

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MARK RILEY, <i>on behalf of himself</i>	:	
<i>and all others similarly situated,</i>	:	
	:	Case No. 2:21-cv-00924
Plaintiff,	:	
	:	Chief Judge Algenon L. Marbley
v.	:	
	:	Magistrate Judge Elizabeth P. Deavers
GENERAL MOTORS LLC,	:	
	:	
Defendant.	:	

ANSWER TO COMPLAINT

Defendant General Motors LLC (“GM” or “Defendant”) hereby answers the Complaint of Plaintiff Mark Riley (“Plaintiff” or “Riley”) as follows:

INTRODUCTORY STATEMENT

In accordance with the Court’s March 15, 2022 Order Granting in Part and Denying in Part Defendant’s Motion to Dismiss, no response is provided to dismissed claims and allegations directed to dismissed claims. Specifically, the Court dismissed Plaintiff’s claim for breach of the implied warranty of merchantability (the “Dismissed Claim”). To the extent any response is deemed required, all allegations not expressly admitted are denied.

RESPONSE TO HEADINGS

The Complaint contains headings. Because they are not set forth in numbered paragraphs, the headings are not properly pleaded facts that require a response. To the extent any headings contain factual allegations requiring a response, GM specifically denies the allegations set forth therein.

INTRODUCTION

1. GM admits only that Plaintiff purports to bring this lawsuit on behalf of the putative class alleged. GM denies any remaining allegations in Paragraph 1 and denies that this action can be maintained as a class action.

2. GM admits only that some owners or lessees of one or more of the vehicle models identified in Paragraph 1 of the Complaint (the “Vehicles”) have commented on an intermittent shift to park message when in park and turning off the vehicle, and that GM identified a repair. GM denies any remaining allegations in Paragraph 2 and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

3. GM admits only that owners or lessees of some of the Vehicles have commented on an intermittent shift to park message when in park and turning off the vehicle, and that GM identified a repair. GM denies any remaining allegations in Paragraph 3 and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

4. Denied.

5. Denied.

6. Denied.

7. GM denies the allegations in Paragraph 7 and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

PARTIES

8. GM lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 8, and therefore denies them.

9. Admitted.

10. GM admits only that it manufactures, markets, and sells certain motor vehicles; and that it provides owner's manuals and a limited warranty for certain motor vehicles, including the Vehicles. GM denies any remaining allegations in Paragraph 10.

JURISDICTION AND VENUE

11. The allegations in Paragraph 11 state legal conclusions to which no response is required. GM denies any remaining allegations in Paragraph 11.

12. The allegations in Paragraph 12 state legal conclusions to which no response is required. GM denies any remaining allegations in Paragraph 12.

13. The allegations in Paragraph 13 state legal conclusions to which no response is required. GM denies any remaining allegations in Paragraph 13.

FACTUAL ALLEGATIONS

14. GM admits only that owners or lessees of some of the Vehicles have commented on an intermittent shift to park message when in park and turning off the vehicle, and that GM identified a repair. GM denies any remaining allegations in Paragraph 14 and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

15. GM admits only that owners or lessees of some of the Vehicles have commented on an intermittent shift to park message when in park and turning off the vehicle, and that GM identified a repair. GM denies any remaining allegations in Paragraph 15 and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

16. GM admits only that owners or lessees of some of the Vehicles have commented on an intermittent shift to park message when in park and turning off the vehicle, and that GM identified a repair. GM denies any remaining allegations in Paragraph 16 and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

17. Denied.

18. GM admits only that any comments on carcomplaints.com speak for themselves. GM denies any remaining allegations in Paragraph 18.

19. GM admits only that any comments on acadiaforum.net speak for themselves. GM denies any remaining allegations in Paragraph 19.

20. GM admits only that owners or lessees of some of the Vehicles have commented on an intermittent shift to park message when in park and turning off the vehicle, and that GM identified a repair. GM denies any remaining allegations in Paragraph 20 and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

21. GM admits only that it issued Bulletin No. PIT5616 on May 29, 2018 and that it speaks for itself. GM denies any remaining allegations in Paragraph 21.

22. GM admits only that it issued the Technical Service Bulletin 18-NA-297 on October 3, 2018 and that it speaks for itself. GM denies any remaining allegations in Paragraph 22.

23. GM admits only that the October 3, 2018 Bulletin speaks for itself; and that GM provided a fix for the Vehicles. GM denies any remaining allegations in Paragraph 23.

24. GM admits only that it issued the TSB No. 19-NA-206 in September 2019; that the bulletin speaks for itself; and that GM provided a fix for the Vehicles. GM denies any remaining allegations in Paragraph 24.

25. Denied.

26. Denied.

27. GM admits only that any comments on carcomplaints.com speak for themselves. GM denies any remaining allegations in Paragraph 27.

28. GM admits only that the Vehicles were accompanied by a limited warranty and that those limited warranties speak for themselves. GM denies any remaining allegations in Paragraph 28.

29. GM lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 29 and therefore denies them.

30. GM admits only that the Vehicles were accompanied by a limited warranty and that those limited warranties speak for themselves. GM denies any remaining allegations in Paragraph 30.

31. GM admits only that the Vehicles were accompanied by a limited warranty and that those limited warranties speak for themselves. GM denies any remaining allegations in Paragraph 31.

32. GM admits only that it provides guidelines and makes available training, materials, special tools, software and replacement parts to its dealers. GM denies any remaining allegations in Paragraph 32 and denies that it “controls execution of all warranty repairs by its dealers.”

33. GM admits only that it reimburses its dealers for authorized warranty repairs. GM denies any remaining allegations in Paragraph 33.

34. The allegations in Paragraph 34 are legal conclusions to which no response is required. GM denies any remaining allegations in Paragraph 34.

A. Plaintiff Mark Riley

35. GM lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 35 and therefore denies them.

36. GM lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 36 and therefore denies them.

37. GM lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding assurances Plaintiff alleges he received from a dealer and Plaintiff's vehicle and therefore denies those allegations. GM denies any remaining allegations in Paragraph 37.

38. GM lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 38 and therefore denies them.

39. GM lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 39 and therefore denies them.

40. GM lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 40 and therefore denies them.

41. GM lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 41 and therefore denies them.

42. GM lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 42 and therefore denies them.

43. GM lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 43 and therefore denies them.

44. GM admits only that it received a letter dated October 31, 2018, from counsel for Plaintiff and that the letter speaks for itself. GM denies any remaining allegations in Paragraph 44.

45. GM lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 45 and therefore denies them.

46. GM lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 46 and therefore denies them.

47. GM lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 47 and therefore denies them.

48. GM denies the allegations of Paragraph 48 and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

CLASS ACTION ALLEGATIONS

A. The Class

49. GM admits only that Plaintiff brings this action on behalf of a putative statewide class in Ohio. GM denies any remaining allegations in Paragraph 49, and denies that a class action can be maintained.

50. GM admits only that Plaintiff brings this action on behalf of a putative statewide class in Ohio. GM denies any remaining allegations in Paragraph 50, and denies that a class action can be maintained.

B. Numerosity

51. GM admits only that thousands of Vehicles have been sold and leased in Ohio. The remaining allegations in Paragraph 51 are legal conclusions to which no response is required. GM denies any remaining allegations in Paragraph 51, and denies that a class action can be maintained.

C. Common Questions of Law and Fact

52. The allegations in Paragraph 52 are legal conclusions to which no response is required. GM denies any remaining allegations in Paragraph 52 and denies that a class action can be maintained.

D. Typicality

53. The allegations in Paragraph 53 are legal conclusions to which no response is required. GM denies any remaining allegations in Paragraph 53, denies that it has engaged in any

wrongful conduct, denies that it has caused any economic or other injury alleged by Plaintiff, and denies that a class action can be maintained.

E. Protecting the Interests of the Class Members

54. The allegations in Paragraph 54 are legal conclusions to which no response is required. GM denies any remaining allegations in Paragraph 54 and denies that a class action can be maintained.

F. Proceeding Via Class Action is Superior and Advisable

55. The allegations in Paragraph 55 are legal conclusions to which no response is required. GM denies any remaining allegations in Paragraph 55 and denies that a class action can be maintained.

56. The allegations in Paragraph 56 are legal conclusions to which no response is required. GM denies any remaining allegations in Paragraph 56 and denies that a class action can be maintained.

FIRST CAUSE OF ACTION
Breach of Contract

57. GM incorporates by reference its responses to all preceding paragraphs above.

58. GM admits only that the Vehicles came with a limited warranty and those limited warranties speak for themselves. GM denies any remaining allegations in Paragraph 58.

59. The allegations in Paragraph 59 are legal conclusions for which no response is required. GM denies any remaining allegations in Paragraph 59.

60. GM denies the allegations in Paragraph 60 and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

61. GM denies the allegations in Paragraph 61 and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

62. GM denies the allegations in Paragraph 62 and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

63. GM denies the allegations in Paragraph 63 and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

SECOND CAUSE OF ACTION

Breach of Express Warranty Under R.C. § 1302.26, *et seq.*

64. GM incorporates by reference its responses to all preceding paragraphs above.

65. GM admits only that the Vehicles came with a limited warranty and those limited warranties speak for themselves. GM denies any remaining allegations in Paragraph 65.

66. The allegations in Paragraph 66 are legal conclusions for which no response is required. GM denies any remaining allegations in Paragraph 66.

67. GM lacks information sufficient to form a belief as to the truth of Plaintiff's allegations regarding the submission of Vehicles for warranty repairs and therefore denies them. GM denies any remaining allegations in Paragraph 67.

68. Denied.

69. The allegations in Paragraph 69 are legal conclusions for which no response is required. GM denies any remaining allegations in Paragraph 69.

70. The allegations in Paragraph 70 are legal conclusions for which no response is required. GM denies any remaining allegations in Paragraph 70.

71. GM lacks information sufficient to form a belief as to the truth of Plaintiff's allegations regarding his or any putative class member's decision to purchase or lease the Vehicles and therefore denies them.

72. Denied.

THIRD CAUSE OF ACTION

Breach of Implied Warranty of Merchantability Under R.C. § 1302.27, *et seq.*

73. GM incorporates by reference its responses to all preceding paragraphs above

74. No response is required to the allegations of Paragraph 74 because they relate to the Dismissed Claim, which the Court dismissed in its March 15, 2022 Order.

75. No response is required to the allegations of Paragraph 75 because they relate to the Dismissed Claim, which the Court dismissed in its March 15, 2022 Order.

76. No response is required to the allegations of Paragraph 76 because they relate to the Dismissed Claim, which the Court dismissed in its March 15, 2022 Order.

77. No response is required to the allegations of Paragraph 77 because they relate to the Dismissed Claim, which the Court dismissed in its March 15, 2022 Order.

78. No response is required to the allegations of Paragraph 78 because they relate to the Dismissed Claim, which the Court dismissed in its March 15, 2022 Order.

79. No response is required to the allegations of Paragraph 79 because they relate to the Dismissed Claim, which the Court dismissed in its March 15, 2022 Order.

FOURTH CAUSE OF ACTION

**Breach of Warranty Under the Magnuson-Moss Warranty Act,
15 U.S.C. § 2301, *et seq.***

80. GM incorporates by reference its responses to all preceding paragraphs above.

81. The allegations in Paragraph 81 state a legal conclusion to which no response is required. GM denies any remaining allegations in Paragraph 81.

82. The allegations in Paragraph 82 state legal conclusions to which no response is required. GM denies any remaining allegations in Paragraph 82.

83. The allegations in Paragraph 83 state a legal conclusion to which no response is required. GM denies any remaining allegations in Paragraph 83.

84. The allegations in Paragraph 84 state a legal conclusion to which no response is required. GM denies any remaining allegations in Paragraph 84.

85. The allegations in Paragraph 85 state a legal conclusion to which no response is required. GM denies any remaining allegations in Paragraph 85, and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or to the putative class.

86. The allegations in Paragraph 86 state a legal conclusion to which no response is required. GM denies any remaining allegations in Paragraph 86, and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

87. The allegations in Paragraph 87 state a legal conclusion to which no response is required. GM denies any remaining allegations in Paragraph 87, and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

88. The allegations in Paragraph 88 state a legal conclusion to which no response is required. GM denies any remaining allegations in Paragraph 88, and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

89. GM denies the allegations in Paragraph 89, and denies that it failed to fulfill any legal or contractual obligation to Plaintiff or the putative class.

DEMAND FOR RELIEF

GM denies any remaining allegations in the unnumbered paragraphs enumerating Plaintiff's relief sought, including each and every subpart. GM further denies that this action can be maintained as a class action, and denies that Plaintiff is entitled to any relief.

TRIAL BY JURY DEMANDED ON ALL COUNTS

To the extent a response to Plaintiff's jury demand is required, GM admits only that Plaintiff demands a jury trial and denies any remaining allegations.

AFFIRMATIVE AND OTHER DEFENSES

GM states the following affirmative and other defenses. In asserting these defenses, GM does not assume the burden of proof with regard to any issue upon which the applicable law places the burden of proof on Plaintiff.

FIRST DEFENSE

Plaintiff's claims are barred, in whole or in part, because the Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations and/or the doctrine of laches.

THIRD DEFENSE

Plaintiff's claims are barred, in whole or in part, on the ground of mootness.

FOURTH DEFENSE

Plaintiff lacks standing to bring his claims.

FIFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff has not suffered any actual injury, loss, or damages; or in the alternative, any injury, loss, or damages that Plaintiff may have suffered were caused by his own conduct.

SIXTH DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff failed to make reasonable efforts to prevent or mitigate any injury, loss, or damages.

SEVENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff seeks damages that would constitute duplicative recovery.

EIGHTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because this action cannot be maintained as a class action pursuant to Federal Rule of Civil Procedure 23.

NINTH DEFENSE

Plaintiff's damages, if any, are speculative and unascertainable.

TENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent that any award of damages to Plaintiff would be excessive, punitive, and disproportionate to any alleged injury suffered by Plaintiff.

ELEVENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff failed to provide any notice required as a condition precedent to bringing his claims for relief.

TWELFTH DEFENSE

Plaintiff's request for equitable relief is barred, in whole or in part, because Plaintiff has available an adequate remedy at law.

THIRTEENTH DEFENSE

Plaintiff's claim is barred, in whole or in part, by the doctrine of accord and satisfaction.

FIFTEENTH DEFENSE

Plaintiff's claim is barred because GM did not breach any contract.

SIXTEENTH DEFENSE

Plaintiff's claim is barred, in whole or in part, by the doctrines of waiver and/or estoppel.

SEVENTEENTH DEFENSE

Plaintiff's claim is barred, in whole or in part, because Plaintiff consented to the acts and events set forth in the Complaint.

EIGHTEENTH DEFENSE

Plaintiff's claim is barred, in whole or in part, because the losses that Plaintiff allegedly suffered were not proximately caused by any act or omission of GM.

NINETEENTH DEFENSE

Because liability and/or damages, if any, to each member of the alleged putative classes Plaintiff purports to represent may not be determined by a single judge or jury or on a group-wide basis, permitting this action to proceed as a class action would violate GM's rights under the Seventh and Fourteenth Amendments to the U.S. Constitution.

TWENTIETH DEFENSE

Plaintiff's claims are barred, in whole or in part, because GM performed any and all contractual duties, and therefore Plaintiff is estopped from asserting any claim against GM.

TWENTY-FIRST DEFENSE

GM has not knowingly or intentionally waived any applicable affirmative defenses, and thus reserves the right to assert and rely on any and all affirmative defense to Plaintiff's Complaint that are available under applicable law, and any other defenses that may now exist or in the future be available based on discovery and further investigation in this case.

WHEREFORE, GM respectfully requests that the Court determine and adjudge:

A. that this action cannot be maintained as a class action;

- B. that the Complaint be dismissed on the merits;
- C. that Plaintiff takes nothing by the Complaint;
- D. that GM be awarded its costs and expenses, including attorneys' fees, to the extent allowed by law and any applicable contractual agreement; and
- C. that GM be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

GM demands a trial by jury on all issues so triable.

Dated: March 29, 2022

Respectfully submitted,

GENERAL MOTORS LLC

By: /s/ Daniel R. Birnbaum
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*Attorneys for Defendant,
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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on March 29, 2022.

/s/ Daniel R. Birnbaum

Daniel R. Birnbaum