manufacture the Affected Vehicles before marketing, advertising, promoting, warranting, leasing, and selling the Affected Vehicles as suitable and safe for use in an intended and/or reasonably foreseeable manner;
  - (b) the Defendants failed to ensure that the Affected Vehicles were free of defects and of merchantable quality;

-2/-

- (c) the Defendants failed to adequately test the Affected Vehicles and their Engines in a manner that would fully disclose the magnitude and scope of the Oil Consumption Defect associated with the Affected Vehicles;
- (d) the Defendants failed to provide Mr Bell and the Class Members with proper, adequate, and/or fair warning of the Oil Consumption Defect;
- (e) the Defendants failed to design and establish an effective and timely procedure for repair of the Oil Consumption Defect;
- (f) the Defendants failed to adequately monitor, evaluate, and act upon reports of the Oil Consumption Defect;
- (g) the Defendants failed to provide any or any adequate updates and/or current information to Mr Bell and the Class Members in a timely fashion respecting the Oil Consumption Defect as such information became available;
- (h) after becoming aware of problems with the Affected Vehicles, the Defendants failed to issue adequate warnings, failed to issue a timely recall, failed to publicize the problems, and failed to otherwise act properly in a timely manner to alert the public to the Oil Consumption Defect;
- (i) the Defendants represented that the Affected Vehicles were fit for their intended purposes and of merchantable quality when the Defendants knew or ought to have known that these representations were false;

- (j) the Defendants made misrepresentations that were unreasonable given that the Oil Consumption Defect was known or ought to have been known by the Defendants;
- (k) the Defendants knowingly and intentionally concealed from Mr Bell and the Class Members that the Affected Vehicles suffered from the Oil Consumption Defect (and the costs, risks, and diminished value of the Affected Vehicles as a result of the Oil Consumption Defect); and,
- (l) the Defendants failed to timely cease the manufacturing, marketing, distribution, leasing, and/or sale of the Affected Vehicles when it knew or ought to have known of the Oil Consumption Defect.

86. As a result of the Defendants' negligence, Mr Bell and the Class Members suffered and will continue to suffer damages.

### **Breach of Warranties**

87. The Defendants expressly or impliedly warranted to Class Members that the Affected Vehicles were reasonably fit for the purpose of safe driving, that the Affected Vehicles were of merchantable quality, that the Affected Vehicles were free from defects and/or that the Affected Vehicles were of acceptable quality. The warranties included the Engines.

88. GM Canada provided the purchasers and lessees of the Affected Vehicles with a written warranty that provides and represents, among other things, that each Affected Vehicle will be free of defects in material and workmanship. In addition, an implied warranty applies to each transaction between the purchasers of the Affected Vehicles and GM

Canada to the same effect pursuant to the *Consumer Protection Act, 2002*, the parallel provisions of the consumer protection legislation in other Canadian provinces, the *Sale of Goods Act*, the parallel provisions of the sale of goods legislation in other Canadian provinces, the *Motor Vehicle Safety Act*, and the common law.

89. Despite, and contrary to, the foregoing warranties and representations, the Defendants sold and leased the Affected Vehicles when they knew or ought to have known of the latent Oil Consumption Defect, and the Defendants concealed or failed to disclose the Oil Consumption Defect to Class Members.
90. GM Canada has breached its warranties with Class Members, and as a result, Class Members have suffered damages.

### **Unjust Enrichment**

91. The Defendants caused Class Members to pay for a product that they would not have otherwise purchased or leased; or, in the alternative, for which they should have paid less than they did.
92. As a result, the Defendants were enriched by the payment or overpayment.
93. Class Members suffered a deprivation equal to the Defendants' enrichment.
94. There is no juristic reason for the Defendants' enrichment and the Class Members' corresponding deprivation. The Class Members are entitled to restitution for the Defendants' unjust enrichment.

## **DAMAGES**

95. Mr Bell and the Class Members have suffered loss and damage caused by the wrongful and negligent acts of the Defendants.
96. Mr Bell and the Class Members face the loss of the ability to sell, or exercise lease purchase options for, the Affected Vehicles at the Class Members' anticipated fair market value.
97. Mr Bell and the Class Members have suffered or will suffer inconvenience and have incurred or will incur special damages arising from any necessary repairs to the Affected Vehicles, including loss of income, loss of use of the Affected Vehicles during any such repair periods, diminished value of the Affected Vehicles, the costs associated with the use of other automobiles or other expenses during such periods.
98. The Defendants' conduct described above was deliberate, arrogant, high-handed, outrageous, reckless, wanton, entirely without care, secretive, callous, willful, disgraceful and in contemptuous disregard of the rights, personal safety and interests of Mr Bell, the Class Members and the public.
99. This conduct renders the Defendants liable to pay punitive damages to Mr Bell and the Class Members.



**PLACE OF TRIAL**

100. Mr Bell proposes that this action be tried in London, Ontario.

**SERVICE OUTSIDE ONTARIO WITHOUT LEAVE**

101. Pursuant to rule 17.02(g) and (p) of the Ontario *Rules of Civil Procedure*, this originating process may be served outside Ontario without a court order because the proceeding consists of a claim or claims (a) in respect of a tort committed in Ontario; and, (b) against a person ordinarily resident or carrying on business in Ontario.

September 14, 2020

**MCKENZIE LAKE LAWYERS LLP**

140 Fullarton Street, Suite 1800

London, ON N6A 5P2

**Michael J Peerless** (LSO # 34127P)

**Matthew D Baer** (LSO # 48227K)

**Chelsea Smith** (LSO # 71843N)

Tel: 519-672-5666

Fax: 519-672-2674

Lawyers for the Plaintiff

## APPENDIX 1

Alberta: *Consumer Protection Act*, RSA 2000, c C-26.3.

British Columbia: *Business Practices and Consumer Protection Act*, SBC 2004, c 2.

Manitoba: *The Business Practices Act*, CCSM c B120, c 2 and *The Consumer Protection Act*, CCSM c C200.

New Brunswick: *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1.

Newfoundland and Labrador: *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1.

Northwest Territories: *Consumer Protection Act*, RSNWT 1988, c C-17.

Nova Scotia: *Consumer Protection Act*, RSNS 1989, c 92.

Nunavut: *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17.

Prince Edward Island: *Consumer Protection Act*, RSPEI 1988, c C-19 and the *Business Practices Act*, RSPEI 1988, c B-7.

Quebec: *Consumer Protection Act*, CQLR c P-40.1.

Saskatchewan: *The Consumer Protection and Business Practices Act*, SS 2014, c C-30.2.

Yukon: *Consumers Protection Act*, RSY 2002, c 40.

## APPENDIX 2

Alberta: *Sale of Goods Act*, RSA 2000, c S-2.

British Columbia: *Sale of Goods Act*, RSBC 1996, c 410.

Manitoba: *The Sale of Goods Act*, CCSM c S10.

New Brunswick: *Sale of Goods Act*, RSNB 2016, c 110.

Newfoundland and Labrador: *Sale of Goods Act*, RSNL 1990, c S-6.

Northwest Territories: *Sale of Goods Act*, RSNWT 1998, c S-2.

Nova Scotia: *Sale of Goods Act*, RSNS 1989, c 408.

Nunavut: *Sale of Goods Act*, RSNWT (Nu) 1998, c S-2.

Prince Edward Island: *Sale of Goods Act*, RSPEI 1988, c S-1.

Quebec: *Civil Code of Quebec*, CQLR c CCQ-1991.

Saskatchewan: *Sale of Goods Act*, RSS 1978, c S-1.

Yukon: *Sale of Goods Act*, RSY 2002, c 198.

MICHAEL BELL  
Plaintiff

-and- GENERAL MOTORS OF CANADA COMPANY et al  
Defendants

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
LONDON

**STATEMENT OF CLAIM**

**MCKENZIE LAKE LAWYERS LLP**

140 Fullarton Street, Suite 1800

London, Ontario N6A 5P2

**Michael J Peerless** (LSO # 34127P)

**Matthew D Baer** (LSO # 48227K)

**Chelsea Smith** (LSO # 71843N)

Tel: 519-672-5666

Fax: 519-672-2674

Lawyers for the Plaintiff