

Exhibit F
Letter from K. Landan to I. Spiro dated February 10, 2005

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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To Call Writer Directly:
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February 10, 2005

Via Facsimile & Certified Mail

Ira Spiro, Esq.
Spiro Moss Barness Harrison & Barge LLP
11377 W. Olympic Boulevard
Fifth Floor
Los Angeles, California 90064-1683

Re: Hunter v. General Motors Corporation, et al.
Superior Court of the State of California
County of Los Angeles, Central District - Case No. BC 324 622

Dear Mr. Spiro:

I have been asked to respond to your January 12, 2005 letter to General Motors Corporation and Robert A. Lutz.

Your letter purports to notify General Motors Corporation, on behalf of LaRonda Hunter, of an undefined alleged defect in a number of different model-year 1999-2003 General Motors vehicles and seeks a variety of relief.

As you are aware, in December 2003 the Office of Defects Investigation ("ODI") of the National Highway Transportation Safety Administration ("NHTSA") opened a Preliminary Evaluation (PE03057) to investigate allegations of parking brake ineffectiveness in certain vehicles referenced in your January 12, 2005 letter. As you are further aware, in April 2004 NHTSA closed its Preliminary Evaluation and commenced an Engineering Analysis (EA04011) of allegations of parking brake ineffectiveness in a broader group of General Motors vehicles, a group which includes all of the vehicles referenced in your letter. For more than one year before receiving your letter, General Motors has cooperated fully with NHTSA in its Preliminary Evaluation and ongoing Engineering Analysis. And, while General Motors does not believe that any safety-related defect exists in the parking brake systems of these vehicles, General Motors will continue to cooperate with NHTSA in its ongoing analysis. Your letter, and the alleged defect it purports to give General Motors notice of, simply parrot the language found in publicly available, online NHTSA documents describing the ODI Preliminary Evaluation and Engineering Analysis referenced above.

KIRKLAND & ELLIS LLP

February 10, 2005

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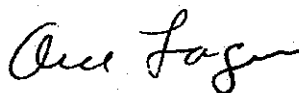
Thus, it is evident that your letter does not provide General Motors with notice of any allegation of defect not already the subject of ongoing discussions between General Motors and NHTSA. If your January 12, 2005 letter was intended to raise different complaints than those currently being investigated by NHTSA, your letter fails to provide sufficient detail concerning the alleged defect to enable General Motors to evaluate your claim and respond to it in a meaningful way.

In either event, General Motors cannot respond to your "demand" at this time because your January 12, 2005 letter does not supply sufficient information to address any complaints Ms. Hunter may have. For example, your letter does not identify the particular vehicle that Ms. Hunter owns. Nor does your letter suggest that your client owns a General Motors vehicle that has manifested any problem with, or failure of, the parking brake or rear service brake systems in her vehicle. Moreover, your January 12 letter's various allegations that General Motors has made misrepresentations about the safety of the vehicles referenced in your letter are unfounded and untrue.

The above notwithstanding, and without waiver of any defense, I am providing by this letter a tender of settlement consistent with General Motors' commitment to customer service. Specifically, Ms. Hunter may bring her General Motors vehicle to any convenient General Motors dealer for a mechanical inspection of the parking brake and rear service brake systems. If that inspection reveals that any repairs should be made to either system, those repairs will be made at no charge. During the time of the inspection, as well as any time necessary for repairs, Ms. Hunter will receive the free use of a loaner vehicle. If your client wishes to take advantage of this offer, please contact me to arrange for an appointment. This procedure should put a satisfactory end to this controversy.

I look forward to hearing from you.

Sincerely,



J. Andrew Langan

Exhibit G
Deposition of Robin Gonzales

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

La RONDA HUNTER, ROSANA N.
PULGARIN, and ROBIN GONZALES
on behalf of themselves and
on behalf of all others
similarly situated and
the general public,

Plaintiffs,

vs. No. BC 324 622

GENERAL MOTORS CORPORATION,
and DOES 1-100,
Defendants.

DEPOSITION OF ROBIN GONZALES
Los Angeles, California
Wednesday, December 17, 2008

Reported by:
SHARON LINDSAY-MILNIKEL
CSR No. 5335
JOB No. 101997

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2
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22
23
24
25

1 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
2 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

3
4 La RONDA HUNTER, ROSANA N.
PULGARIN, and ROBIN GONZALES
5 on behalf of themselves and
6 on behalf of all others
7 similarly situated and
8 the general public,

Plaintiffs,

vs. No. BC 324 622

9
10 GENERAL MOTORS CORPORATION,
and DOES 1-100,
11 Defendants.

12
13
14
15 Deposition of ROBIN GONZALES, taken on behalf of
16 Defendant General Motors Corporation, at 777 South
17 Figueroa Street, Los Angeles, California, beginning at
18 10:14 a.m. and ending at 4:46 p.m. on Wednesday,
19 December 17, 2008, before SHARON LINDSAY-MILNIKEL,
20 Certified Shorthand Reporter No. 5335.

21
22
23
24
25

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1 Los Angeles, California, Wednesday, December 17, 2008
2 10:14 a.m. - 4:46 p.m.
3
4 VIDEO OPERATOR: Good morning. Today is
5 December 17th, 2008. We are on the record at 10:14.
6 We're here for the deposition of Robin
7 Gonzales in the matter of Hunter, et al. versus
8 General Motors, Case Number BC 324 622, pending before
9 the Superior Court, State of California, County of Los
10 Angeles.
11 This deposition is being taken on behalf of
12 defendant. We're at the offices of Kirkland & Ellis
13 located at 777 South Figueroa Street in Los Angeles,
14 California.
15 My name is Bruno Sere appearing on behalf of
16 Sarnoff Court Reporters and Legal Technologies located
17 in Los Angeles, California.
18 Would counsel please introduce themselves and
19 state their affiliations.
10:15 20 MS. YASHAR: Pantea Yashar on behalf of
21 General Motors Corporation.
22 MS. GUZMAN: Kelly Guzman on behalf of
23 General Motors Corporation.
24 MR. SPIRO: Ira Spiro on behalf of
25 plaintiffs.

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1 VIDEO OPERATOR: You may swear in the
2 witness.
3
4 ROBIN GONZALES,
5 having been administered an oath, was examined and
6 testified as follows:
7
8 EXAMINATION
9 BY MS. YASHAR:
10:15 10 Q Good morning, Ms. Gonzales.
11 A Good morning.
12 Q Will you please state your full name for the
13 record.
14 A Robin Gonzales.
15 Q You were here yesterday during Ms. Hunter's
16 deposition so you -- I'm sure you're familiar with
17 some of the basic deposition rules of what's going to
18 happen today. I'm still going to go over some of
19 those rules with you to make sure we're on the same
10:15 20 page.
21 A Okay.
22 Q You understand that you've been put under
23 oath, correct?
24 A Yes.
25 Q You must answer truthfully and to the best of

1 your ability.
 2 Do you understand that?
 3 A Yes.
 4 Q If you don't know an answer to a question,
 5 tell me that you don't know the answer.
 6 A Okay.
 7 Q If you don't understand a question, let me
 8 know that you don't understand that question and I can
 9 rephrase it for you.
 10:16 10 A Okay.
 11 Q If you don't tell me that you don't
 12 understand it, then I'll assume that you understood my
 13 question?
 14 A Okay.
 15 Q When I refer to GM, I'm referring to General
 16 Motors Corporation and all of its divisions and
 17 affiliates.
 18 Do you understand that?
 19 A Yes.
 10:16 20 Q Is there any reason why you may not be able
 21 to give your best testimony today?
 22 A No.
 23 Q Can you tell me how old you are.
 24 A 46.
 25 Q When were you born?

1 A Yeah. Yes.
 2 Q Do you have any children?
 3 A One.
 4 Q How old?
 5 A 25.
 6 Q Does this child live with you?
 7 A No.
 8 Q Does anyone live with you?
 9 A My mom.
 10:18 10 Q Do you have a son or a daughter?
 11 A Daughter.
 12 Q Does anyone depend on you for financial
 13 support?
 14 A No.
 15 Q Are you -- are you currently employed?
 16 A No.
 17 Q When was the last time that you were
 18 employed?
 19 A About 20 months ago.
 10:18 20 Q And where did you work?
 21 A Fidelity National Tax Services.
 22 Q What was your position?
 23 A Cash management specialist.
 24 Q How long were you cash management specialist?
 25 A Maybe a year and before that I -- I was an

1 A March 19th, '62.
 2 Q Where were you born?
 3 A Los Angeles.
 4 Q Where do you currently reside?
 5 A 9644 Foxbury Way, Pico Rivera.
 6 Q How long have you lived there?
 7 A Since 2002 and then I lived there before that
 8 since 1964, off and on.
 9 Q Where did you live before 2002?
 10:17 10 A Fullerton.
 11 Q Where in Fullerton?
 12 A On Kroeger Street.
 13 Q What's the address?
 14 A I don't know the number. It's on Kroeger.
 15 Q Are you currently married?
 16 A No.
 17 Q Have you ever been married?
 18 A Yes.
 19 Q When was that?
 10:17 20 A 1986 or '87.
 21 Q That's when you were married?
 22 A Yes.
 23 Q And how long were you married?
 24 A About ten years.
 25 Q Until about 1996?

1 accounts receivable specialist.
 2 Q Also for Fidelity National?
 3 A Yes.
 4 Q Have you had any other employers within the
 5 last five years?
 6 A I don't recall.
 7 Q Have you worked for ELG Metals?
 8 A Yes.
 9 Q When did you work for ELG Metals?
 10:19 10 A Before that.
 11 Q Do you know what year?
 12 A No.
 13 Q You don't know what year?
 14 A No, I'm not good on dates.
 15 Q Do you know how long you worked for ELG
 16 Metals?
 17 A Approximately four months.
 18 Q What was your position?
 19 A Accounts payable.
 10:20 20 Q Has anyone in your family or anyone close to
 21 you done any work in the automotive industry?__
 22 A No.
 23 Q Do you have a high school diploma?
 24 A Yes.
 25 Q Do you have a college degree?

1 A No.
 2 Q Have you ever participated in any training or
 3 seminars that relate to the automotive industry?
 4 A No.
 5 Q Have you ever participated in any type of
 6 training or seminars that relate to advertising or
 7 marketing?
 8 A No.
 9 Q Do you have any training or experience in the
 10 automotive industry?
 10:21 10 A No.
 11 Q Do you have any training or experience in
 12 automotive engineering?
 13 A No.
 14 Q Do you have any training or experience in
 15 mechanics?
 16 A No.
 17 Q Do you have any training or experience in
 18 automotive repair or work?
 19 A No.
 10:21 20 A No.
 21 Q Do you have any training or experience in
 22 automotive sales, leasing, rental or anything of that
 23 sort?
 24 A No.
 25 Q Do you have any training or experience in

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1 Q Are you aware that you've been served with
 2 written requests for production in this case?
 3 A No.
 4 Q Are you aware that you've been served with
 5 written interrogatories in this case?
 6 A Yeah.
 7 Q Are you aware that you have been served with
 8 written form interrogatories in this case as well?
 9 A I don't understand the question.
 10:24 10 Q Well, let me show you a document and see if
 11 that helps.
 12 I'm handing you what is titled "Plaintiff
 13 Robin Gonzales's Response To Form Interrogatories, Set
 14 One."
 15 MR. SPIRO: What are we marking it as?
 16 MS. YASHAR: We'll have these marked as
 17 Defendant's Exhibit Number 1.
 18 MR. SPIRO: 1.
 19 (Defendant's Exhibit 1 marked.)
 10:25 20 BY MS. YASHAR:
 21 Q Have you seen this document before?
 22 A Yes.
 23 Q You've seen this document before?
 24 A Yes.
 25 Q Can you tell me what it is?

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1 advertising?
 2 A No.
 3 Q Do you have any training or experience in
 4 drafting warranties or anything that's related to
 5 warranties?
 6 A No.
 7 Q Do you consider yourself an educated
 8 consumer?
 9 MR. SPIRO: Vague. Vague.
 10:22 10 THE WITNESS: On what?
 11 BY MS. YASHAR:
 12 Q In general?
 13 A Yes.
 14 Q Why?
 15 A Because I'm educated.
 16 Q Do you know what discovery is?
 17 A No.
 18 Q You don't know what discovery is?
 19 A No.
 10:22 20 Q Each party has a right to obtain information
 21 before trial through written requests like
 22 interrogatories and requests for production and
 23 depositions such as this one today.
 24 Do you understand that?
 25 A No.

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1 A "Plaintiff Robin Gonzales's Response To Form
 2 Interrogatories, Set One."
 3 Q Did you review -- can you tell me -- that is
 4 what the title of the document is, can you tell me a
 5 little bit more in depth what it is?
 6 A Well, it looks like receipts.
 7 MS. YASHAR: Can we take a break for about
 8 ten minutes.
 9 MR. SPIRO: Sure.
 10:26 10 VIDEO OPERATOR: We're going off the record
 11 at 10:26.
 12 We are off the record.
 13 (Interruption in the proceedings.)
 14 VIDEO OPERATOR: We are back on the record at
 15 10:33.
 16 MS. YASHAR: Ms. Gonzales, I'm handing you
 17 another document that is entitled "Form
 18 Interrogatories - General" from the asking party,
 19 General Motors Corporation.
 10:33 20 This will be marked as Defendant's Exhibit
 21 Number 2.
 22 (Defendant's Exhibit 2 marked.)
 23 BY MS. YASHAR:
 24 Q Do you recognize this document?
 25 A Yes.

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1 Q What is it?
 2 A A -- "Form Interrogatories - General."
 3 Q When did you see it for the first time?
 4 A I don't remember.
 5 Q Can you give me a ballpark?
 6 A No.
 7 Q Was it last week?
 8 A No.
 9 Q Was it a few months ago?
 10:35 10 A I don't remember.
 11 Q Did you provide answers to the questions that
 12 are in Exhibit 2?
 13 A Yes.
 14 Q You provided those answers to your counsel?
 15 A Yes.
 16 Q Did you provide those answers prior to your
 17 responses being served on GM to your -- to General
 18 Motors' first set of form interrogatories?
 19 A Repeat the question.
 10:35 20 Q Did you provide those answers to your counsel
 21 to these form interrogatories before Exhibit 1 was
 22 served on GM?
 23 A I have no idea.
 24 Q Let's go back to Exhibit 1, plaintiff Robin
 25 Gonzales's responses to form interrogatories.

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1 THE WITNESS: Repeat the question.
 2 BY MS. YASHAR:
 3 Q We're looking at Exhibit 1. Are the answers
 4 in Exhibit 1 to the document "Plaintiff Robin
 5 Gonzales's Response To Form Interrogatories," a true
 6 and accurate copy of your responses to GM's first set
 7 of form interrogatories.
 8 MR. SPIRO: Vague.
 9 THE WITNESS: I don't understand the
 10:38 10 question.
 11 BY MS. YASHAR:
 12 Q What don't you understand?
 13 A Rephrase it.
 14 Q Is there anything in these answers that is
 15 not true and accurate, as you sit here today?
 16 A I've already answered that question, yes,
 17 they're true.
 18 Q They're -- they're true?
 19 A Yeah.
 10:38 20 Q And they're true, as you sit here today --
 21 A Yes.
 22 Q -- everything in Exhibit 1.
 23 I'm going to hand you what Ms. Lindsay is
 24 going to mark as Defendant's Exhibit Number 3.
 25 (Defendant's Exhibit 3 marked.)

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1 Did you review these with your counsel prior
 2 to them being served to GM?
 3 A I have no idea.
 4 Q Did you review these with your counsel ever?
 5 A Yes.
 6 Q Did you draft these responses?
 7 MR. SPIRO: Vague. The word "draft," vague.
 8 THE WITNESS: I -- these are my -- these are
 9 my answers.
 10:37 10 BY MS. YASHAR:
 11 Q Those are your answers in Exhibit 1?
 12 A Yes.
 13 Q Did you review these answers as they're
 14 written before they were served on General Motors?
 15 A I don't know.
 16 Q But you did review these answers at some
 17 point; is that correct?
 18 A Yes.
 19 Q Did you make edits to these answers when you
 10:37 20 reviewed them?
 21 A I don't remember.
 22 Q Are these a true and accurate response of
 23 your answers to General Motors' first set of form
 24 interrogatories?
 25 MR. SPIRO: Vague.

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1 BY MS. YASHAR:
 2 Q Can you tell me what Exhibit 3 is.
 3 A "Plaintiff Robin Gonzales's Supplemental
 4 Response To Form Interrogatories, Set One."
 5 Q Do you recognize this document?
 6 A Yes.
 7 Q Did you provide supplemental answers to your
 8 form interrogatories that were served on GM?
 9 A Did I provide the answers? I provided the
 10:40 10 answers, yes.
 11 Q Are your answers, as reflected here in
 12 Exhibit 3, still true and accurate as you sit here
 13 today?
 14 A Yes.
 15 MS. YASHAR: I'm handing you what is being
 16 marked as Defendant's Exhibit Number 4.
 17 (Defendant's Exhibit 4 marked.)
 18 BY MS. YASHAR:
 19 Q Do you recognize this document?
 10:42 20 A Yes.
 21 Q Can you tell me what it is?
 22 A "Defendant Robin Gonzales's Response To
 23 Defendant's First Set Of Interrogatories."
 24 Q And are you aware that these -- strike that.
 25 Did you provide these written responses, as

Page 20

1 reflected in Exhibit 47
 2 MR. SPIRO: Vague. "Provide" and
 3 "responses," those words are vague.
 4 THE WITNESS: I provided the answers.
 5 BY MS. YASHAR:
 6 Q Did you actually draft the answers yourself
 7 or did you provide the information to your counsel?
 8 A I don't recall.
 9 Q Did you review these answers, as written,
 10:43 10 before they were served on GM?
 11 A I don't know.
 12 Q Do you remember reviewing the answers, as
 13 written, at any point?
 14 A Reviewing with who?
 15 Q Reviewing, period, did you review these
 16 answers to make sure they were accurate at any point?
 17 MR. SPIRO: Vague, the word "review."
 18 THE WITNESS: Review with who?
 19 BY MS. YASHAR:
 10:44 20 Q Did you review these answers at any point to
 21 check that they were accurate, you didn't have to
 22 review with anyone, review yourself, you actually
 23 review and read and make sure that the responses in
 24 this written discovery was accurate?
 25 A My answers are accurate.

1 strike that.
 2 Are these answers your accurate responses to
 3 GM's first set of written interrogatories?
 4 A What was the question?
 5 Q Well, let's back up.
 6 Did you review these written responses before
 7 they were served on GM?
 8 A I don't recall.
 9 Q You don't recall ever reviewing these written
 10:46 10 responses?
 11 MR. SPIRO: Well, that misstates her
 12 testimony, it's argumentative.
 13 THE WITNESS: Not before they were served to
 14 GM. I reviewed them.
 15 BY MS. YASHAR:
 16 Q When did you review them?
 17 A I don't recall.
 18 Q Did you review them last week?
 19 A I don't recall.
 10:47 20 Q Did you review them within the week, the last
 21 week?
 22 A I don't recall.
 23 Q Do you recall whether it was a few months
 24 ago?
 25 A I don't know.

1 Q And they're still accurate, as you sit here
 2 today?
 3 A Yes.
 4 Q Do you remember -- do you recall providing
 5 supplemental responses to GM's first set of
 6 interrogatories served on you?
 7 A Rephrase.
 8 MR. SPIRO: Vague.
 9 BY MS. YASHAR:
 10:44 10 Q Do you remember providing supplemental
 11 responses to this?
 12 MR. SPIRO: Vague.
 13 THE WITNESS: I don't understand the
 14 question.
 15 MS. YASHAR: I'm handing you what is being
 16 marked as Defendant's Exhibit Number 5.
 17 (Defendant's Exhibit 5 marked.)
 18 BY MS. YASHAR:
 19 Q Do you recognize this document?
 10:45 20 A Yes.
 21 Q What is it?
 22 A "Robin Gonzales's Supplemental And Amended
 23 Responses To Defendant's First Set Of
 24 Interrogatories."
 25 Q And are these true and accurate responses --

1 Q Did you review them yesterday?
 2 A I don't know.
 3 Q You don't know whether you reviewed --
 4 A I didn't review them yesterday, no.
 5 Q You didn't review them yesterday?
 6 A No.
 7 Q And you didn't review them today?
 8 A I'm looking at them right now.
 9 Q Other than right now as you sit here during
 10:47 10 this deposition, you don't recall reviewing these
 11 earlier today?
 12 A No, I didn't review them today.
 13 Q And you don't recall reviewing them within
 14 the last week?
 15 A No, I didn't.
 16 Q Do you recall reviewing them within the last
 17 month?
 18 A No, I didn't.
 19 Q Do you recall reviewing them within the last
 10:48 20 couple of months?
 21 A No, I didn't.
 22 Q Did you -- do you recall reviewing them
 23 within the last three months?
 24 A No, I didn't.
 25 Q Do you recall reviewing them within the last

1 six months?
 2 A I said I don't know.
 3 Q You don't know or you didn't?
 4 A I don't know when I did.
 5 Q But you know that you reviewed them at some
 6 point?
 7 A Yes.
 8 Q And the answers in here are accurate, as you
 9 sit here today, correct?
 10:48 10 A Yes.
 11 MS. YASHAR: I'm handing you what is being
 12 marked as Defendant's Exhibit Number 6.
 13 (Defendant's Exhibit 6 marked.)
 14 BY MS. YASHAR:
 15 Q Do you recognize this document?
 16 A No, I don't.
 17 Q Have you ever seen this document?
 18 A No.
 19 Q You've never seen "Defendant's First Requests
 10:50 20 To The Named Plaintiffs For Production Of Documents"?"
 21 A If I have, I don't remember.
 22 Q Do you remember having discussions with your
 23 counsel about GM requesting documents?
 24 MR. SPIRO: It's just a yes or a no.
 25 THE WITNESS: No.

1 A I saw them August 25th of '08.
 2 Q You saw them for the first time on
 3 August 25th of 2008?
 4 A Yeah.
 5 Q And did you review the written responses to
 6 make sure that they were accurate?
 7 A Yes.
 8 Q Did you edit or correct any of them?
 9 A I don't recall.
 10:55 10 Q Are they still a true and accurate copy of
 11 your responses, as you sit here today?
 12 A Yes.
 13 MR. YASHAR: I'm handing you what's being
 14 marked as Defendant's Exhibit Number 8.
 15 (Defendant's Exhibit 8 marked.)
 16 BY MS. YASHAR:
 17 Q Can you tell me what this is.
 18 A "Plaintiff's Supplemental Response To
 19 Defendant's First Set Of Requests For Production."
 10:56 20 Q Do you recognize this document?
 21 A (Indicating.)
 22 Q You appear to be showing your counsel a copy
 23 of your signature?
 24 A That's not mine.
 25 Q That's not your signature?

1 BY MS. YASHAR:
 2 Q Did you provide documents to your counsel to
 3 produce to GM?
 4 A Yes.
 5 Q But you don't remember any formal requests
 6 such as this being shown to you?
 7 A No.
 8 Q So you don't remember any -- seeing any
 9 requests for production?
 10:52 10 A No.
 11 MS. YASHAR: I'm handing you what is going to
 12 be marked Defendant's Exhibit 7.
 13 (Defendant's Exhibit 7 marked.)
 14 MS. YASHAR: These are "Plaintiff's Responses
 15 to Defendant's First Set Of Requests For Production."
 16 Q Do you recognize this document?
 17 A Well, apparently I have, I just don't recall
 18 it.
 19 Q You have no specific recollection of ever
 10:54 20 reviewing these responses to defendant's first set of
 21 requests for production?
 22 A When was this -- oh, yeah, I've seen these.
 23 Q When did you see them for the first time?
 24 A Oh, I don't know.
 25 Q Was it within the last week?

1 A Huh-uh.
 2 MR. SPIRO: She said that's La Ronda Hunter's
 3 signature.
 4 MS. YASHAR: That's La Ronda Hunter's
 5 signature.
 6 Q So have you never seen this document before?
 7 A I don't recall. That's not my signature.
 8 Q Let's look on the first page.
 9 The first page says, toward the bottom,
 10:58 10 "Responding Parties." The first page. This.
 11 Do you see where it says, "Responding
 12 Parties," it says "Plaintiffs La Ronda Hunter, Rosana
 13 N. Pulgarin and Robin Gonzales"?"
 14 A Uh-huh.
 15 Q But you don't recall ever seeing these
 16 responses before, correct?
 17 A I don't recall, but, like I said, it's --
 18 this isn't my signature.
 19 Q I understand that it's not your signature.
 10:59 20 But my question is whether you have seen these written
 21 responses before, not whether you signed the written
 22 responses, not whether you signed the verification to
 23 the written responses.
 24 A Where's my signature?
 25 Q I'm not asking you whether you signed the

1 verification to these written responses –
 2 A I know, but where's mine.
 3 Q -- I'm asking whether you've seen these
 4 written responses before.
 5 A Well, let me read it, okay?
 6 Yeah, I recall seeing this.
 7 Q When did you see them for the first time?
 8 A Oh, I don't recall.
 9 Q Was it within the last week?
 11:01 10 A No.
 11 Q The last month?
 12 A No.
 13 Q Was it within the last two months?
 14 A No.
 15 Q Was it within the last three months?
 16 A No.
 17 Q Was it within the last four months?
 18 A No.
 19 Q Was it within the last five months?
 11:01 20 A Possibly.
 21 Q Do you recall reviewing it to make sure that
 22 everything in here was accurate?
 23 A Yes.
 24 Q Do you recall making any edits?
 25 A No.

1 Q Are you the principal driver?
 2 A Yes.
 3 Q Does anyone other than you drive the car?
 4 A Yes.
 5 Q I'm sorry, does anyone other than you drive
 6 the truck?
 7 MR. SPIRO: We'll stipulate here that truck
 8 and car from now on are interchangeable for today.
 9 MS. YASHAR: Let's do that.
 11:02 10 MR. SPIRO: Yeah.
 11 BY MS. YASHAR:
 12 Q Who else drives the truck?
 13 A My ex-husband and my daughter.
 14 Q But you said you're the principal driver,
 15 correct?
 16 A Yes.
 17 Q And if you were to say -- assign a percentage
 18 of how much time you spend driving the truck versus
 19 how much time your ex-husband drives it versus how
 11:03 20 much time your daughter drives it, what -- what would
 21 those percentages be, do you drive, for example,
 22 80 percent of the time and each of them drive maybe 10
 23 percent of the time?
 24 A I drive it about 90 percent of the time.
 25 Q And what percentage of the time does your

1 Q And as you sit here today, is this still true
 2 and accurate, to the best of your knowledge, the
 3 written answers that are in Exhibit 8?
 4 A Yes.
 5 Q Okay. Do you own a car, Ms. Gonzales?
 6 A Do I own a car?
 7 Q Yes.
 8 A No.
 9 Q You don't own a car?
 11:02 10 A No.
 11 Q Did you used to own a 2001 Chevy Silverado?
 12 A Yes. I own a truck.
 13 Q I'm sorry, you own a truck.
 14 MR. SPIRO: That's all right.
 15 BY MS. YASHAR:
 16 Q And that's the 2001 Chevy Silverado?
 17 A Yes.
 18 Q Are you the registered owner?
 19 A Yes.
 11:02 20 Q Do you know the vehicle identification
 21 number?
 22 A No.
 23 Q Was the -- was the 2001 Chevy Silverado
 24 purchased in your name?
 25 A Yes.

1 ex-husband drive it?
 2 A 5 -- 5 and 5.
 3 Q 5 for your ex-husband and 5 for your
 4 daughter?
 5 A Yes.
 6 Q What purposes do you use the truck for?
 7 A To get around.
 8 Q What options did the car come with?
 9 A Radio, air conditioning, lumbar seat.
 11:04 10 Q Anything else that you can recall?
 11 A Steering wheel, tires.
 12 Q Any special options that came with the truck?
 13 A No, I -- I don't recall.
 14 Q Do -- do you recall requesting any additional
 15 options in your truck?
 16 A No, I don't recall.
 17 Q When did you buy your truck?
 18 A 2001.
 19 Q Do you recall what month in 2001?
 11:05 20 A July.
 21 Q Do you recall what day?
 22 A No.
 23 Q So July 2001?
 24 A Yes.
 25 Q Where did you buy your truck from in

1 July 2001?
 2 A Anaheim Chevrolet.
 3 Q And Anaheim Chevrolet is a dealer --
 4 A Yes.
 5 Q -- in Anaheim?
 6 Did you buy your truck new?
 7 A Yes.
 8 Q Did you lease the car or did you purchase --
 9 A Bought it.
 11:06 10 Q You bought it?
 11 A Yes.
 12 Q Did you finance it?
 13 A Yes.
 14 Q Do you recall how much you financed it for?
 15 A No, I don't.
 16 MS. YASHAR: I'm handing you what is being
 17 marked as Defendant's Exhibit 9.
 18 (Defendant's Exhibit 9 marked.)
 19 BY MS. YASHAR:
 11:07 20 Q Do you recognize this document?
 21 A Yes.
 22 Q Can you tell me what it is?
 23 A It's my contract.
 24 Q It's your contract for what?
 25 A Buying the car.

1 your trade-in?
 2 A Yes.
 3 Q Did you put anything in addition to the value
 4 of your Grand Am and the \$5,000 cash that you put
 5 down?
 6 A No.
 7 Q Do you recall the mileage of your truck at
 8 the time that you purchased it in July of 2001?
 9 A No.
 11:09 10 Q It was brand-new, though, right?
 11 A Yes.
 12 Q Would it be fair to say that it had less than
 13 a hundred miles on it?
 14 A It was new. I don't know how many miles it
 15 had on it. Could have had zero.
 16 Q But it couldn't have had more than a hundred
 17 miles?
 18 A It could have had five. It was new.
 19 Q It was new?
 11:10 20 A It was new.
 21 Q It couldn't have had more than 100 miles,
 22 though, on it?
 23 A I don't know.
 24 Q Do you know the mileage of your car today?
 25 A No, I don't.

1 Q Somewhere in the middle of the page there is
 2 the box that says, "Amount Financed."
 3 Do you see that?
 4 A Uh-huh. Yes.
 5 Q I know it's hard to read but it appears to
 6 say \$17,355.51.
 7 A 51 cents.
 8 It's also up here.
 9 Q Is that the amount that you financed your
 11:08 10 truck for?
 11 A Yes.
 12 Q How much did you put down for your truck?
 13 A I put down \$5,000 cash and I had a trade-in.
 14 Q What was your trade-in?
 15 A How much?
 16 Q What was your trade-in?
 17 A A car.
 18 Q What was the car?
 19 A A Pontiac Grand Am.
 11:08 20 Q What year was the Grand Am?
 21 A I don't recall what year.
 22 Q How much did you get for the Pontiac Grand
 23 Am?
 24 A 4,000.
 25 Q So you put 5,000 down and you got \$4,000 for

1 Q I'm going to direct your attention to
 2 Exhibit 4, Interrogatory Response Number 1, page 5,
 3 line 2 to 3. It says, "The current odometer
 4 reading is" 82- -- "82,130."
 5 And these responses were verified on
 6 August 27th -- or were served, rather, on August 27th,
 7 2008.
 8 Does that seem like --
 9 A Yes.
 11:12 10 Q -- an accurate estimate of somewhere where
 11 your mileage was a few months ago?
 12 A Yes.
 13 Q Have you been in any collisions or accidents
 14 with your vehicle?
 15 A No.
 16 Q Never?
 17 A Never.
 18 Q Did you pay the sticker price for your truck?
 19 A I don't think so.
 11:12 20 Q You bargained for the price of your truck?
 21 A I don't recall.
 22 Q You don't recall paying the sticker but you
 23 don't recall bargaining either?
 24 A No, I don't -- I don't recall. That was a --
 25 that was a long time ago.

1 Q Can you tell me what you do recall about
 2 negotiating the price of your truck.
 3 A I don't recall negotiating at all.
 4 Q Can you tell me what you do recall about
 5 discussing the price of your truck.
 6 A I don't recall discussing the price of my
 7 truck at all.
 8 Q What do you recall in terms of coming up with
 9 an agreed price for your truck?
 11:13 10 A I don't recall.
 11 Q You don't recall anything at all?
 12 A No.
 13 Q You recall just going to Anaheim Chevrolet
 14 and signing a contract for the amount of --
 15 MR. SPIRO: Vague.
 16 BY MS. YASHAR:
 17 Q -- your truck?
 18 MR. SPIRO: Vague.
 19 THE WITNESS: I just remember buying a truck.
 11:13 20 BY MS. YASHAR:
 21 Q And you remember trading in your Grand Am for
 22 the truck?
 23 A Right.
 24 Q But you don't remember any negotiations
 25 regarding the price of the truck?

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1 Q Did you shop around before going to Anaheim
 2 Chevrolet to purchase your truck in July of 2001?
 3 A Yes.
 4 Q Can you tell me about that.
 5 A We just looked for other trucks.
 6 Q Where did you look?
 7 A Looked at Toyota and looked at other -- other
 8 Chevy dealers.
 9 Q When you say you looked at Toyota, does that
 11:16 10 mean that you went to a Toyota dealership?
 11 A Yes.
 12 Q Were you looking at any particular Toyota
 13 truck?
 14 A Tundra.
 15 Q What did you like about the Tundra?
 16 A The body style.
 17 Q Were you looking at any other trucks other
 18 than the Toyota Tundra?
 19 A No, just that and the Silverado.
 11:16 20 Q And when you say "we" looked at Toyota and
 21 other Chevy dealers, are you referring to yourself and
 22 your ex-husband?
 23 A No. My then boyfriend.
 24 Q What other Chevy dealers did you visit?
 25 A You know, I don't recall, actually.

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1 A No.
 2 Q And you don't remember any bargaining
 3 regarding the price of the truck?
 4 A No.
 5 Q Did you have any rebates when you purchased
 6 the truck?
 7 A I believe so.
 8 Q What rebate?
 9 A I don't know. It says on here, there's a
 11:14 10 rebate of -- looks like 35- or 3800.
 11 Q Now, when you say "on here," you're referring
 12 to Exhibit Number 9?
 13 A Yes.
 14 Q And where are you looking on Exhibit 9?
 15 A "Manufacturer's Rebate."
 16 Q Do you recall whether you received that
 17 rebate?
 18 A I don't recall the rebate at all. If it
 19 wasn't on here, I wouldn't have recalled it at all.
 11:14 20 Q So you don't recall discussing any rebate --
 21 A No.
 22 Q -- with anybody at Anaheim Chevrolet?
 23 A No.
 24 Q Or discussing a rebate with anyone at all?
 25 A No.

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1 Q Do you recall any of the other Chevy dealers
 2 that you went to visit?
 3 A No, I don't even know their names.
 4 Q Do you know how many other Chevy dealers that
 5 you went to visit?
 6 A Maybe two.
 7 Q Were you looking at any other trucks at those
 8 Chevy dealers other than the Chevy Silverado?
 9 A No.
 11:17 10 Q How long were you looking to buy a truck
 11 before you bought your 2001 Chevy Silverado?
 12 A Actually just maybe a couple of months,
 13 looked around, was in the market to buy a truck so we
 14 looked around and bought a truck.
 15 Q You said you went to a couple of other Chevy
 16 dealers in addition to Anaheim Chevrolet, what did you
 17 discuss with these dealers when you were looking at
 18 the Chevy Silverado?
 19 A I didn't discuss anything with them. I knew
 11:18 20 what I was looking for as far as the color and I liked
 21 the body style, I liked the durability of a Chevy and
 22 certain things I wanted in the truck.
 23 Q What are the certain things that you wanted
 24 in the truck?
 25 A The lumbar seats and I wanted the air

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1 conditioning and radio and -- and a good price.
 2 Q Is there anything else that you liked about
 3 the Chevy Silverado other than the body style, the
 4 durability and those basic things that you were
 5 looking for, including the lumbar seats, the air
 6 conditioning, the radio and a good price?
 7 A I think that's -- that's it.
 8 Q And what do you mean by "durability"?
 9 A They're supposed to be safe, made well, they
 11:20 10 do well in the crash test, and that was important to
 11 me.
 12 Q How would you determine whether the truck was
 13 durable -- or let's make it more specific -- how did
 14 you determine that the Chevy Silverado was durable?
 15 A Because I saw the -- I pay attention to the
 16 crash tests. At that time they did well in the crash
 17 tests.
 18 Q What crash tests are you referring to?
 19 A The one that they -- they would do on TV, you
 11:21 20 know, on 20/20 or 60 Minutes.
 21 Q So you saw a crash test that was on TV that
 22 included the Chevy Silverado?
 23 A Yeah, they would -- they would go -- they
 24 would do the crash test and they would also tell you
 25 what -- what cars or what trucks were safe.

1 expensive.
 2 Q So is the reason why you chose a Chevy
 3 Silverado over the Toyota Tundra because the Chevy
 4 Silverado was less expensive than the Toyota Tundra?
 5 A Yes.
 6 Q Is there any other reason why you chose the
 7 Chevy Silverado over the Toyota Tundra?
 8 A They're -- the Silverado is -- is a little
 9 bit bigger, a little bit more spacious.
 11:23 10 Q Anything else?
 11 A That's it.
 12 Q You mentioned that you went to several
 13 dealers, two dealers before you bought your Chevy
 14 Silverado from Anaheim Chevrolet.
 15 Why didn't you buy it from the first dealer
 16 that you went to, why did you go to several dealers
 17 before you purchased --
 18 A You know, I don't recall. Maybe they didn't
 19 have the truck. I -- I don't recall why we didn't.
 11:24 20 Q You don't recall why you didn't buy it from
 21 the other two dealers that you went to visit?
 22 A Right.
 23 Q Did you special order your truck?
 24 A No.
 25 Q You bought the truck right off the lot?

1 Q You mentioned several television shows, do
 2 you recall which --
 3 A No --
 4 Q -- specific one?
 5 A -- I don't.
 6 Q Was it more than one of these television
 7 shows that you saw a crash test that involved the
 8 Chevy Silverado?
 9 A No, it was one, but I don't recall which one.
 11:21 10 Q And you saw this crash test that involved the
 11 Chevy Silverado prior to purchasing your Chevy
 12 Silverado, obviously, right?
 13 A Yes.
 14 Q And it was on a news show -- strike that.
 15 You saw the crash test on a -- a news show as
 16 opposed to an advertisement?
 17 A Right, it wasn't an advertisement, no.
 18 Q The crash test was run by someone that wasn't
 19 affiliated with GM, correct?
 11:22 20 A Correct.
 21 Q Was the Toyota Tundra involved in that crash
 22 test as well?
 23 A Yes.
 24 Q How did they perform?
 25 A They did well, but the Tundras are a lot more

1 A Right.
 2 Q And you knew what color you wanted?
 3 A Right.
 4 Q And you don't think the other two dealerships
 5 had that particular color that you wanted?
 6 A I don't recall.
 7 Q What color is your truck?
 8 A Green.
 9 Q Other than the crash test that you saw on
 11:24 10 some news show, is there any other investigation or
 11 research that you did before buying your truck in
 12 July 2001?
 13 A No.
 14 Q You mentioned that you had a Grand Am prior
 15 to your truck.
 16 A Yes.
 17 Q And that's a GM car, do you know that?
 18 A Yes. I've had two Grand Ams in a row.
 19 Q I've had a Grand Am as well.
 11:25 20 What was your experience with the Grand Am?
 21 A Good.
 22 Q Which is why you had two of them, correct?
 23 A Yes.
 24 Q Is it fair to say that your prior experience
 25 with GM was positive?

1 A Yes.
 2 Q What did you believe was the reputation of
 3 GM?
 4 A What do I believe now?
 5 Q What did you believe then was the reputation
 6 of GM as a car manufacturer?
 7 A I thought it was good.
 8 Q Knowing what you know now, would you have
 9 purchased another truck instead of your 2001 Chevy
 11:27 10 Silverado?
 11 A No.
 12 Q How many times did you visit the dealer at
 13 Anaheim Chevrolet before purchasing your 2001 Chevy
 14 Silverado?
 15 A I don't recall.
 16 Q More than once?
 17 A I don't -- I don't know.
 18 Q You don't remember whether you went more than
 19 once before actually buying your truck?
 11:28 20 A No, I don't remember.
 21 Q But when you went and finally did purchase
 22 your truck in July 2001, prior to going to the
 23 dealership, you knew you wanted to buy the Chevy
 24 Silverado?
 25 A Right.

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1 Q Do you remember his name?
 2 A No.
 3 Q Does Adam ring a bell?
 4 A No.
 5 Q Can you tell me a little bit about your
 6 experience when you test-drove the truck in July 2001,
 7 the day that you purchased it?
 8 A I don't remember much about the test-drive,
 9 it was just a test-drive.
 11:30 10 Q Do you remember anything out of the ordinary?
 11 A No.
 12 Q Do you remember anything that may have caused
 13 you to think twice about buying the Chevy Silverado?
 14 A No.
 15 Q Do you remember your conversations with
 16 Timothy about the Chevy Silverado?
 17 A No.
 18 Q You don't remember any conversations with
 19 Timothy?
 11:31 20 A No.
 21 Q Do you remember any of your conversations
 22 with anyone at Anaheim Chevrolet about your Chevy
 23 Silverado in July 2008, the day that you bought your
 24 truck?
 25 A Regarding?

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1 Q Do you remember who your salesperson was at
 2 Anaheim Chevrolet?
 3 A His name was Timothy.
 4 Q Did you test-drive the truck before you
 5 purchased it that day in July 2001?
 6 A Yes.
 7 Q Did you test-drive it with Timothy?
 8 A Yes.
 9 Q How did you first meet Timothy?
 11:29 10 A At the Anaheim Chevrolet.
 11 Q Did you just walk in to Anaheim Chevrolet and
 12 Timothy was the first person to help you?
 13 A Right.
 14 Q You didn't know Timothy prior to that day in
 15 July of 2001 when you actually purchased your truck?
 16 A Right.
 17 Q You don't recall having met Timothy on a
 18 previous occasion?
 19 A No.
 11:30 20 Q Is there anyone else that helped you at
 21 Anaheim Chevrolet?
 22 A On?
 23 Q In July 2001, the day that you purchased your
 24 truck?
 25 A Just the person that wrote up the contract.

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1 Q Questions about your Chevy Silverado.
 2 A Yeah, after I bought it.
 3 Q After you bought your car, what were the
 4 questions -- what were the conversations after you
 5 bought your car?
 6 A Going over the check list, I asked about
 7 the -- the brake.
 8 Q So can you tell me a little bit about your
 9 conversation regarding the brakes.
 11:32 10 A Well, we were going over the check list and I
 11 just went ahead and just checked myself and I pressed
 12 on the emergency brake and it didn't have any
 13 resistance.
 14 And the gentleman that was with me said it
 15 was normal. And I asked him if he was sure and he
 16 said yeah and that was the end of the conversation.
 17 Q Who -- who was this gentleman that you had
 18 spoken to?
 19 A The person that brought out the truck.
 11:32 20 Q And this was this -- this same second
 21 individual that you said was helping you draft your
 22 contract to purchase the truck?
 23 A No, I don't know who it was.
 24 Q Do you remember how this person looked like?
 25 A No.

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1 Q But it was a man not a woman?
 2 A Yes.
 3 Q Do you remember what ethnicity they were?
 4 A No.
 5 Q You don't remember any characteristics about
 6 them?
 7 A No.
 8 Q And you mentioned a check list, what check
 9 list are you referring to?
 11:33 10 A Check list going over the -- the car -- the
 11 truck.
 12 Q Did you talk about the brakes before you
 13 purchased your truck?
 14 A No.
 15 Q You talked about the brakes after you had
 16 already purchased your truck and the paperwork was
 17 complete?
 18 A Yes.
 19 Q Was it the same day that you purchased your
 11:34 20 truck --
 21 A Yes.
 22 Q -- or on a different day?
 23 It was on the same day?
 24 A Yes, when they brought it out to me.
 25 Q Now, when you say that when you pressed on

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1 Chevrolet said, in your words, that it was normal, is
 2 that where the conversation ended?
 3 A Yes.
 4 Q There was no more discussion about the
 5 brakes?
 6 A No.
 7 Q Did you have any discussion with anyone else
 8 about the parking brakes?
 9 A No, didn't feel there was a need to.
 11:37 10 Q Are the parking brakes in the Chevy Silverado
 11 something that you push down with your -- your foot?
 12 A Yes.
 13 Q And when you say that it didn't have any
 14 resistance, you mean that it easily went down to the
 15 floor?
 16 A Yes.
 17 Q You didn't feel any pressure --
 18 A Pressure.
 19 Q -- pushing back up?
 11:37 20 A Yes.
 21 Q But you had no indication that it wasn't
 22 working properly, correct?
 23 A Correct.
 24 Q Were there any statements that anyone at
 25 Anaheim Chevrolet made that you relied on in

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1 the emergency brake system, it didn't have any
 2 resistance --
 3 A Correct.
 4 Q -- what does that mean?
 5 A It didn't have any resistance, it just went
 6 straight to the floor.
 7 Q Were you with your ex-boyfriend during this
 8 conversation -- I'm sorry -- were you with your
 9 boyfriend during this conversation with the gentleman
 11:35 10 about the brakes?
 11 A I don't recall if he was there or if he was
 12 listening, I don't recall if he was.
 13 Q What is the name of your boyfriend?
 14 A Frank.
 15 Q What's his last name?
 16 A Hofmann.
 17 Q H-o-f-f-m-a-n?
 18 A H-o-f-m-a-n-n.
 19 Q Do you recall anyone else being present
 11:36 20 during your conversation about the emergency brakes?
 21 A Nobody else was there.
 22 Q It was just you and the gentleman from
 23 Anaheim Chevrolet, correct?
 24 A Correct.
 25 Q And after the gentleman from Anaheim

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1 purchasing your truck in July 2001?
 2 A Is there any --
 3 MR. SPIRO: Vague.
 4 THE WITNESS: Rephrase -- rephrase that.
 5 BY MS. YASHAR:
 6 Q Is there anything Timothy or anyone else at
 7 Chevy Silverado -- at Chevy -- strike that. Let me
 8 begin again.
 9 Did anything that Timothy or anyone else that
 11:39 10 worked at Anaheim Chevrolet say to you that caused you
 11 to purchase your Chevy Silverado in July 2001?
 12 A No.
 13 Q So there's nothing that they said that you
 14 relied on in purchasing your Chevy Silverado in
 15 July 2001?
 16 MR. SPIRO: Vague.
 17 THE WITNESS: Nobody made me purchase it.
 18 MR. SPIRO: The question calls for a legal
 19 conclusion.
 11:40 20 MS. YASHAR: I'm handing you what's being
 21 marked as Defendant's Exhibit 10.
 22 (Defendant's Exhibit 10 marked.)
 23 MS. YASHAR: This has been previously
 24 Bates-labeled as P3012.
 25 Q Do you recognize this document?

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1 A Yes.
 2 Q Can you tell me what it is?
 3 A It's a new vehicle delivery system.
 4 Q It's the "Completely Satisfied New Vehicle
 5 Delivery System" form; is that right?
 6 A Yes.
 7 Q And this says -- has a delivery date of
 8 July 8th, 2001.
 9 Do you see that at the top?
 11:41 10 A Yes.
 11 Q Is that the date that you purchased your
 12 vehicle?
 13 A Yes.
 14 Q When you were referring to the check list
 15 that you went over with the gentleman at Anaheim
 16 Chev- -- Chevy, is this the check list that you're
 17 referring to?
 18 A Yes.
 19 Q Is that your signature at the bottom of
 11:41 20 Exhibit 10?
 21 A Yes.
 22 Q Did you check these boxes off yourself?
 23 A Yes.
 24 Q And you reviewed the boxes obviously before
 25 checking them off, correct?

1 Q Do you see at the bottom where it says
 2 "Customer comments"?
 3 A Yes.
 4 Q Then it says, "Timothy is a good
 5 salesperson," with an exclamation
 6 mark.
 7 Do you see that?
 8 A Yes.
 9 Q Did you write that?
 11:43 10 A Yes.
 11 Q Why did you write that?
 12 A Because he was a good salesperson.
 13 Q Was he able to answer all of your questions?
 14 A Yes.
 15 Q Was anything he said to you false, misleading
 16 or deceptive?
 17 A No.
 18 Q Did you also write what's also written in the
 19 "Customer comments" of Exhibit 10, "P.S.
 11:43 20 and Adam was okay too," followed by
 21 an exclamation mark?
 22 A Yes.
 23 Q Was Adam the gentleman that you spoke to
 24 about the brakes?
 25 A I don't recall who Adam was.

1 A Yeah, actually I think they checked the boxes
 2 off.
 3 Q Who's they?
 4 A Our -- whoever had -- whoever did the check
 5 list.
 6 Q The person who was helping you --
 7 A Yes.
 8 Q Is the person who's helping you, the person
 9 who did the check list?
 11:42 10 A Yes.
 11 Q And just so our record's clean, please let me
 12 finish my question before --
 13 A Okay.
 14 Q -- you answer just so she's able to write
 15 everything down.
 16 Who -- was Timothy the person that was
 17 helping you that checked off this check list?
 18 A No.
 19 Q Was it the second gentleman that you
 11:42 20 mentioned that you asked about the brake system that
 21 checked off this -- this form?
 22 A I believe so.
 23 Q And were these boxes checked off in front of
 24 you?
 25 A I believe so.

1 Q But you recall writing this statement,
 2 "P.S. and Adam was okay too" --
 3 A Yes.
 4 Q -- with the exclamation mark?
 5 MR. SPIRO: Excuse me. May I take a break.
 6 MS. YASHAR: Let me just finish this series
 7 of questions, just a few more minutes, and then we can
 8 take a break.
 9 MR. SPIRO: I'm going to explode but go
 11:44 10 ahead.
 11 BY MS. YASHAR:
 12 Q Why did you write that statement about Adam?
 13 A Because he was good too.
 14 Q Was anything he said to you false, misleading
 15 or deceptive?
 16 A I don't believe so.
 17 Q Do you recall talking to anyone other than
 18 Timothy and Adam at Anaheim Chevrolet on July 8th,
 19 2001?
 11:44 20 A The person that brought out the truck.
 21 Q And do you recall whether that person was the
 22 individual who you asked about the brakes?
 23 A That's who I asked about the brakes.
 24 Q And that's the individual that you don't
 25 recall his name --

1 A Right.
 2 Q -- or anything about him, correct?
 3 A Correct.
 4 Q Was anything he said to you false, misleading
 5 or deceptive?
 6 A Who?
 7 Q The individual at Anaheim Chevrolet that
 8 brought out the truck to you.
 9 A Yes.
 11:45 10 Q What was it?
 11 A The parking brake, he was wrong.
 12 Q Why was he wrong?
 13 A Because it -- it didn't work.
 14 Q When did you realize for the first time that
 15 the parking brake didn't work?
 16 A I don't recall a date.
 17 Q Do you recall a year?
 18 A No, I don't.
 19 Q Was it within the first year of buying your
 11:45 20 vehicle in 2001?
 21 A No, I don't --
 22 Q Was it --
 23 A -- I don't recall -- I don't recall when it
 24 was; I can't even give you an approximate.
 25 Q Was it within a couple of weeks of buying

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1 Q Yes.
 2 A It would roll backwards.
 3 Q How much would it roll backwards?
 4 A How much, it would roll until I put the brake
 5 on.
 6 Q But when you put the brake on, the parking
 7 brake, correct?
 8 A No, the regular brakes.
 9 Q Let's back up.
 11:47 10 There's a time where you remember that the
 11 car rolled, correct?
 12 A Yes.
 13 Q You put the car -- you attempted to park the
 14 car and then you pressed the parking brakes?
 15 A The car had to be in neutral for some reason,
 16 put it in -- on the parking brake. The parking -- if
 17 the truck would roll backwards, it would roll as
 18 long -- until you put on the brakes to stop it.
 19 Q So you attempted to park your car with your
 11:48 20 stick in neutral --
 21 A No --
 22 Q -- but your parking brakes --
 23 A -- I had an automatic.
 24 Q You have an automatic.
 25 With your -- describe to me everything that

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1 your car?
 2 A I don't -- I don't know.
 3 Q Do you recall the first time that your brakes
 4 did not work?
 5 A No.
 6 Q You don't recall the first time that your
 7 brakes did not work?
 8 A My parking brake; my brakes worked, my
 9 parking brake didn't work.
 11:46 10 Q Do you recall the first time that your
 11 parking brakes did not provide resistance when you
 12 tried the parking brake --
 13 A It didn't provide resistance from day one.
 14 Q Do you remember the first time that your
 15 parking brakes failed to keep your car in a parking
 16 position?
 17 A No, I don't.
 18 Q Do you recall your truck ever sliding?
 19 A Yes.
 11:47 20 Q When?
 21 A Sometime it -- I don't know when, it just
 22 rolled backwards and -- I don't know when, though, it
 23 just would roll backwards.
 24 Q And when did -- how would it roll backwards?
 25 A How?

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1 you can remember from the time that you tried to park
 2 your car and noticed for the first time that the
 3 parking brake did not work.
 4 MR. SPIRO: She didn't say she tried to park
 5 the car.
 6 THE WITNESS: We had to put my car in neutral
 7 for some reason, I don't recall why, and put on the
 8 parking brake. The truck proceeded to roll, so I had
 9 to put on the regular brake to stop it, so we couldn't
 11:49 10 use the parking brake.
 11 MR. SPIRO: Pantea, I -- I can't even
 12 concentrate, I just have to go to the bathroom. You
 13 can all stay in here, I just need about two minutes.
 14 MS. YASHAR: That's fine. Let's take a
 15 break.
 16 VIDEO OPERATOR: We're going off the record
 17 at 11:49.
 18 This concludes Media Number 1 and we are off
 19 the record.
 12:01 20 (Recess.)
 21 VIDEO OPERATOR: We are back on the record at
 22 12:01.
 23 This is the beginning of Media Number 2 in
 24 the deposition of Robin Gonzales.
 25 BY MS. YASHAR:

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1 Q Before the break, you talked about an
 2 incident where your car was in neutral and you
 3 attempted to use your parking brakes in your 2001
 4 Chevy Silverado and it didn't hold the car; is that
 5 correct?
 6 A Correct.
 7 Q And that was the first time that you say your
 8 parking brake system didn't work for you; is that
 9 correct?
 12:01 10 A Correct.
 11 Q When was this?
 12 A I don't recall the date.
 13 Q Do you recall a year.
 14 A Well, I know it was after the warranty was
 15 over.
 16 Q How long was your warranty for, how many
 17 years?
 18 A You know, I don't recall. I think it was
 19 three years and 50,000 miles, but I'm not -- I'm not
 12:02 20 sure about that.
 21 Q So you think that this incident occurred
 22 sometime after 2004, correct?
 23 A Yes, I know it did.
 24 Q And you're definitely sure your warranty was
 25 over when this incident occurred, correct?

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1 A During the day.
 2 Q Do you remember what time during the day,
 3 approximately?
 4 A No, I don't.
 5 Q Do you remember if it was raining that day?
 6 A No, it wasn't raining.
 7 Q Do you remember if it was a clear day?
 8 A No, I don't know.
 9 Q Was anyone with you other than your
 12:04 10 ex-husband and yourself?
 11 A No.
 12 Q Was your ex-husband in the car?
 13 A No.
 14 Q Was he outside of the car?
 15 A Yes.
 16 Q Do you remember why you had to put the car in
 17 neutral before you attempted to use the parking brake?
 18 A No.
 19 Q You have no idea why the car needed to be in
 12:04 20 neutral?
 21 A No.
 22 Q Did your parking brakes ever not work when
 23 your car was in park?
 24 A I wouldn't know that.
 25 Q Did your parking -- strike that.

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1 A Yes, I know -- I know it was.
 2 Q Were you the one in the vehicle attempting to
 3 use the parking brake?
 4 A Yes.
 5 Q Was anyone with you?
 6 A My ex-husband.
 7 Q Were you on a slope?
 8 A The driveway.
 9 Q Is the driveway --
 12:03 10 A Slightly slanted.
 11 Q Let's just make sure I'm asking my
 12 questions --
 13 A Okay, sorry.
 14 Q -- and you're answering your questions after
 15 me just so the court reporter is clear.
 16 So you were on your driveway, correct?
 17 A Correct.
 18 Q And your driveway is on a slope -- it is a
 19 slope, correct?
 12:03 20 A Slightly slanted.
 21 Q What were the weather conditions like during
 22 this particular day or night when you attempted to use
 23 the parking brake when your car was in neutral?
 24 A I don't recall.
 25 Q Was it during the day or was it at night?

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1 Did your car ever roll when your car was in
 2 park and your parking brakes were set?
 3 A No.
 4 Q Did you ever have any problems with your
 5 parking brakes when your car was in park?
 6 A No.
 7 Q The only time you experienced problems with
 8 your parking brakes was this one incident when your
 9 car was in neutral, correct?
 12:06 10 A Correct.
 11 Q And you were on your driveway, right?
 12 A Yes.
 13 Q And your driveway is at a slope?
 14 A Yes.
 15 Q Did you ever try to use the parking brakes
 16 when your car was in neutral, again, after this
 17 particular incident that we just discussed when you
 18 were with your ex-husband, when you were on the
 19 driveway?
 12:06 20 A No, because it didn't work.
 21 Q And you don't remember why you were trying to
 22 park -- use your parking brakes when your car was in
 23 neutral, correct?
 24 A Right.
 25 Q After discovering that your parking brakes

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1 may not have worked when you had your car in neutral
 2 and you were on your driveway, which was at a slope,
 3 what did you do?
 4 A I took it to Massey Chevrolet and inquired
 5 about getting it fixed.
 6 Q When did you take it to Massey Chevrolet?
 7 A After that.
 8 Q Within a week?
 9 A Sometime after that, I don't -- whenever it
 10 was convenient, I don't remember.
 11 Q Would it be fair to say that it was --
 12 A Within a month, I guess.
 13 Q So it's fair to say that it was within a
 14 month of that incident occurring?
 15 A Yeah.
 16 Q And you said you don't ever remember using
 17 the parking brake system when your car was in park and
 18 the car not being held, correct?
 19 MR. SPIRO: Asked and answered.
 12:09 20 THE WITNESS: Ask that again.
 21 BY MS. YASHAR:
 22 Q You don't remember an incident where you
 23 attempted to use the parking brake and your car was in--
 24 park and the car did not hold the vehicle -- the
 25 parking brake did not hold the vehicle?

Page 65

1 conversation with --
 2 A That's what I recall, what I just told you.
 3 Q But you don't remember if they ever actually
 4 inspected your vehicle?
 5 A Oh, well, I ended up looking back in my
 6 paperwork and finding that they did note that it was
 7 inoperable.
 8 Q Did you look back at your paperwork before
 9 visiting Massey Chevrolet?
 10 A No, I looked after.
 11 MS. YASHAR: I'm handing you what is going to
 12 be marked as Defendant's Exhibit 11.
 13 (Defendant's Exhibit 11 marked.)
 14 BY MS. YASHAR:
 15 Q Can you tell me what this document is.
 16 A It's my paperwork for Massey Chevrolet.
 17 Q And is this your --
 18 A It's receipts.
 19 Q And what are the receipts from?
 12:13 20 A Massey Chevrolet.
 21 Q And is this your -- from your visit to Massey
 22 Chevrolet after the incident occurred with your
 23 parking brakes that you mentioned when your car was in
 24 neutral?
 25 MR. SPIRO: Hold on one second, please. I

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1 A Yeah, the -- the parking brake wasn't working
 2 so the parking brake wasn't holding the vehicle.
 3 Q When you took the car to Massey after the
 4 incident occurred with your car in neutral and you
 5 attempted to use the parking brake system, what did
 6 Massey -- well, tell me about that visit to Massey?
 7 A Well, they said there wasn't a recall on the
 8 parking brake so they -- and it was out of warranty,
 9 so they wouldn't fix it, free of charge, that is, that
 10 I would have to pay for it myself.
 11 Q What is Massey?
 12 A Massey Chevrolet, it's a dealer.
 13 Q And is that where you usually took your truck
 14 in?
 15 A Usually, yes.
 16 Q That's where you took your truck in for
 17 service --
 18 A Yes.
 19 Q -- and for any problems that came up with
 12:11 20 your truck, correct?
 21 A Yes.
 22 Q Did you have them evaluate your truck before
 23 asking them to pay for repairs?
 24 A I don't recall.
 25 Q Can you tell me what you do recall about your

Page 66

1 want to look at something.
 2 Okay.
 3 THE WITNESS: What was the question?
 4 MS. YASHAR: Ms. Lindsay, can you please
 5 repeat my question.
 6 (Record read as follows:
 7 "Q And is this your -- from
 8 your visit to Massey Chevrolet
 9 after the incident occurred with
 10 your parking brakes that you
 11 mentioned when your car was in
 12 neutral?")
 13 THE WITNESS: I don't think this has anything
 14 to do with the parking brake.
 15 BY MS. YASHAR:
 16 Q Do you see somewhere in the middle of the
 17 first page it says, "Owner request complete
 18 brake inspection. Customer states
 19 E break won't hold. Inspect and
 12:15 20 report."
 21 A Uh-huh.
 22 Q Do you see that?
 23 A Yeah.
 24 Q Do you still think that this invoice
 25 wasn't --

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1 A Yeah, I had to pay \$40 to have them tell me
 2 again that it didn't work. That's right.
 3 Q So this is an invoice from Massey Chevrolet
 4 from your visit asking them to inspect the brakes as a
 5 result of the incident with your parking brakes when
 6 your car was in neutral; is that correct?
 7 A Yes.
 8 Q And this invoice is dated July 28th, 2005; is
 9 that right?
 10 A Yes.
 11 Q So is it fair to say that the incident with
 12 your parking brakes on your driveway when it was in
 13 neutral happened somewhere around July 2005?
 14 A Sometime before that.
 15 I had been arguing with them back and forth
 16 between the time that I found out and -- and had to
 17 pay for them to tell me again that it wasn't working,
 18 pay \$40 again in an attempt to get them to fix this.
 19 Q Is it fair to say that it happened within one
 20 or two months of this invoice --
 21 A Yes.
 22 Q -- being generated?
 23 And by "it," I mean your incident on your
 24 driveway with your parking brakes and your car in
 25 neutral; is that correct?

12:16
12:17

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1 A Correct.
 2 Q -- correct?
 3 A Correct.
 4 Q Do you remember an invoice being generated at
 5 that -- at that time that you went to Massey Chevrolet
 6 for the very first time?
 7 A No, because I didn't leave it.
 8 Q When's the next time after that initial visit
 9 to Massey Chevrolet that you went back to Massey
 10 Chevrolet?
 11 A I don't recall.
 12 Q Do you recall how many times you went back to
 13 Massey Chevrolet before actually giving Massey
 14 Chevrolet your vehicle to -- to be inspected in
 15 July of 2008 -- I'm sorry, in July 2005?
 16 A Maybe two or three times.
 17 Q So you went back to Massey Chevrolet two or
 18 three times before you gave them your vehicle to
 19 complete a brake inspection; is that correct?
 20 A Correct.
 21 Q And on those two to three occasions, can you
 22 explain to me what conversations you had with Massey
 23 Chevrolet?
 24 A Well, I brought them the other invoice that
 25 says brake inoperable and I also talked to the general

12:18
12:19

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1 A Yes.
 2 Q All right. So let's go through this one by
 3 one.
 4 Sometime in around June or July of 2005, you
 5 experienced a problem with your parking brakes when
 6 your car was in neutral, right?
 7 A Yes.
 8 Q Within a month or so you went to go visit
 9 Massey Chevrolet; is that right?
 10 A Yes.
 11 Q And you had a conversation with someone at
 12 Massey Chevrolet about your parking brakes?
 13 A Yes.
 14 Q Do you remember who that person was that you
 15 spoke to at Massey Chevrolet?
 16 A No.
 17 Q Do you remember them doing an inspection on
 18 your vehicle at that time?
 19 A No.
 20 Q But you do remember reporting problems with
 21 your parking brakes, correct?
 22 A Yes.
 23 Q And them explaining to you that your vehicle
 24 was not under warranty so any repairs would have to be
 25 paid for out of your own pocket; is that --

12:17
12:18

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1 manager.
 2 Q Who was the general manager at Massey
 3 Chevrolet?
 4 A I don't recall.
 5 Q You don't remember his name?
 6 A No.
 7 Q Do you remember the name of anyone you spoke
 8 to during any of your visits at Massey Chevrolet?
 9 A Not anymore.
 10 Q Do you remember any characteristics about any
 11 of the people that you spoke to at Massey Chevrolet?
 12 A Not anymore.
 13 Q So after your first visit to Massey
 14 Chevrolet, you went back and looked at your old
 15 invoices; is that correct?
 16 A Yes.
 17 Q And why did you look at your old invoices?
 18 A I don't remember what made me look at my old
 19 invoices but I did and luckily I found that little
 20 note that the mechanic left on there.
 21 Q And what note did the mechanic leave on one
 22 of your old invoices from Massey Chevrolet?
 23 A Parking brake inoperable.
 24 MS. YASHAR: Handing you what has been
 25 previously Bates-labeled as PP3301 and is now being

12:20
12:20

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1 labeled Defendant's Exhibit Number 12.
 2 (Defendant's Exhibit 12 marked.)
 3 BY MS. YASHAR:
 4 Q Is this a copy -- strike that.
 5 Can you tell me what this is.
 6 A It is a -- a copy of my invoice at Massey
 7 Chevrolet.
 8 Q Is this a copy of an old invoice that you
 9 were referring to that has a note in it that says
 10 parking -- "Parking brake inop"?
 11 A Yes.
 12 Q And you noticed this for the very first time
 13 sometime around June or July of 2005; is that correct?
 14 A Yes.
 15 Q And this invoice was generated on
 16 December 13, 2003; is that correct?
 17 A Yes.
 18 Q So let's go step by step.
 19 After you noticed this note in the "Comments"
 12:22 20 section of the December 13, 2003 invoice from Massey
 21 Chevrolet that says "Parking brake inop," you went
 22 back to Massey Chevrolet sometime in June or
 23 July 2005; is that correct?
 24 A No, sometime before that.
 25 Q But sometime around June or July of 2005 --

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1 wouldn't fix your brakes because your car was not
 2 under warranty and because you had a truck that was
 3 automatic and it was not necessary?
 4 A The same people that I was talking to, the
 5 general manager and -- I don't know what the other
 6 titles are, the people that greet you when you first
 7 bring it in for service, I guess the service manager
 8 would be his title.
 9 Q But you don't remember anyone's name,
 10 correct?
 11 A Correct.
 12 Q Did you leave your car with Massey that day
 13 when they told you that they're not going to --
 14 A No.
 15 Q -- pay for the repairs of your car?
 16 A No.
 17 Q You left?
 18 A Yes.
 19 Q And at some point you decided to come back to
 12:25 20 Massey, right?
 21 A Yeah, that's when I got the -- I had to get
 22 the -- when I got this done, when I had to pay the
 23 \$40.
 24 Q And by "this done," you're referring to the
 25 invoice in Exhibit 11, the invoice that is Exhibit 11

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1 A Yes.
 2 Q -- right?
 3 And then at -- at this point you showed this
 4 invoice to somebody at Massey Chevrolet?
 5 A Yes.
 6 Q Can you tell me about that conversation?
 7 A I don't remember much about the conversation
 8 anymore, I just showed them that -- that they had put
 9 that in there, that they should fix it because it was
 10 under warranty when they noticed it and they should
 11 have just fixed it or at least told me about what they
 12 found and they didn't hold up -- they didn't want to
 13 fix it, they just blew it off.
 14 Q Why did they tell you they did not want to
 15 fix the parking brakes or --
 16 A They told --
 17 Q I'm sorry, why did they tell you they didn't
 18 want to fix whatever you were asking them to fix?
 19 A Because it wasn't in warranty and I didn't
 12:24 20 need -- I didn't need a parking brake because my truck
 21 was an automatic.
 22 Q And you were asking them to fix your parking
 23 brakes, correct?
 24 A Yes.
 25 Q Do you remember who told you that they

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1 that refers to a complete brake inspection?
 2 A Correct.
 3 Q Why did you come back to Massey Chevrolet to
 4 get a complete brake inspection?
 5 A You know, I don't remember how come I got a
 6 complete brake inspection.
 7 Q Prior to getting your complete brake
 8 inspection in July 2005 at Massey Chevrolet, did you
 9 have anyone else inspect your brakes?
 10 A No.
 11 Q Did you contact the service agent that had
 12 helped you in December 2003 from Massey Chevrolet to
 13 ask them about the comment that said, "Parking brake
 14 inop"?
 15 A The service agent -- I don't understand your
 16 question.
 17 Q Let me rephrase.
 18 You took your car in December -- on
 19 December 13th, or somewhere around December 13, 2003
 12:27 20 to Massey Chevrolet, correct?
 21 A Uh-huh. Yes.
 22 Q Is there somebody at Massey Chevrolet that
 23 you generally work with that is your service agent?
 24 A No.
 25 Q Do you know who generated the invoice from

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1 December 13, 2003 that's Exhibit 12?
 2 A No.
 3 Q Do you know who wrote in the "Comments"
 4 section, "Parking brake inop"?
 5 A No.
 6 Q Aside from going to Massey Chevrolet in
 7 June or July of 2005 to ask about repairs to your
 8 parking brake system, did you contact any other GM
 9 dealership?
 10 A About the parking brake?
 11 Q Yes?
 12 A I went to S & J Chevrolet and asked them
 13 about it and they had the same answer.
 14 Q And is S & J Chevrolet associated with
 15 General Motors?
 16 A Not - I don't know.
 17 MS. YASHAR: I'm handing you what has
 18 previously been Bates-labeled as P3319 and is being
 19 marked as Defendant's Exhibit Number 13.
 20 (Defendant's Exhibit 13 marked.)
 21 BY MS. YASHAR:
 22 Q Is this a copy of the invoice from your visit
 23 to S & J Chevrolet?
 24 A Yes.
 25 Q And this is dated September 29, 2005; is that

12:28
 12:29

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1 Q It says here "Brake light and
 2 ABS light back on."
 3 A Yeah, the light in the truck was on.
 4 MS. YASHAR: I'm going to hand you another
 5 invoice that's previously Bates-labeled as
 6 P3317 that's now being marked as Defendant's
 7 Exhibit 14.
 8 (Defendant's Exhibit 14 marked.)
 9 BY MS. YASHAR:
 10 Q Can you tell me what this is.
 11 A It's an invoice.
 12 Q It is an invoice from S & J Chevrolet,
 13 correct?
 14 A Correct.
 15 Q And it's dated September 27, 2005?
 16 A Yes.
 17 Q Here it shows that you paid a total of \$78;
 18 is that right?
 19 A Correct.
 20 Q And was that payment for fixing the brake
 21 light, ABS light that went on in your vehicle?
 22 A Correct.
 23 Q And it says there was an issue with the wire
 24 connections, right?
 25 A Right.

12:32
 12:33

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1 correct?
 2 A Yes.
 3 Q So you went to S & J Chevrolet and asked them
 4 if they would replace your parking brake system?
 5 A No.
 6 Q Why did you go to S & J Chevrolet?
 7 A My brake light was on.
 8 Q Did you ask them about your parking brake
 9 system at all?
 10 A Yes.
 11 Q But that's not why you initially went to S &
 12 J Chevrolet, right?
 13 A Right.
 14 Q You went because of your brake light?
 15 A Yes.
 16 Q And what did they tell you when you asked
 17 them if they would repair your parking brake system?
 18 A They said the same thing, it wasn't in - in
 19 warranty and I don't need it because I have an
 20 automatic.
 21 Q Did you have them fix your brake light?
 22 A It doesn't look like I did.
 23 Q Why not?
 24 A It wasn't the brake light, the light in the
 25 truck was on. I don't know why I didn't have it done.

12:30
 12:31

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1 Q That had nothing to do with your parking
 2 brakes; is that right?
 3 A Correct.
 4 Q Let's go back to Exhibit 12. And this was a
 5 copy of the invoice from December 13, 2003 from Massey
 6 Chevrolet.
 7 Why did you take your car in to Massey
 8 Chevrolet in December of 2003?
 9 A My horn wasn't working, looks like I had a
 10 rattle, I had them check my brakes.
 11 Q Anything else?
 12 A That's it.
 13 Q You also mentioned that you had them check
 14 your brakes; is that right?
 15 A Yeah.
 16 Q Why did you have them check your brakes?
 17 A I always have my brakes checked to make sure
 18 they're not getting low.
 19 Q They're not getting what?
 20 A Low.
 21 Q What do you mean by brakes getting low? --
 22 A You don't want your brakes to run out on you.
 23 Q And you remember having a conversation with
 24 your -- with somebody from Massey about checking your
 25 parking brakes in December 2003?

12:34
 12:35

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1 A No.
 2 Q But you asked somebody to check your parking
 3 brakes in December 2003?
 4 A No, not my parking brakes, my brakes.
 5 Q Do you remember having a conversation with
 6 somebody at Massey in December 2003 about checking
 7 your brakes?
 8 A No, I don't remember having a conversation.
 9 Q Do you remember asking somebody from Massey
 12:36 10 in December 2003 to check your brakes?
 11 A You know, I don't recall anymore.
 12 Q Do you understand that when you take your
 13 vehicle into the dealership for repairs, they write
 14 down or they input everything that they need to
 15 evaluate in your vehicle?
 16 MR. SPIRO: Well, assumes facts not in the
 17 record.
 18 BY MS. YASHAR:
 19 Q Let's look at Exhibit 12 in the middle of
 12:37 20 Exhibit 12, do you see that, it says,
 21 "Customer states that getting a
 22 rattling noise from pass" -- strike
 23 that.
 24 In the middle of Exhibit 12, it lists a
 25 number of things that the customer states.

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1 problem.
 2 Q I'm not asking you what they found or didn't
 3 find. I'm asking whether you recall actually having
 4 them check anything --
 5 A Yes.
 6 Q -- with respect to your brakes?
 7 A I remember telling them to check my brakes --
 8 Q You remember --
 9 A -- see how much -- how much room -- brake
 12:39 10 pads that I had left.
 11 Q You remember telling someone from Massey in
 12 December 2003 to check your brakes?
 13 A Yes.
 14 Q Do you remember who you told?
 15 A No -- the service manager, the people when
 16 you drive up, the people that help you.
 17 Q And at the top of this sheet it says,
 18 "Advisor, Andrew Lopez."
 19 Was that the person who helped you,
 12:39 20 Mr. Lopez?
 21 A I don't recall.
 22 Q But it was whoever was your advisor when you
 23 came to Massey, that you --
 24 A I don't know who -- what an advisor is, so I
 25 don't know if it was Andrew Lopez.

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1 Do you see that?
 2 A Where? Oh. No.
 3 "Customer states," yeah.
 4 Q Can you read that for me.
 5 A Customer states getting a rattling
 6 noise from passenger seat while
 7 driving.
 8 Found window regulator loose.
 9 Okay.
 12:38 10 Q Does it say anything about checking your
 11 brakes there?
 12 A No.
 13 Q And you don't remember specifically asking
 14 anyone from Massey in December 2003 to check your
 15 brakes?
 16 A No, I don't recall anymore.
 17 Q Did you have any indication or anything to
 18 give you a reason to think there was something wrong
 19 with your brakes in December 2003?
 12:38 20 A No, I just have them checked.
 21 Q You just have them checked regularly?
 22 A Uh-huh.
 23 Q But you don't recall actually asking them to
 24 be checked in December 2003, right?
 25 A Well, that's how they found the parking brake

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1 Q When you rolled your car -- your truck into
 2 Massey Chevrolet in December 2003, somebody from
 3 Massey Chevrolet assisted you, right?
 4 A Correct.
 5 Q Did more than one person assist you?
 6 A Just one.
 7 Q And that one person is the one who asked you
 8 what was wrong with your vehicle, right?
 9 A Correct.
 12:40 10 Q Is that the same person who you spoke to
 11 about having your brakes checked?
 12 A Correct.
 13 Q But you don't remember that person's specific
 14 name, right?
 15 A Correct.
 16 Q Was it a male?
 17 A I don't recall.
 18 Q You don't recall if it was a male or a
 19 female?
 12:40 20 A No.
 21 Q And you don't recall whether you worked with
 22 this individual before or not?
 23 A No.
 24 Can I talk to my lawyer for a minute.
 25 MR. SPIRO: We can take a break, if you will.

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1 MS. YASHAR: Just give me one minute.
 2 MR. SPIRO: It's all right.
 3 MS. YASHAR: Let's take a brief break so she
 4 can consult with her attorney.
 5 VIDEO OPERATOR: We're going off the record
 6 at 12:41.
 7 We are off the record.
 8 (Interruption in the proceedings.)
 9 VIDEO OPERATOR: We are back on the record at
 12:45 10 12:45.
 11 BY MS. YASHAR:
 12 Q Did you have a chance to consult with your
 13 attorney?
 14 A Yes.
 15 Q Back to Exhibit 12, the December 2003
 16 invoice.
 17 When you got back your truck from Massey
 18 Chevrolet, did you have any conversations with anybody
 19 from Massey Chevrolet about your truck?
 12:46 20 A I don't recall.
 21 Q And you don't recall any conversations about
 22 your brakes?
 23 A Usually they'll tell me how much brake pads I
 24 have left and that's -- that would be, you know, the
 25 conversation.

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1 Q And do you recall them telling you how much
 2 brake pads you had left in December 2003?
 3 A No, I don't.
 4 Q You don't recall anything about your
 5 brakes -- you don't recall any conversation about
 6 your brakes?
 7 A No.
 8 Q You don't recall any specific conversation
 9 about your brakes before or after your car was worked
 12:47 10 on at Massey Chevrolet in December 2003, right?
 11 A Before?
 12 Q Right.
 13 A Before, yes, I asked them to check the
 14 brakes.
 15 Q But you don't remember a conversation about
 16 your brakes after you picked up your car?
 17 A Not particularly but, like I said, usually
 18 they tell me how much brake pads I have left because I
 19 ask them to check the brakes but I don't recall how
 12:47 20 much they told me was left.
 21 Q And you never had a conversation about your
 22 parking brake system in December 2003, right?
 23 A Correct.
 24 Q Not before you dropped off your car or after
 25 you picked up your car, right?

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1 A Correct.
 2 Q You received this invoice, Exhibit 12,
 3 December 13, 2003, when you picked up your car from
 4 Massey Chevrolet, right?
 5 A Correct.
 6 Q Did you review the invoice after the work was
 7 done?
 8 A No, I didn't.
 9 Q You just took the invoice and took it home?
 12:48 10 A Yeah.
 11 Q What did you do when you got home with the
 12 invoice?
 13 A I file my invoices.
 14 Q Do you have a place where you file all of
 15 your truck invoices?
 16 A Yes.
 17 Q And were all of those invoices produced in
 18 this case, to the best of your knowledge?
 19 A Yes.
 12:49 20 Q You gave a copy of all those invoices to your
 21 counsel?
 22 A Yes.
 23 Q And the first time that you looked back at
 24 this invoice was sometime around June or July 2005?
 25 A Yes.

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1 Q And you didn't experience any problems with
 2 the parking brake system until sometime around June or
 3 July 2005 when your car was in neutral and you
 4 attempted to park your car; is that correct?
 5 MR. SPIRO: Asked and answered, but --
 6 THE WITNESS: Well, I didn't know it wasn't
 7 working until then.
 8 BY MS. YASHAR:
 9 Q Does that mean, yes, you did not experience
 12:50 10 any problems with the parking brakes until sometime
 11 around June or July of 2005?
 12 A Yes.
 13 MS. YASHAR: If you'd like, we can take a
 14 lunch break now.
 15 MR. SPIRO: Okay.
 16 VIDEO OPERATOR: We're going off the record
 17 at 12:50.
 18 We are off the record.
 19 (Lunch recess.)
 01:49 20 VIDEO OPERATOR: We are back on the record at
 21 1:49.
 22 BY MS. YASHAR:
 23 Q So before we took a break for lunch, you
 24 were talking about going to Massey in -- sometime in
 25 June and July of 2005 to get your parking brakes

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1 repaired and then after that, going to S & J Chevrolet
 2 to see if they were willing to front the cost to get
 3 your parking brakes repaired; is that correct?
 4 A Actually I went to S & J to get an opinion.
 5 I honestly didn't think they would fix them.
 6 Q So the two places so far that we've discussed
 7 that you went to try to get your parking brakes
 8 repaired or an opinion regarding getting your parking
 9 brakes repaired was Massey Chevrolet and S & J
 01:50 10 Chevrolet?
 11 A Correct.
 12 Q Did you go anywhere else?
 13 A Not that I recall.
 14 Q Did you ultimately get your parking brakes
 15 repaired?
 16 A Yes, I did.
 17 Q Where did you get them repaired?
 18 A I don't remember the name of it.
 19 MS. YASHAR: Handing you what is being marked
 01:51 20 as Defendant's Exhibit Number 15. This has been
 21 previously Bates-labeled as P3260.
 22 (Defendant's Exhibit 15 marked.)
 23 BY MS. YASHAR:
 24 Q Do you recognize this document?
 25 A Yes, I do.

1 A Yes.
 2 Q Did you get an estimate of the cost for
 3 repairing your parking brakes before giving Barsom
 4 Tire And Auto Repair your truck to repair the parking
 5 brakes?
 6 A No.
 7 Q You just took your truck to Barsom Tire and
 8 told them to repair the brakes?
 9 A Yes.
 01:53 10 Q You didn't shop around and get another
 11 opinion on how much it would cost to get your parking
 12 brakes repaired somewhere else?
 13 A No.
 14 Q Why not?
 15 A Because I didn't.
 16 Q Do you know how much it would have cost to
 17 get your parking brakes replaced at the Massey
 18 dealership?
 19 A No.
 01:54 20 Q Or at the S & J Chevrolet dealership?
 21 A No.
 22 Q Do you remember your conversation with anyone
 23 at Barsom Tire prior to giving them your truck?
 24 A No, I don't recall.
 25 Q You don't recall having a conversation about

1 Q What is it?
 2 A It's an invoice from Barsom Tire And Auto
 3 Repair.
 4 Q Did you take your car into Barsom Tire And
 5 Auto Repair?
 6 A Yes.
 7 Q This invoice is dated November 23rd, 2005.
 8 Did you take in your car on or around
 9 November 23rd, 2005 to Barsom Tire And Auto Repair?
 01:51 10 A Yes.
 11 Q Why did you take your truck to Barsom Tire
 12 And Auto Repair?
 13 A To get the parking brake fixed.
 14 Q How did you find this place?
 15 A I was given the name.
 16 Q Who gave you the name?
 17 A I don't recall.
 18 Q You don't recall who recommended that you go
 19 to Barsom Tire And Auto Repair?
 01:52 20 A No.
 21 Q Was it someone in your family?
 22 A No.
 23 Q Was it a friend?
 24 A No.
 25 Q Was it your counsel?

1 what was wrong with your parking brakes?
 2 A I'm sure I had a conversation, but I don't
 3 remember what was said, no.
 4 Q Do you know what was wrong with your parking
 5 brakes?
 6 A No, other than it didn't work.
 7 Q So you didn't know what was wrong with it,
 8 you just knew that it didn't work?
 9 A Correct.
 01:55 10 Q Or you thought it didn't work, right?
 11 A I knew it didn't work.
 12 Q On the invoice for Barsom Tire, it lists your
 13 rear rotors -- rotors -- I can't talk right now -- on
 14 your invoice for Barsom Tire, it lists that your rear
 15 rotors were replaced as well.
 16 Is that related to your parking brakes?
 17 A I have no idea.
 18 Q And what was the cost of getting your parking
 19 brakes repaired at Barsom Tire?
 01:56 20 A \$417.
 21 Q And that's reflected on this invoice, right?
 22 A Correct.
 23 MR. SPIRO: Excuse me, can we stop for one
 24 second.
 25 MS. YASHAR: Sure.

1 We can go off the record so counsel can take
 2 a call.
 3 VIDEO OPERATOR: We're going off the record
 4 at 3:56 (sic).
 5 (Interruption in the proceedings.)
 6 VIDEO OPERATOR: We are back on the record at
 7 3:56 (sic).
 8 BY MS. YASHAR:
 9 Q Who paid the cost of repairing your parking
 01:56 10 brakes at Barsom Tire?
 11 A I did.
 12 Q You paid the \$417?
 13 A Yes, I did.
 14 Q Were you reimbursed by anyone for this \$417?
 15 A Yes, I was.
 16 Q Who reimbursed you?
 17 A I don't recall the -- I don't recall the name
 18 on the -- how I was reimbursed.
 19 Q I didn't ask you how you were reimbursed. I
 01:57 20 asked you who reimbursed you?
 21 A I don't know.
 22 Q Was it your counsel?
 23 A Yes.
 24 Q Do you know which one of your attorneys
 25 reimbursed you?

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1 Q Did you rent a car during the time your truck
 2 was being worked on at Barsom Tire?
 3 A Yes.
 4 Q Who paid the costs of the rental car?
 5 A I did.
 6 Q How much was the cost?
 7 A \$28.
 8 Q Were you reimbursed for the cost of the
 9 rental car?
 01:58 10 A I don't think so.
 11 Q You paid for it on your own?
 12 A Yes.
 13 Q And nobody reimbursed you?
 14 A I don't believe so.
 15 Q Did you incur any additional costs as a
 16 result of getting the parking brake system replaced?
 17 A No.
 18 Q Did you take any pictures of your parking
 19 brake system prior to getting them replaced in
 01:59 20 November 2005?
 21 A No.
 22 Q Did you take any video of your truck or the
 23 parking brake system prior to getting them replaced in
 24 November 2005?
 25 A No.

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1 A No.
 2 Q But you know it was one of the attorneys that
 3 represent you in this litigation?
 4 A Yes.
 5 Q Did your counsel agree to reimburse you prior
 6 to you giving Barsom Tire your truck to repair the
 7 parking brake system?
 8 MR. SPIRO: That's attorney-client, I'm going
 9 to have to object to that and I'll instruct her not to
 10 answer.
 11 (Instruction not to answer.)
 12 MS. YASHAR: You're instructing your witness
 13 not to answer.
 14 MR. SPIRO: Yes, that's attorney-client.
 15 BY MS. YASHAR:
 16 Q Did you have any agreements on whether you
 17 would be reimbursed for the cost of repairing your
 18 parking brake system with your counsel?
 19 MR. SPIRO: That's the same thing.
 01:58 20 Don't answer, please.
 21 (Instruction not to answer.)
 22 MS. YASHAR: Are you instructing your witness
 23 not to answer.
 24 MR. SPIRO: Attorney-client.
 25 BY MS. YASHAR:

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1 Q Did you have your truck inspected by any
 2 third party prior to getting them replaced in
 3 November of 2005?
 4 A I -- other than S & J and -- I mean other
 5 than Massey Chevrolet?
 6 Q Other than Massey Chevrolet and S & J
 7 Chevrolet.
 8 A No.
 9 Q Did you keep your old parking brakes system
 02:00 10 so that it could be inspected as part of this
 11 litigation or by anyone later on?
 12 A No.
 13 Q Have you had your car appraised since
 14 replacing the parking brake system?
 15 A No.
 16 Q Did you have your car appraised before
 17 replacing the parking brake system?
 18 A No.
 19 Q You said that you didn't know what was wrong
 02:00 20 with your parking brake system; is that right?
 21 MR. SPIRO: She did say that. Asked and __
 22 answered.
 23 THE WITNESS: Other than it didn't work.
 24 BY MS. YASHAR:
 25 Q Do you have an opinion now, as you sit here

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1 today, on what was wrong with your parking brake
 2 system?
 3 A Other than it didn't work.
 4 Q But you don't know why it didn't work?
 5 A It was defective.
 6 Q And when did you first hear the term
 7 "defective" or "defect"?
 8 A I have no idea. Some years back.
 9 Q Was it prior to 2005 or after 2005?
 02:02 10 A Probably in that time period.
 11 Q Somewhere around 2005?
 12 A Yes.
 13 Q Was it prior to your first conversation with
 14 an attorney or after your first conversation with an
 15 attorney?
 16 A Prior.
 17 Q Do you know where you heard that term
 18 "defect" or "defective"?
 19 A No.
 02:02 20 Q Was it on television?
 21 A No.
 22 Q Was it by counsel?
 23 A No.
 24 Q Was it in a newspaper?
 25 A No, I don't usually read the newspaper.

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1 just read that you believe to be false, misleading or
 2 deceptive?
 3 MR. SPIRO: Whoa. Vague, confusing.
 4 THE WITNESS: Can you read it again.
 5 BY MS. YASHAR:
 6 Q "This vehicle conforms to all
 7 applicable U.S. Federal Motor
 8 Safety Standards in effect on the
 9 date of manufacture shown above."
 02:05 10 A Yeah, I would say it's false.
 11 Q What do you think is false?
 12 A It is not safe.
 13 Q And why do you think it's not safe?
 14 A Because the parking brake is defective.
 15 Q And you're saying because you believe it's
 16 not safe and because you believe the parking brake is
 17 defective, that it must not conform to the U.S.
 18 Federal Motor Safety Standards?
 19 A Correct.
 02:06 20 Q Is there reason -- any other reason why you
 21 think that the statement that I just read for you is
 22 false, deceptive and misleading?
 23 A No.
 24 Q But you don't recall ever seeing that
 25 certificate on your truck prior to purchasing it,

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1 Q Was it by someone you talked to?
 2 A Could be.
 3 Q But you don't know who it was that you talked
 4 to?
 5 A No. Could have been from the dealership.
 6 Q Did you ever contact the dealership itself
 7 about the problems with your parking brake system?
 8 A Yeah, I talked to Massey Chevrolet about my
 9 parking brake system.
 02:03 10 Q Did you ever talk to Anaheim Chevrolet?
 11 A No.
 12 Q Let's go back to 2001 when you were at
 13 Anaheim Chevrolet purchasing your Chevy Silverado.
 14 Prior to purchasing your truck, did you see a
 15 certificate, label or tag on the 2001 Chevy Silverado
 16 that you purchased saying, "This vehicle
 17 conforms to all applicable U.S.
 18 Federal Motor Safety Standards in
 19 effect on the date of manufacture
 02:04 20 shown above."
 21 A Did I see that on the truck?
 22 Q Did you see that certification, label or tag
 23 on the truck itself?
 24 A If I did, I don't remember.
 25 Q Is there anything in that statement that I

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1 right?
 2 A Right.
 3 MS. YASHAR: I'm handing you what is being
 4 marked as Defendant's Exhibit 16 and it's been
 5 previously Bates-labeled as P3010 to P3011.
 6 (Defendant's Exhibit 16 marked.)
 7 BY MS. YASHAR:
 8 Q Do you recognize this document?
 9 A I don't remember -- I don't remember this,
 02:07 10 but I'm sure I've seen it, but it's -- it's been a
 11 long time since I bought the truck so I don't remember
 12 it actually, so --
 13 Q Can you tell me what this document is.
 14 A "General Motors Pre-Delivery Inspection
 15 Procedure for Passenger Cars and Light Duty Trucks."
 16 Q There is a VIN number, vehicle identification
 17 number that's listed on the first page of this
 18 document.
 19 Do you see that?
 02:08 20 A Yes.
 21 Q Is that the VIN for your car?
 22 A I don't know unless I was looking at my
 23 truck.
 24 Q I'm going to direct your attention to Exhibit
 25 Number 4, Number 1, page 5.

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1 Listed here in your responses to defendant's
 2 first set of interrogatories on line 2 is your vehicle
 3 identification number.
 4 Does the vehicle identification number in
 5 your interrogatory responses match the VIN that is
 6 listed on Exhibit 16?
 7 A It doesn't.
 8 Q It's missing a letter?
 9 A A number and a letter.
 02:10 10 Q You think that the VIN in Exhibit 16 refers
 11 to a different vehicle or do you think that the
 12 response in your interrogatories is probably not
 13 accurate?
 14 A I don't know.
 15 Q You produced all of the documents that were
 16 in your house that related to your truck to your
 17 counsel, correct?
 18 A Correct.
 19 Q And your counsel produced those documents to
 02:11 20 us, right?
 21 A I believe so.
 22 Q And this was one of the documents that were
 23 produced to us.
 24 A What document, 16?
 25 Q Exhibit 16 was one -- one of the documents

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1 MR. SPIRO: Really?
 2 MS. YASHAR: Right. I mean there's a lot of
 3 numbers there so -- but if you can double-check to
 4 make sure that that's amended so that we have the
 5 correct VIN number, I'd appreciate that.
 6 MR. SPIRO: You're right -- oh, wait, no.
 7 THE WITNESS: "3" and the "C."
 8 MR. SPIRO: You're right. This one is
 9 different too. I'm sorry.
 02:13 10 MS. YASHAR: That's okay.
 11 Can you provide us with an amended
 12 supplemental interrogatory that provides the correct
 13 VIN?
 14 MR. SPIRO: Sure.
 15 MS. YASHAR: But, Counsel, you stipulate that
 16 this predelivery inspection form is with respect to
 17 Ms. Gonzales's vehicle?
 18 MR. SPIRO: Let me take a look at some other
 19 papers to make sure that I'm not making a mistake on
 02:14 20 this.
 21 Somebody tried to correct it and they didn't
 22 correct it. All right.
 23 I'm trying to see if it -- if it matches the
 24 sales contract, but the sales contract is hard to
 25 read. I hope it has a VIN number on it.

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1 that was produced to us.
 2 Would you stipulate that this is the
 3 predelivery inspection form that came with your car?
 4 MR. SPIRO: Well, she can't stipulate to
 5 anything.
 6 Are you asking me?
 7 MS. YASHAR: Yes, I'm asking you.
 8 MR. SPIRO: Oh. I believe it is. I wouldn't
 9 know but I can't imagine what else it would be.
 02:11 10 MS. YASHAR: Just so we're -- we're clear --
 11 and this is with me and you --
 12 MR. SPIRO: Yeah.
 13 MS. YASHAR: -- you should make sure that
 14 whichever number is listed in the responses to the
 15 interrogatories are accurate to the extent that there
 16 may be one letter and one number that seems to be
 17 missing from what's listed in the interrogatory
 18 responses.
 19 MR. SPIRO: Pantea, the interrogatory
 02:12 20 responses were amended to correct the number,
 21 supplemented.
 22 MS. YASHAR: You're looking at the
 23 supplemental responses and the supplemental responses
 24 are not consistent with what's been produced to us as
 25 well.

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1 THE WITNESS: Yeah, it does.
 2 MR. SPIRO: Can you see it.
 3 THE WITNESS: Yeah, it's right here.
 4 MR. SPIRO: Is that the sales contract?
 5 THE WITNESS: Yeah, that's the vehicle VIN
 6 ID.
 7 MR. SPIRO: Okay, good. I was looking at
 8 something else.
 9 THE WITNESS: Yeah.
 02:15 10 MR. SPIRO: That is from a different time.
 11 THE WITNESS: Oh, that's --
 12 MS. YASHAR: Let's go off the record for --
 13 MR. SPIRO: All right.
 14 MS. YASHAR: -- a minute.
 15 VIDEO OPERATOR: We're going off the record
 16 at 3:15 (sic) -- we are off the record. 2:15.
 17 (Discussion off the record.)
 18 VIDEO OPERATOR: We are back on the record at
 19 2:21.
 02:21 20 MS. YASHAR: Mr. Spiro and I have stipulated
 21 that Exhibit 16 is the predelivery inspection
 22 procedure form for Ms. Gonzales's vehicle, we have
 23 also stipulated that Mr. Spiro will provide an amended
 24 interrogatory response with respect to Ms. Gonzales's
 25 VIN since the response in both the original

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1 interrogatory responses and the supplemental responses
 2 to those interrogatory responses reflects the
 3 incorrect VIN for Ms. Gonzales's vehicle.
 4 MR. SPIRO: I should say that I'm not sure
 5 that the -- all the handwritten markings on this
 6 Exhibit 16 are part of the --
 7 THE WITNESS: The original.
 8 MR. SPIRO: -- the original, right.
 9 But the printed stuff, I'm stipulating that
 02:22 10 it is part of the original -- is the original.
 11 MS. YASHAR: Okay.
 12 Q Ms. Gonzales, do you recall receiving
 13 Exhibit 16?
 14 A No, I don't recall receiving -- I received a
 15 lot of papers that day, so this in particular, I don't
 16 recall.
 17 Q But you can see that it was in your
 18 possession, right, so at some point you did receive
 19 this document?
 02:22 20 A Correct.
 21 Q You just are not sure when?
 22 A Correct.
 23 Q But you are likely to have received it when
 24 you purchased your truck in 2001, right?
 25 A Right.

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1 Q There's a signature on the second page of
 2 Exhibit 16 by Jorge Perez indicating that the
 3 preinspection was complete and the vehicle passed the
 4 inspection.
 5 Do you see that signature?
 6 A Yes.
 7 Q Do you allege that this certification is
 8 false, misleading or deceptive?
 9 A Yes, it's false.
 02:23 10 Q Which part?
 11 A The parking brake wasn't working.
 12 Q So which part of this form specifically is
 13 false?
 14 A Well, it didn't really pass the inspection
 15 because the parking brake wasn't working. When I
 16 asked whoever delivered my truck, obviously I didn't
 17 have the knowledge of the parking brake when I asked.
 18 Q You don't recall reviewing this truck -- I
 19 mean, I'm sorry -- strike that.
 02:23 20 You don't recall reviewing this form prior to
 21 purchasing your truck, correct, in 2001?
 22 A No, I don't recall.
 23 Q And you don't recall reviewing this form
 24 immediately after purchasing your truck in 2001,
 25 correct?

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1 A Correct.
 2 MR. SPIRO: One of the -- I think the answer
 3 before the last one, Ms. Gonzales said --
 4 MS. YASHAR: Counsel, if you have an
 5 objection, please state your objection.
 6 MR. SPIRO: I'm going to but I have to tell
 7 you what the question is about -- what the objection
 8 is about.
 9 The objection is about the statement that the
 02:24 10 vehicle didn't pass the test because of brakes. I
 11 move to strike that as nonresponsive.
 12 BY MS. YASHAR:
 13 Q Ms. Gonzales, when you said that the
 14 vehicle -- when you said that your truck -- strike
 15 that.
 16 Ms. Gonzales, when you said that the
 17 predelivery inspection form with respect to the
 18 parking brake was false, what did you mean by that?
 19 THE WITNESS: What was the question?
 02:26 20 MS. YASHAR: Ms. Lindsay, can you repeat my
 21 question.
 22 (Record read as follows:
 23 "Q Ms. Gonzales, when you
 24 said that the predelivery
 25 inspection form with respect to the

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1 parking brake was false, what did
 2 you mean by that?")
 3 THE WITNESS: You asked me if the inspection
 4 passed.
 5 MR. SPIRO: No, she didn't actually ask that.
 6 THE WITNESS: Oh, then I misunderstood.
 7 BY MS. YASHAR:
 8 Q So I'll ask you the question again.
 9 Is there anything about this preinspection
 02:27 10 form that you believe is false?
 11 A This isn't the form -- this -- we didn't go
 12 over the parking brake.
 13 Q Ms. Gonzales, just answer my question.
 14 Is there anything about the preinspection
 15 form that you believe, the certification that we're
 16 looking at right now, Exhibit 16, that you believe is
 17 false?
 18 A Okay, I don't remember this form so I can't
 19 answer that question -- I don't remember going over
 02:27 20 this form.
 21 Q Okay. You talked about a crash test that you
 22 recalled seeing on a news show prior to purchasing
 23 your 2001 Chevy Silverado, right?
 24 A Yes.
 25 Q Did you observe anything in that show that

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1 dealt with the testing of the parking brake system?
 2 A No.
 3 Q There was nothing in that show where you saw
 4 the crash test, results of different vehicles, that
 5 discussed the performance of the parking brake system
 6 in your -- in GM's Chevy Silverados, correct?
 7 A Correct.
 8 Q Did you rely on the results of that crash
 9 test that you saw on the news show in making your
 02:28 10 decision to purchase your Chevy Silverado?
 11 MR. SPIRO: Calls for a legal conclusion.
 12 THE WITNESS: That was one of the things, not
 13 the -- not overall, that wasn't my decision.
 14 BY MS. YASHAR:
 15 Q What else did you rely on?
 16 A I already answered that question.
 17 Q You answered my question of whether -- you
 18 didn't answer that question --
 19 A Yes, I did.
 02:29 20 Q -- so I'm going to ask it again.
 21 Did you rely on anything other than the
 22 results of the crash tests in making your decision to
 23 purchase your Chevy Silverado --
 24 MR. SPIRO: Yes, she did.
 25 BY MS. YASHAR:

1 already answered this question in the middle of her
 2 answer.
 3 BY MS. YASHAR:
 4 Q So you relied on the crash test results and
 5 the durability and --
 6 A The price.
 7 Q Anything else?
 8 A That's all I can remember right now.
 9 Q And when you said "durability," prev-- your
 02:31 10 previous testimony -- in your previous testimony, you
 11 indicated that in evaluating durability, you relied on
 12 the crash test; is that correct?
 13 MR. SPIRO: No, it's not. That misstates the
 14 testimony.
 15 THE WITNESS: No.
 16 BY MS. YASHAR:
 17 Q So the three factors that you relied on in
 18 purchasing your 2001 Chevy Silverado was the crash
 19 test results in the TV show, correct?
 20 A Yes.
 21 Q The price, right?
 22 A Yes.
 23 Q And the durability of the truck?
 24 A Yes.
 25 MR. SPIRO: Misstates the testimony. She

1 Q -- in 2001, what did you rely on?
 2 A I did answer.
 3 MR. SPIRO: Hold on. Hold on.
 4 She did answer it, I believe, it was asked
 5 and answered and also calls for a legal conclusion.
 6 Go ahead.
 7 THE WITNESS: I relied on -- I relied on the
 8 crash test, on durability.
 9 BY MS. YASHAR:
 02:30 10 Q Anything else?
 11 A I've already answered this question. Look
 12 back in your notes, I already answered the question.
 13 Q You didn't answer this particular question --
 14 A Yes, I did.
 15 Q -- so I will ask you again.
 16 A No, I've already answered the question.
 17 Q You can answer. I'm asking you the question
 18 again.
 19 MR. SPIRO: Well, she just answered the
 02:30 20 question again.
 21 MS. YASHAR: Counsel, I didn't ask her this
 22 specific question so I'm asking her this question.
 23 MR. SPIRO: No, I mean she's answered the
 24 question -- the question that you asked about
 25 30 seconds ago, she's answered and then she said I've

1 said that's all I can remember now. That's what she
 2 said.
 3 BY MS. YASHAR:
 4 Q Is there anything else that you can remember?
 5 A All I can remember now and what I've already
 6 answered prior to that because I've already answered
 7 this question before.
 8 Q So other than anything that you've answered
 9 during this deposition, there's nothing else that you
 02:32 10 can recall that you relied on in making the decision
 11 to purchase your 2001 Chevy Silverado?
 12 MR. SPIRO: Calls for a legal conclusion.
 13 THE WITNESS: Right.
 14 BY MS. YASHAR:
 15 Q And when you say --
 16 MR. SPIRO: I'll also say vague.
 17 BY MS. YASHAR:
 18 Q When you say durability, how did you
 19 determine durability?
 20 A I've already answered that question too.
 21 Q I believe what you answered in determining
 22 the durability of the vehicle was the crash test
 23 results.
 24 A No.
 25 MR. SPIRO: Can we --

1 BY MS. YASHAR:
 2 Q What did you do to determine the durability
 3 of the vehicle?
 4 MR. SPIRO: I -- I would like to go back to
 5 her previous -- she's -- this is in the first session.
 6 Would it take a long time to search for the
 7 word "durability," the first time she said it --
 8 MS. YASHAR: Counsel, if you have an
 9 objection, please state your objection.
 02:33 10 MR. SPIRO: My objection is that --
 11 MS. YASHAR: I am asking --
 12 MR. SPIRO: I know.
 13 MS. YASHAR: -- the witness the questions,
 14 this is my deposition.
 15 MR. SPIRO: No, it's not, it's the court's
 16 deposition.
 17 The -- I'm asking the court reporter if I can
 18 please have read back what the witness said about
 19 durability the first time, it would be the first time
 02:33 20 the word "durability" appears in the transcript.
 21 (Record read.)
 22 BY MS. YASHAR:
 23 Q So when you said that you relied on the
 24 durability of the Chevy Silverado in making the
 25 decision to purchase it, you mentioned earlier that by

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1 A "Like a Rock."
 2 Q You remember the statement "Like a Rock"?
 3 A Uh-huh.
 4 Q And was that referring to a Chevy Silverado?
 5 A Uh-huh -- a Chevy.
 6 Q Do you remember any other statements made in
 7 any other commercials for the Chevy Silverado?
 8 A I remember other ones but I can't quote them.
 9 Q What other commercials do you remember?
 02:37 10 A I just remember commercials.
 11 Q You remember in general commercials?
 12 A Right.
 13 Q But you don't remember the contents of
 14 that -- of any of these commercials?
 15 A No.
 16 Q You don't remember specifically any of these
 17 commercials?
 18 A No.
 19 Q And the only statement that you recall from
 02:37 20 any of these commercials is "Like a Rock"?
 21 A Right.
 22 Q Do you believe anything in the statement
 23 "Like a Rock" is false, misleading or deceptive?
 24 A Yes, is -- yes.
 25 Q What?

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1 durability, you meant that it was safe, made well and
 2 did well in the crash test; is that right?
 3 A Yes.
 4 Q And what did you rely on in determining
 5 whether it was safe and made well?
 6 MR. SPIRO: Legal conclusion, vague.
 7 THE WITNESS: The crash test showed it was
 8 safe.
 9 BY MS. YASHAR:
 02:36 10 Q Did you rely on anything other than the crash
 11 test in determining that the Chevy Silverado was
 12 durable?
 13 MR. SPIRO: Legal conclusion, vague.
 14 THE WITNESS: There was some commercials
 15 about Chevy.
 16 BY MS. YASHAR:
 17 Q What commercials?
 18 A Different commercials that are out when they
 19 do commercials about cars, trucks.
 02:36 20 Q Commercials on television?
 21 A Yes.
 22 Q Do you recall any commercials on radio?
 23 A No, usually on television.
 24 Q Was it one in particular commercial that you
 25 recall?

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1 A Well, they're not -- they're not safe --
 2 or is -- I mean they're not -- they're not -- well,
 3 the parking brake is not safe and so they're not --
 4 it's not what they stand up to be, false
 5 advertisement.
 6 Q When did you hear that term for the first
 7 time, "false advertisement"?
 8 A No, I'm saying it's false advertisement.
 9 Q And I'm asking you when did you hear for the
 02:39 10 very first time the term "false advertisement"?
 11 A No, I didn't hear it, I just said it.
 12 Q Why do you believe that the parking brake is
 13 not safe?
 14 A Because it's -- it's defective.
 15 Q And do you believe that it's just your car
 16 that's defective or --
 17 A Oh, no.
 18 Q Why?
 19 A Why, because it's -- they're defective.
 02:39 20 Q Why do you think that it's not just your car
 21 that has a defective parking brake?
 22 A Because it's -- it's the class action, the --
 23 it's just known that there's -- that they're
 24 defective. Why would just mine be, I mean that's
 25 silly.

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1 Q How is it just known that since yours -- your
 2 parking brake is not working properly, then no one
 3 else's parking brake in their Chevy Silverados are
 4 working properly?
 5 MR. SPIRO: Excuse me, what? Can I hear that
 6 again.
 7 (Record read as follows:
 8 "Q How is it just known that
 9 since yours -- your parking brake
 10 is not working properly, then no
 11 one else's parking brake in their
 12 Chevy Silverados are working
 13 properly?")
 14 MR. SPIRO: She said the opposite, Counsel.
 15 It misstates her testimony, I think.
 16 BY MS. YASHAR:
 17 Q How is it that you made the conclusion that
 18 since your parking brake is not working properly,
 19 everybody who owns a Chevy Silverado has a parking
 02:40 20 brake that isn't working properly?
 21 MR. SPIRO: She didn't say that either.
 22 BY MS. YASHAR:
 23 Q You can answer.
 24 MR. SPIRO: Misstates her testimony.
 25 THE WITNESS: Well, I know one other person

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1 Q But you said you don't work?
 2 A Worked.
 3 Q Where did he work with you?
 4 A Fidelity.
 5 Q And what do you know about his parking brake
 6 system?
 7 A That it also didn't work.
 8 Q What car does he own?
 9 A I just know that he owns a truck.
 02:42 10 Q Do you know if it's -- what kind of truck it
 11 is?
 12 A I'm not sure, it's -- it's a big truck and
 13 could possibly be a Silverado but I'm not sure.
 14 Q Are you confident that it's a GM-owned truck?
 15 A Yes, it is.
 16 Q But you don't know what make or model it is
 17 of a GM truck?
 18 A No. It's either a GMC or a Silverado.
 19 Q When's the last time that you talked to
 02:42 20 Mr. McDonald?
 21 A It's probably been about two years.
 22 Q And what did he tell you about his parking
 23 brakes?
 24 A We just have the same problem, that his just
 25 didn't work. I believe his is a manual truck, though.

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1 that has a problem with their parking brake.
 2 BY MS. YASHAR:
 3 Q Who is that other person?
 4 A Person I worked with.
 5 Q And what's that person's name?
 6 A His name is Damian.
 7 Q Damian what?
 8 A McDonald.
 9 And La Ronda.
 02:41 10 Q And you're talking about La Ronda Hunter?
 11 A Yes.
 12 Q And that's another named plaintiff, correct?
 13 A Yes.
 14 Q And that's who you met yesterday during --
 15 A Yes.
 16 Q -- yesterday's deposition?
 17 Did you meet her prior to yesterday's
 18 deposition?
 19 A No.
 02:41 20 Q Did you talk to her prior to yesterday's
 21 deposition?
 22 A No.
 23 Q And Damian McDonald, you said that's someone
 24 you work with?
 25 A Yes. Worked.

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1 Q Do you know whether he got his parking brakes
 2 fixed?
 3 A I don't know.
 4 Q Do you know when he first experienced
 5 problems with his parking brakes?
 6 A No.
 7 Q Do you know whether GM repaired his parking
 8 brakes --
 9 A No.
 02:43 10 Q -- under warranty?
 11 You don't know any details --
 12 A No.
 13 Q -- about what happened with his parking
 14 brakes, correct?
 15 A No.
 16 Q And you haven't talked to him for the last
 17 two years?
 18 A Right.
 19 Q Did you ever see or hear any advertisements
 02:43 20 about the parking brake systems?
 21 A No.
 22 Q Did you ever hear or see any ads that the
 23 parking brakes on GM can last for the life of the
 24 vehicle?
 25 A No. I would think that would be common

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1 sense.
 2 Q Did you ever see or hear any ads that the
 3 parking brakes on the GM truck that you owned would
 4 have an expected life span of over 200,000 miles?
 5 A No.
 6 Q There was nothing in any of the
 7 advertisements that you saw or heard that related
 8 to the parking brake system, right?
 9 A Right.
 02:44 10 MR. SPIRO: Whoa. Vague, the term "related
 11 to" is vague.
 12 BY MS. YASHAR:
 13 Q Did you receive an owners manual at the time
 14 of or before purchasing the truck in 2001?
 15 A Yes.
 16 MS. YASHAR: I'm handing you what's been
 17 marked -- or what's being marked as Defendant's
 18 Exhibit 17 and what has previously been Bates-labeled
 19 as GM_HUNTER-1668 to about -2135.
 02:45 20 (Defendant's Exhibit 17 marked.)
 21 MS. YASHAR: This is a copy of the owners
 22 manual for the 2001 Chevrolet Silverado.
 23 Q Do you recognize this document?
 24 A Yeah.
 25 Q Did you receive this prior to purchasing

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1 -30581?
 2 (Defendant's Exhibit 18 marked.)
 3 BY MS. YASHAR:
 4 Q Do you recognize this document?
 5 A No.
 6 Q It's a copy of the warranty booklet for your
 7 2001 truck.
 8 A Uh-huh.
 9 Q Do you recall ever receiving a warranty
 02:49 10 booklet?
 11 A No, I never got one.
 12 Q Do you recall ever looking at a warranty
 13 booklet in connection with your 2001 Chevy Silverado?
 14 A No. I didn't know they had one.
 15 Q So it would be fair to say that no one went
 16 over a warranty booklet with you prior to purchasing
 17 your vehicle?
 18 A Correct.
 19 Q And you never reviewed any warranty booklet
 02:49 20 after purchasing your truck in 2001, right?
 21 A Correct.
 22 MS. YASHAR: I'm handing you what's being
 23 marked as Defendant's Exhibit Number 19.
 24 (Defendant's Exhibit 19 marked.)
 25 MS. YASHAR: This has been previously

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1 your -- your truck in 2001?
 2 A When I purchased it.
 3 Q Did you read the owners manual?
 4 A No.
 5 Q Have you ever read the owners manual?
 6 A No. Only when I need to.
 7 Q Have you ever needed to read the owners
 8 manual?
 9 A I need -- needed to look up certain things.
 02:46 10 Q Did you ever look anything up that had to do
 11 with the parking brake system?
 12 A I don't recall if I did look it up or not.
 13 Q So as you sit here today, you don't recall
 14 ever looking up anything in the owners manual that
 15 relates to the parking brake system; is that correct?
 16 A Right.
 17 Q And you never read the owners manual before
 18 you purchased your truck in 2001?
 19 A Before?
 02:47 20 Q Right.
 21 A Oh, no, I wouldn't have it before I purchased
 22 it.
 23 MS. YASHAR: I'm handing you what is being
 24 marked as Defendant's Exhibit 18. This has been
 25 previously Bates-labeled as GM_HUNTER-30548 through

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1 Bates-labeled as P3274 through P3275, and it's titled
 2 "Warranty Insert California."
 3 Q Do you recognize this document?
 4 A No.
 5 Q You don't remember ever having received this
 6 document?
 7 A No.
 8 Q You don't ever recall having read this
 9 document before, right?
 02:51 10 A Right.
 11 Q Were you provided with any product brochures
 12 at Anaheim Chevrolet when you were purchasing your
 13 2001 Chevy Silverado?
 14 A Product brochures? I don't recall.
 15 Q You don't recall receiving any brochures from
 16 anyone at GM when you were purchasing your truck?
 17 A Regarding what?
 18 Q Any statements about the parking brakes in
 19 your truck?
 02:52 20 A I don't think they hand out brochures.
 21 Q And you don't remember any brochures in
 22 general about your truck given to you or provided to
 23 you at Anaheim Chevrolet?
 24 A No.
 25 Q How would you describe the general

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1 performance of your 2001 Chevy Silverado?
 2 MR. SPIRO: Vague.
 3 Go ahead.
 4 THE WITNESS: Meaning the motor?
 5 BY MS. YASHAR:
 6 Q In general?
 7 MR. SPIRO: Vague.
 8 THE WITNESS: Well, other than the parking
 9 brake, it gets me where I'm going.
 10 BY MS. YASHAR:
 11 Q Has it been reliable?
 12 MR. SPIRO: Vague.
 13 THE WITNESS: Yeah.
 14 BY MS. YASHAR:
 15 Q Has it been dependable?
 16 MR. SPIRO: Vague.
 17 THE WITNESS: Dependable as far as?
 18 BY MS. YASHAR:
 19 Q In getting you from place to place?
 02:53 20 A Yes.
 21 Q Has it -- has your 2001 truck safely
 22 transported you so far?
 23 MR. SPIRO: Vague.
 24 THE WITNESS: Safely? It's -- well, it's not
 25 safe -- it's not safe, but it's -- it's not safe,

1 so far?")
 2 MR. SPIRO: Well, she's answered it twice.
 3 She can go ahead and answer it again.
 4 THE WITNESS: Not safely, but it gets me from
 5 point A to point B.
 6 BY MS. YASHAR:
 7 Q Why has it not safely transported you so far?
 8 A Because it's not safe, it's not a safe truck.
 9 Q Have you ever been in any collisions or
 02:55 10 accidents?
 11 A No.
 12 Q Has -- has anyone ever gotten hurt in your
 13 truck as a result of anything not working properly in
 14 it?
 15 A It doesn't -- it wasn't working properly.
 16 Q Has anyone been injured in your vehicle?
 17 A Not in my vehicle, no.
 18 Q As a result of your vehicle?
 19 A No.
 02:55 20 Q Is your only reason for saying that your
 21 truck is not safe -- strike that.
 22 Is your only reason for saying that your
 23 truck has not safely transported you so far because of
 24 the incident where you put your car in neutral on the
 25 driveway and tried to use the brakes and it didn't

1 so -- it gets me from A to B.
 2 BY MS. YASHAR:
 3 Q And my question was has your truck safely
 4 transported you so far?
 5 MR. SPIRO: She answered. Asked and
 6 answered.
 7 Vague.
 8 THE WITNESS: I said it's not safe, but it
 9 gets me from A to B, so I answered you.
 02:54 10 MS. YASHAR: It's nonresponsive.
 11 MR. SPIRO: No, it isn't.
 12 MS. YASHAR: I'll ask the question again.
 13 MR. SPIRO: No, she's not answering it again.
 14 BY MS. YASHAR:
 15 Q Has the --
 16 MR. SPIRO: I mean you can ask but I'm going
 17 to tell her not to answer.
 18 MS. YASHAR: You're instructing your witness
 19 not to answer.
 02:54 20 MR. SPIRO: Well, you haven't asked yet.
 21 MS. YASHAR: Ms. Lindsay, can you please
 22 repeat my question.
 23 (Record read as follows:
 24 "Q And my question was has
 25 your truck safely transported you

1 work?
 2 A No, because the parking brake doesn't work --
 3 or didn't work.
 4 Q But that's the only reason, correct?
 5 A Correct.
 6 Q Do you primarily use your truck on highways
 7 or residential streets?
 8 A Both.
 9 Q Did you have any other work done to repair
 02:56 10 your parking brakes other than the work that we
 11 discussed previously at Barsom Tire?
 12 A No.
 13 Q There have been no other modifications made
 14 to your vehicle's parking brakes other than the work
 15 done by Barsom Tire, correct?
 16 A Correct.
 17 Q Are you aware of the federal safety standards
 18 for cars and trucks?
 19 MR. SPIRO: Vague.
 02:57 20 THE WITNESS: Rephrase.
 21 BY MS. YASHAR:
 22 Q Do you know that there are federal safety
 23 standards for cars and trucks?
 24 A Yeah. Yes.
 25 Q And these federal safety standards are

1 commonly referred to as -- as FMVSS, which stands for
 2 the Federal Motor Vehicle Safety Standards.
 3 Have you ever heard of that?
 4 A No.
 5 Q Then would it be fair to say that you don't
 6 have any information that your truck doesn't meet the
 7 Federal Motor Vehicle Safety Standards?
 8 A I don't understand the question.
 9 Q You said you've never heard of the FMVSS; is
 10 that right?
 11 A Correct.
 12 Q You've never heard of the Federal Motor
 13 Vehicle Safety Standards, right?
 14 MR. SPIRO: Well, that misstates her
 15 testimony.
 16 BY MS. YASHAR:
 17 Q Have you ever heard of the Federal Motor
 18 Safety -- I'm sorry -- have you ever heard of the
 19 Federal Motor Vehicle Safety Standards?
 20 A No.
 21 Q When did you first decide to sue General
 22 Motors?
 23 A I don't recall when it was.
 24 Q Do you recall what year it was?
 25 A No, I don't.

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1 MR. SPIRO: Compound.
 2 BY MS. YASHAR:
 3 Q Let's break it up. Let's start with
 4 Mr. Spiro.
 5 When did you meet Mr. Spiro for the first
 6 time?
 7 A Last week.
 8 Q Is that the first time that you spoke to him
 9 as well?
 10 A Thereabout.
 11 Q When did you meet David Arbogast for the
 12 first time?
 13 A I don't recall the date.
 14 Q Was it this year?
 15 A No.
 16 Q Was it last year?
 17 A No, it could have been the year before, I
 18 don't remember.
 19 Q Was it about three years ago?
 20 A I don't recall.
 21 MS. YASHAR: Do you want to go ahead and
 22 change the tape?
 23 VIDEO OPERATOR: If you want.
 24 MS. YASHAR: Go ahead and change it right
 25 now.

03:02

03:02

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1 Q Was it before you got your parking brakes
 2 replaced by Barsom Tire or after you got your parking
 3 brakes replaced by Barsom Tire?
 4 A It was -- I'm not sure. I'm not sure.
 5 Q Ms. Gonzales -- Ms. Gonzales, you understand
 6 that you're under oath today, right?
 7 A Yes.
 8 MR. SPIRO: Please. That's harassing the
 9 witness. She knows she's under oath, you've said
 10 it, and it implies that you think she's lying or
 11 something, and she's not.
 12 BY MS. YASHAR:
 13 Q Who are your attorneys in this lawsuit?
 14 A Ira, David Arbogast and Mark.
 15 Q Mark Moore?
 16 A I don't know if that's his last name.
 17 Q How did you meet Ira Spiro, David Arbogast
 18 and Mark Moore?
 19 MR. SPIRO: Compound.
 20 THE WITNESS: How did I?
 21 MR. SPIRO: Yeah, and vague too.
 22 THE WITNESS: How did I -- I drove down -- I
 23 drove down to the office.
 24 BY MS. YASHAR:
 25 Q When did you meet them for the first time?

03:00

03:01

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1 VIDEO OPERATOR: We are going off the record
 2 at 3:02. This concludes Media Number 2.
 3 And we are off the record.
 4 (Interruption in the proceedings.)
 5 VIDEO OPERATOR: We are back on the record at
 6 3:07.
 7 This is the beginning of Media Number 3 of
 8 the deposition of Robin Gonzales.
 9 BY MS. YASHAR:
 10 Q Ms. Gonzales, you said that you met
 11 Mr. Arbogast about three years ago, is that what you
 12 said?
 13 A That's -- that's fair to say.
 14 Q Did you meet him prior to getting your
 15 parking brakes repaired at Barsom Tire or after?
 16 A You know what, I don't -- I don't remember.
 17 Q When did you meet Mark Moore?
 18 A Last week.
 19 Q Did you ever talk to him on the telephone or
 20 E-mail or correspond with him prior to last week?
 21 A I talked to him on the telephone probably
 22 for -- the last month.
 23 Q Did you ever talk to him on the telephone
 24 prior to last month?
 25 A No.

03:07

03:08

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1 Q Are any of the attorneys, Mr. Spiro,
 2 Mr. Arbogast or Mr. Moore related to you or anyone in
 3 your family?
 4 A No.
 5 Q Do any of them have any relationships with
 6 any of your friends or your coworkers?
 7 A No.
 8 Q So prior to last month, the only attorney
 9 that you met was David Arbogast; is that correct?
 03:09 10 A Correct.
 11 Q Do you know when you retained him in this
 12 lawsuit?
 13 MR. SPIRO: Vague, unfortunately, about the
 14 word "retained."
 15 THE WITNESS: I have no idea.
 16 BY MS. YASHAR:
 17 Q Do you know when you sought out counsel in
 18 this lawsuit?
 19 A No idea.
 03:10 20 Q Do you know when you decided to sue General
 21 Motors?
 22 A No idea.
 23 Q You testified earlier that you had counsel
 24 prior to getting your tires repaired at Barsom Tire,
 25 right?

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1 to represent you?
 2 A I have no idea.
 3 Q Did you consider and meet with any other
 4 attorneys, other than Mr. Arbogast, any attorneys that
 5 worked for his firm with respect to this lawsuit?
 6 A No.
 7 Q He's the only attorney that you spoke to?
 8 A Yes.
 9 Q Mr. Arbogast, right?
 03:12 10 A (No audible response.)
 11 Q Is that a yes?
 12 A Yes.
 13 Q Did you seek out an attorney to represent you
 14 with respect to this lawsuit or did someone seek you
 15 out to join this lawsuit?
 16 A I sought, I -- how do you say -- sucked --
 17 I --
 18 MR. SPIRO: Sought.
 19 THE WITNESS: -- sought out -- I inquired.
 03:12 20 BY MS. YASHAR:
 21 Q How did you inquire?
 22 A I don't recall.
 23 Q And where did you meet Mr. Arbogast for the
 24 first time?
 25 A I -- we met at a restaurant.

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1 A Right.
 2 Q So would it be fair to say that --
 3 A Well, I had talked to --
 4 MR. SPIRO: There's no question yet.
 5 BY MS. YASHAR:
 6 Q Go ahead.
 7 MR. SPIRO: No, no, no. She can -- she can
 8 only answer a question.
 9 BY MS. YASHAR:
 03:10 10 Q Who did you talk to prior to getting your
 11 tires repaired at Barsom --
 12 A David.
 13 Q -- I'm sorry, who did you talk to before
 14 getting your parking brakes repaired at Barsom Tire?
 15 A David.
 16 Q And how did you first meet David?
 17 A I don't remember.
 18 Q You don't remember whether you bumped into
 19 him at a party?
 03:11 20 A No, I didn't bump into him at a party.
 21 Q Did you look him up in the newspaper?
 22 A No.
 23 Q Did you look him up in the Yellow Pages?
 24 A No.
 25 Q How did you find Mr. Arbogast as an attorney

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1 Q Which restaurant?
 2 A BJ's.
 3 Q And where is BJ's located?
 4 A Cerritos.
 5 Q And you met at BJ's in Cerritos prior to
 6 getting your tires -- I'm sorry -- you met
 7 Mr. Arbogast at BJ's prior to getting your parking
 8 brakes replaced at Barsom Tire?
 9 A I don't recall the date.
 03:13 10 Q But do you recall, even if you don't recall
 11 the date, that the period of time was prior to getting
 12 your parking brakes --
 13 A That was so long ago, I don't know.
 14 Q Ms. Gonzales, please don't interrupt me, just
 15 so the court reporter can write down my questions and
 16 you can fully listen to my questions before you
 17 answer.
 18 You don't recall whether you met with
 19 Mr. Arbogast prior to your parking brakes being
 20 repaired at Barsom Tire or afterwards?
 21 A That was so long ago, I don't remember.
 22 Q And was Mr. Arbogast the individual who
 23 recommended that you go to Barsom Tire?
 24 A I don't remember that either.
 25 Q But you know it was your counsel that

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1 recommended that you go to Barsom Tire?
 2 A Correct.
 3 Q And you know that the only person that you
 4 spoke to prior to last month was Mr. Arbogast; is that
 5 correct?
 6 MR. SPIRO: No. Misstates the testimony.
 7 THE WITNESS: Somebody told me to go to – as
 8 far as I remember, it – I was told to go to Barsom.
 9 BY MS. YASHAR:
 03:14 10 Q And prior to last month, is the only attorney
 11 you spoke to Mr. Arbogast?
 12 A As far as I remember.
 13 Q Did you have a telephone conversation with
 14 Mr. Arbogast before meeting him at BJ's in Cerritos?
 15 A Yes.
 16 Q Was it more than one telephone conversation?
 17 A I don't recall.
 18 Q Do you recall the length of the telephone
 19 conversation that you had with Mr. Arbogast prior to
 03:15 20 meeting him at BJ's in Cerritos?
 21 A No.
 22 Q And you don't recall whether Mr. Arbogast
 23 called you or you called Mr. Arbogast?
 24 A No, I don't recall.
 25 Q And you don't recall whether – strike that.

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1 Q When is the next time that you met
 2 Mr. Arbogast or had any contact with Mr. Arbogast
 3 after you met him at BJ's in Cerritos?
 4 MR. SPIRO: Vague.
 5 THE WITNESS: I have no idea.
 6 BY MS. YASHAR:
 7 Q Do you think it was within a week after that
 8 meeting at BJ's?
 9 MR. SPIRO: Vague.
 03:18 10 THE WITNESS: I have no idea.
 11 BY MS. YASHAR:
 12 Q Within a year?
 13 A I have no idea.
 14 Q Within two years?
 15 A I have no idea.
 16 Q You can't tell me within – whether it was
 17 within a week or within three years?
 18 A No.
 19 Q Did you decide to retain Mr. Arbogast as your
 03:18 20 attorney during the meeting at BJ's in Cerritos?
 21 A I have no idea.
 22 Q Do you know when you decided to retain
 23 Mr. Arbogast as your attorney in this lawsuit?
 24 A No, I don't remember when.
 25 Q You don't remember a season?

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1 You don't recall whether Mr. Arbogast
 2 initiated the conversation with you or whether you
 3 initiated the conversation with Mr. Arbogast prior to
 4 meeting at BJ's in Cerritos?
 5 MR. SPIRO: Vague. I thought she just
 6 answered that.
 7 THE WITNESS: I don't recall.
 8 BY MS. YASHAR:
 9 Q Did you decide to first sue General Motors
 03:16 10 after September 2005 when you went to S & J Chevrolet
 11 or prior to that period?
 12 MR. SPIRO: Vague.
 13 THE WITNESS: I don't recall.
 14 BY MS. YASHAR:
 15 Q When's the next time after you met
 16 Mr. Arbogast after your initial meeting at BJ's in
 17 Cerritos in 2005?
 18 A When is the next – what was the question.
 19 (Record read as follows:
 20 "Q When's the next time
 21 after you met Mr. Arbogast after
 22 your initial meeting at BJ's in
 23 Cerritos in 2005?")
 24 THE WITNESS: When's the next what?
 25 BY MS. YASHAR:

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1 A (No audible response.)
 2 Q You don't remember the year?
 3 A (No audible response.)
 4 Q I'd like to note you have to audibly answer
 5 so that she can write it down?
 6 A I don't remember.
 7 Q You don't remember anything about it?
 8 A No, I don't, I – it's – it was so long ago,
 9 I – I don't remember – I'm not good at dates, I
 03:19 10 don't remember.
 11 Q And you can't remember whether you retained
 12 counsel prior to getting your tires repaired at
 13 Barsom Tire – I keep saying tires – you can't
 14 remember whether you retained Mr. Arbogast as your
 15 counsel prior to getting your parking brakes repaired
 16 at Barsom Tire or after you got your parking brakes
 17 repaired at Barsom Tire?
 18 A No, not truthfully, I can't remember, I
 19 honestly don't know a date.
 03:19 20 Q And you don't know a year?
 21 A I don't know – definitely don't know a year.
 22 Q And you don't know a season?
 23 A A season – how can you determine a season,
 24 it was 80 degrees two weeks ago, how do you determine
 25 a season out here.

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1 Q So your answer is no?
 2 A No.
 3 Q Did you make any agreements with Mr. Arbogast
 4 or your other attorneys in this lawsuit --
 5 MR. SPIRO: Huh?
 6 THE WITNESS: Agreements to what?
 7 MR. SPIRO: Seems to be calling for
 8 attorney-client.
 9 MS. YASHAR: I didn't finish my question?
 03:20 10 MR. SPIRO: Oh.
 11 BY MS. YASHAR:
 12 Q Did you make any agreements with your
 13 attorneys in this lawsuit regarding who would fund
 14 pursuing this lawsuit?
 15 MR. SPIRO: You can say yes or no to that.
 16 THE WITNESS: Who would fund it? No.
 17 BY MS. YASHAR:
 18 Q Do you know what a class action is?
 19 A Yes.
 03:21 20 Q Can you explain it for me.
 21 A It's a group of people, we're suing.
 22 Q Can you elaborate on that?
 23 MR. SPIRO: Calls for a narrative.
 24 THE WITNESS: No.
 25 BY MS. YASHAR:

1 BY MS. YASHAR:
 2 Q Whose idea was it?
 3 MR. SPIRO: Vague.
 4 THE WITNESS: I don't know.
 5 BY MS. YASHAR:
 6 Q Have you had any previous involvement in
 7 class action lawsuits?
 8 A No.
 9 Q Have you been involved in any other civil
 03:23 10 lawsuits?
 11 A No.
 12 Q Are you currently involved in any other
 13 pending lawsuits other than this current litigation?
 14 A No.
 15 Q Do you know what class notice is?
 16 A No.
 17 Q Do you have any agreements with your
 18 attorneys regarding the cost of providing class
 19 notice?
 03:24 20 MR. SPIRO: You can say yes or no.
 21 THE WITNESS: No.
 22 BY MS. YASHAR:
 23 Q Do you think that you have an obligation to
 24 pay for class notice in the event that a class action
 25 is certified in this lawsuit?

1 Q So your only knowledge of a class action is
 2 that it is a group of people suing?
 3 A A group of people.
 4 Q A class action is a group of people?
 5 MR. SPIRO: Asked and answered.
 6 THE WITNESS: That's what I said.
 7 BY MS. YASHAR:
 8 Q Do you know why this lawsuit was filed as a
 9 class action -- well, let's back up.
 03:22 10 Do you know -- do you know if this lawsuit
 11 was filed as a class action?
 12 A Yes.
 13 Q Do you know why this lawsuit was filed as a
 14 class action?
 15 MR. SPIRO: Vague.
 16 THE WITNESS: No.
 17 BY MS. YASHAR:
 18 Q Was it your idea to start -- was it your idea
 19 to be part of this lawsuit?
 03:23 20 MR. SPIRO: Vague.
 21 THE WITNESS: Yes.
 22 BY MS. YASHAR:
 23 Q Was it your idea to start this lawsuit?
 24 A No.
 25 MR. SPIRO: Vague. Vague.

1 MR. SPIRO: Vague.
 2 THE WITNESS: No.
 3 BY MS. YASHAR:
 4 Q Are you willing to personally pay the costs
 5 of having to give written notice to each potential
 6 member of any certified class in this lawsuit?
 7 MR. SPIRO: Vague.
 8 THE WITNESS: No.
 9 BY MS. YASHAR:
 03:25 10 Q Do you have an understanding of what it would
 11 cost to prosecute this lawsuit as a class action?
 12 MR. SPIRO: Vague.
 13 THE WITNESS: No.
 14 BY MS. YASHAR:
 15 Q Are you aware of any of the additional costs
 16 that you may potentially have to pay to pursue this
 17 lawsuit?
 18 MR. SPIRO: Assumes facts not in evidence,
 19 that there are any, and it's vague.
 03:25 20 THE WITNESS: No.
 21 BY MS. YASHAR:
 22 Q Do you have any agreements with your
 23 attorneys regarding personally paying the costs of
 24 pursuing this lawsuit?
 25 A No.

1 Q Are you willing to pay any amount out of your
 2 pocket in order to prosecute and pursue this lawsuit?
 3 MR. SPIRO: Vague.
 4 THE WITNESS: No.
 5 BY MS. YASHAR:
 6 Q Do you know what a class representative is?
 7 A Yes.
 8 Q What is your understanding of what a class
 9 representative is?
 03:26 10 A Myself.
 11 Q Can you elaborate on that for me.
 12 MR. SPIRO: Calls for a narrative.
 13 THE WITNESS: I'm representing myself and
 14 other people that need their brakes fixed or
 15 reimbursed for the dangerous parking brake that GM put
 16 out.
 17 BY MS. YASHAR:
 18 Q And what other people are you representing
 19 that, quote, may need their brakes fixed?
 03:26 20 MR. SPIRO: Vague.
 21 THE WITNESS: What do you mean?
 22 BY MS. YASHAR:
 23 Q I am asking what you mean by the other people...
 24 that you're representing, who do you think that you're
 25 representing?

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1 MR. SPIRO: Yes.
 2 BY MS. YASHAR:
 3 Q Do you know whether a class representative
 4 has the duty to direct the conduct of the lawsuit or
 5 the litigation?
 6 A No.
 7 Q Do you know whether a class representative
 8 has the duty to meet regularly with counsel for the
 9 putative class to discuss the lawsuit?
 03:28 10 MR. SPIRO: That's vague and so is the
 11 previous question so I move to strike the answer to
 12 the previous question.
 13 THE WITNESS: No.
 14 BY MS. YASHAR:
 15 Q Do you know whether a class representative
 16 has a duty to meet regularly with counsel to control
 17 the direction of the lawsuit?
 18 MR. SPIRO: Vague.
 19 THE WITNESS: No.
 03:29 20 BY MS. YASHAR:
 21 Q Is it your understanding that the class
 22 representative's duty is to represent and protect his
 23 own personal -- her own personal interest regardless
 24 of whether her own personal interest conflicts with
 25 those of the class.

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1 MR. SPIRO: Vague, asked and answered.
 2 THE WITNESS: People that bought trucks with
 3 inoperable parking brakes.
 4 BY MS. YASHAR:
 5 Q You've never been a class representative
 6 before, right?
 7 MR. SPIRO: Asked and answered.
 8 THE WITNESS: Right.
 9 BY MS. YASHAR:
 03:27 10 Q Has anyone explained to you what the duties
 11 of a class representative are?
 12 MR. SPIRO: You can say yes or no or if you
 13 remember.
 14 THE WITNESS: Yes.
 15 BY MS. YASHAR:
 16 Q And who was that?
 17 MR. SPIRO: No. Don't answer that, please.
 18 (Instruction not to answer.)
 19 BY MS. YASHAR:
 03:28 20 Q Was it your counsel?
 21 MR. SPIRO: Don't answer that, please.
 22 Calls for attorney-client.
 23 (Instruction not to answer.)
 24 MS. YASHAR: Are you instructing her not to
 25 answer.

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1 MR. SPIRO: I -- may I hear that again.
 2 BY MS. YASHAR:
 3 Q Is it your understanding that the class
 4 representative's duty is to represent and protect her
 5 personal interest regardless of whether her personal
 6 interest conflict with those of the class?
 7 MR. SPIRO: It's very confusing.
 8 Go ahead.
 9 THE WITNESS: I want to hear it one more
 03:30 10 time.
 11 MS. YASHAR: Ms. Lindsay.
 12 (Record read as follows:
 13 "Q Is it your understanding
 14 that the class representative's
 15 duty is to represent and protect
 16 her personal interest regardless of
 17 whether her personal interest
 18 conflict with those of the class?")
 19 THE WITNESS: No, I'm here to represent
 03:30 20 everybody.
 21 BY MS. YASHAR:
 22 Q If GM were to offer you all the damages and
 23 relief that you are seeking, would you withdraw --
 24 A No.
 25 Q -- from this lawsuit?

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1 A No.
 2 Q Do you think a class representative is
 3 supposed to defer to the judgment of the class's
 4 attorneys regarding the conduct of the lawsuit?
 5 MR. SPIRO: Vague.
 6 THE WITNESS: One more time.
 7 (Record read as follows:
 8 "Q Do you think a class
 9 representative is supposed to defer
 10 to the judgment of the class's
 11 attorneys regarding the conduct of
 12 the lawsuit?")
 13 THE WITNESS: I don't understand the
 14 question.
 15 BY MS. YASHAR:
 16 Q Do you think that a class representative is
 17 supposed to defer to the judgment of the class's
 18 attorneys regarding the strategy of the lawsuit?
 19 MR. SPIRO: Vague.
 03:32 20 THE WITNESS: Can you read it again.
 21 (Record read as follows:
 22 "Q Do you think that a class
 23 representative is supposed to defer
 24 to the judgment of the class's
 25 attorneys regarding the strategy of

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1 THE WITNESS: Defer to who?
 2 BY MS. YASHAR:
 3 Q Defer to your attorneys, which would be
 4 Mr. Spiro, Mr. Moore and Mr. Arbogast that you
 5 mentioned to me are your attorneys?
 6 A You said if my attorneys -- I didn't
 7 understand the question --
 8 Q Would you --
 9 A -- I thought you just said if my attorneys.
 03:34 10 MS. YASHAR: Ms. Lindsay, can you please
 11 repeat the question.
 12 (Record read as follows:
 13 "Q In this case if your
 14 attorneys wanted to pursue a
 15 particular strategy or course of
 16 conduct with which you disagree,
 17 would you defer to them?")
 18 THE WITNESS: Would I -- would I ask them
 19 about it, is what you're asking?
 03:35 20 BY MS. YASHAR:
 21 Q Would you let them pursue the particular
 22 strategy or course of conduct with which you disagree?
 23 MR. SPIRO: Same objections.
 24 THE WITNESS: Would I ask them about it, this
 25 is what you're asking, correct?

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1 the lawsuit?")
 2 THE WITNESS: I guess I don't understand the
 3 class's attorneys, I don't understand that part.
 4 BY MS. YASHAR:
 5 Q The class's attorneys, I mean Mr. Spiro
 6 that's sitting next to you, Mr. Arbogast and
 7 Mr. Moore?
 8 A I can't answer that one.
 9 Q You don't know?
 03:33 10 A No.
 11 Q In this case if your attorneys wanted to
 12 pursue a particular strategy or course of conduct with
 13 which you disagree, would you defer to them?
 14 MR. SPIRO: Vague, also incomplete
 15 hypothetical.
 16 THE WITNESS: I'm distracted.
 17 MR. SPIRO: Your fingers are causing static.
 18 THE WITNESS: Can you go over it one more
 19 time.
 20 (Record read as follows:
 21 "Q In this case if your
 22 attorneys wanted to pursue a
 23 particular strategy or course of
 24 conduct with which you disagree,
 25 would you defer to them?")

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1 BY MS. YASHAR:
 2 Q No, I'm not asking you that. Let's -- let me
 3 rephrase the question --
 4 A Okay.
 5 Q -- so you can understand it a little bit
 6 better.
 7 If your attorneys wanted to pursue a
 8 particular strategy or course of conduct with which
 9 you didn't agree with, would you -- would you still
 03:35 10 allow them to pursue that particular strategy or
 11 course of conduct even though you disagreed with them?
 12 MR. SPIRO: Hold on, vague and it's an
 13 incomplete hypothetical.
 14 THE WITNESS: Answer?
 15 MR. SPIRO: Don't look -- you can answer
 16 that, if you can.
 17 I don't have an answer for it myself, so --
 18 THE WITNESS: Yes.
 19 BY MS. YASHAR:
 03:36 20 Q Have you given your attorneys complete power
 21 to make decisions relating to this lawsuit?
 22 MR. SPIRO: Vague, calls for a legal
 23 conclusion.
 24 THE WITNESS: Yes.
 25 BY MS. YASHAR:

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1 Q Do you remember when the last time was that
 2 you met with David Arbogast?
 3 A No.
 4 Q You don't remember if it was within the last
 5 few months?
 6 A Oh, I'm sorry, yes, it was last week.
 7 Q Do you remember the time that you met with
 8 Mr. Arbogast prior to last week?
 9 A Prior to last week, no.
 03:37 10 Q Was it within the last few months?
 11 A No.
 12 Q Was it within the last year?
 13 A No.
 14 Q Was it within the last two years?
 15 A No.
 16 Q Was it --
 17 A It was before that, but I don't recall.
 18 Q It was over two years ago, though?
 19 A Yes.
 03:37 20 Q What was the name of your ex-husband?
 21 A Joe Gonzales.
 22 Q J-o-e, the same spelling as your last name,
 23 correct?
 24 A Yes.
 25 Q Do you know where he lives?

1 Q What is the class that you're seeking to
 2 represent?
 3 MR. SPIRO: Vague.
 4 THE WITNESS: I don't understand the
 5 question.
 6 BY MS. YASHAR:
 7 Q Who are the people that you are seeking to
 8 represent in this lawsuit?
 9 MR. SPIRO: Vague.
 03:39 10 THE WITNESS: Would be people that have
 11 inoperable parking brakes.
 12 BY MS. YASHAR:
 13 Q Just people who have inoperable parking
 14 brakes?
 15 A With General Motor trucks.
 16 Q Prior to yesterday, during Ms. Hunter's
 17 deposition when you were here, did you meet with any
 18 other of the named plaintiffs in this lawsuit?
 19 A No.
 03:40 20 Q Did you speak with any of the other named
 21 plaintiffs in this lawsuit?
 22 A No.
 23 Q And did you have any contact with any other
 24 named plaintiffs in this lawsuit?
 25 A No.

1 A Yes.
 2 Q What is his address?
 3 A 9551 Metro Street.
 4 Q What city is that in?
 5 A Downey.
 6 Q And you mentioned your boyfriend. Is he
 7 still your boyfriend?
 8 A No.
 9 Q Do you know where he lives?
 03:38 10 A In Fullerton.
 11 Q Do you know the address?
 12 A No. I just know it's on Kroeger.
 13 Q Do you know whether you represent people
 14 nationwide or just people who own trucks in
 15 California?
 16 MR. SPIRO: Vague. Assumes facts not in
 17 evidence also.
 18 THE WITNESS: Nationwide.
 19 BY MS. YASHAR:
 03:39 20 Q What was the alleged class that you're
 21 seeking to represent?
 22 MR. SPIRO: Vague.
 23 THE WITNESS: I don't understand the
 24 question.
 25 BY MS. YASHAR:

1 Q So yesterday was your first contact with any
 2 named plaintiff in this lawsuit?
 3 A Yes.
 4 Q Do you know personally whether there are
 5 common issues with you and any of the other named
 6 plaintiffs in this lit -- litigation?
 7 MR. SPIRO: It calls for a legal conclusion
 8 and it's vague.
 9 THE WITNESS: I have no idea.
 03:41 10 BY MS. YASHAR:
 11 Q Do you know personally whether there are
 12 common issues with you and any of the class members
 13 that you seek to represent in this litigation?
 14 MR. SPIRO: Same objections.
 15 THE WITNESS: Other than our brakes don't --
 16 our parking brake didn't work.
 17 BY MS. YASHAR:
 18 Q But you don't know anybody --
 19 MR. SPIRO: Well, argumentative.
 03:42 20 BY MS. YASHAR:
 21 Q -- personally, right?
 22 A The plaintiffs?
 23 Q You don't know any of the class members
 24 personally, right?
 25 MR. SPIRO: Vague, it also misstates previous

1 testimony.
 2 THE WITNESS: I've already mentioned one
 3 person that I worked with that I know. Other than
 4 that, no.
 5 BY MS. YASHAR:
 6 Q Have you left the scope of the class to your
 7 attorneys?
 8 MR. SPIRO: Vague.
 9 THE WITNESS: Yes.
 10 BY MS. YASHAR:
 11 Q Do you know what years are included within
 12 the scope of the defined class in this lawsuit?
 13 MR. SPIRO: Vague.
 14 THE WITNESS: I know it starts from 1999 and
 15 I'm not sure, it's about five or six years.
 16 BY MS. YASHAR:
 17 Q But you're not sure?
 18 A Approximately.
 19 Q And you're nodding your head, that's a no?
 03:43 20 A I said approximately.
 21 Q Approximately?
 22 A Five or six years.
 23 Q But you're not sure, right?
 24 A Right.
 25 Q And do you know what year -- strike that.

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1 BY MS. YASHAR:
 2 Q Other than sitting in yesterday's deposition
 3 of plaintiff La Ronda Hunter, have you investigated
 4 whether others in the purported class have claims
 5 similar to yours?
 6 MR. SPIRO: Vague. Calls for a legal
 7 conclusion.
 8 THE WITNESS: No, I don't know.
 9 MS. YASHAR: I'm going to hand you what is
 03:45 10 being marked as Defendant's Exhibit 20.
 11 (Defendant's Exhibit 20 marked.)
 12 BY MS. YASHAR:
 13 Q Do you recognize this document?
 14 MR. SPIRO: Post-its, Post-its. May I have a
 15 few.
 16 THE WITNESS: No, I don't recognize the
 17 document. I recognize some of the things in the
 18 document.
 19 BY MS. YASHAR:
 03:47 20 Q Have you ever seen this document?
 21 A No.
 22 Q As you sit here today during this deposition,
 23 this is the first time that you're seeing Exhibit 20?
 24 A Yes.
 25 Q Did you contact GM and notify them that you

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1 Do you know personally whether there are
 2 typical issues with you and any of the other named
 3 plaintiffs in this litigation?
 4 MR. SPIRO: I thought that was -- oh, named
 5 plaintiffs -- it's vague, calls for a legal
 6 conclusion.
 7 THE WITNESS: What was the question?
 8 (Record read as follows:
 9 "Q Do you know personally
 10 whether there are typical issues
 11 with you and any of the other named
 12 plaintiffs in this litigation?")
 13 THE WITNESS: Other than our brakes are
 14 defective.
 15 BY MS. YASHAR:
 16 Q Other than the general category of your
 17 brakes being defective --
 18 A My parking brake, yes.
 19 Q -- you don't know personally whether there
 03:44 20 are other typical issues with you and any of the other
 21 named plaintiffs in this litigation?
 22 MR. SPIRO: Vague and calls for a legal
 23 conclusion.
 24 THE WITNESS: Well, that is a typical issue,
 25 is the parking brake.

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1 might join in a lawsuit against them?
 2 A No.
 3 Q Did you contact GM and tell them that you
 4 might file a lawsuit against them?
 5 A No.
 6 Q Have you spoken to anyone other than your
 7 counsel, Mr. Arbogast, Mr. Spiro and Mr. Moore about
 8 this lawsuit?
 9 A Have I spoken to anybody else? Yes.
 03:48 10 Q Who?
 11 A Joe and my mom.
 12 Q And Joe is your ex-husband?
 13 A Yes.
 14 Q Anyone else?
 15 A That's it.
 16 Q What relief are you hoping to get from this
 17 lawsuit?
 18 MR. SPIRO: Vague. Legal conclusion.
 19 THE WITNESS: Meaning?
 03:49 20 BY MS. YASHAR:
 21 Q Are you asking for money?
 22 A Just to get my -- just to get the 400 back to
 23 pay my lawyers back.
 24 Q Are you looking for anything else?
 25 A No.

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1 Q Are you seeking any other relief other than
 2 money, your \$417 back as a result of this lawsuit?
 3 MR. SPIRO: Vague.
 4 THE WITNESS: No.
 5 BY MS. YASHAR:
 6 Q What did you do to prepare for your
 7 deposition today?
 8 A Met with my lawyers last week and I came
 9 yesterday, that was it.
 03:51 10 Q Where did you meet with your lawyers last
 11 week?
 12 A At the office.
 13 Q At your attorneys' office?
 14 A Yes.
 15 Q And is that at 11377 West Olympic Boulevard?
 16 A Yes.
 17 Q Which attorneys did you meet with?
 18 A Ira, David and Mark.
 19 Q How long did you meet with Ira, David and
 03:51 20 Mark?
 21 A I believe like an hour, hour and a half.
 22 Q About an hour, hour and a half?
 23 A Yes.
 24 Q Do you remember the date that you met with
 25 them last week?

1 about today?
 2 A I don't know.
 3 Q You don't remember anything about the
 4 documents that you were shown last week?
 5 A No.
 6 Q Do you remember how many documents there
 7 were?
 8 A No.
 9 Q Do you remember whether they were documents
 03:53 10 that looked like they were filed with the court or
 11 your own documents that looked like invoices?
 12 MR. SPIRO: It's compound and vague.
 13 Go ahead.
 14 THE WITNESS: Yeah, I don't want to guess,
 15 I -- I didn't look at the name of the document.
 16 BY MS. YASHAR:
 17 Q Do you remember the contents of the document?
 18 A No, I just kind of briefly looked over my --
 19 I -- I don't even know what they were.
 03:54 20 Q You don't know what any of the documents were
 21 that you were shown --
 22 A No.
 23 Q -- by counsel last week?
 24 A No.
 25 Q Were they any of the documents that we talked

1 A I don't recall the date.
 2 Q So it was sometime last week?
 3 A Sometime last week.
 4 Q Did you meet with your counsel any other time
 5 than last week and yesterday --
 6 A No.
 7 Q -- when you attended the deposition?
 8 Let me just finish the question?
 9 A I thought you were done.
 03:52 10 Q Sorry.
 11 Did you meet with your counsel any other time
 12 other than last week?
 13 A No.
 14 Q You also mentioned that you attended
 15 yesterday's deposition, correct?
 16 A Yes.
 17 Q And that was of Ms. Hunter, right?
 18 A Yes.
 19 Q When you met with your counsel last week to
 03:52 20 prepare for the deposition, were you shown any
 21 documents?
 22 A Yes.
 23 Q Which documents?
 24 A You know, I didn't look at the name of them.
 25 Q Were you shown the discovery that we talked

1 about today?
 2 MR. SPIRO: Compound.
 3 THE WITNESS: They might have been --
 4 BY MS. YASHAR:
 5 Q Which ones?
 6 A -- but I don't know -- I don't know.
 7 Q Did you provide counsel with any documents
 8 when you met with them last week?
 9 A Yes.
 03:54 10 Q What documents?
 11 A What -- I just gave them some paperwork that
 12 I -- I had, I don't remember what it was.
 13 Q The paperwork related to your parking brakes?
 14 A No. It was paperwork having to do with my
 15 truck when I bought it.
 16 MS. YASHAR: Counsel, were those documents
 17 produced --
 18 MR. SPIRO: Yeah.
 19 MS. YASHAR: -- to us as well.
 03:55 20 MR. SPIRO: Yeah, your colleague
 21 Mr. Kavanaugh asked us if we had other documents. We
 22 said we might when we met with Ms. Gonzales and when
 23 we met with her, there were a few more and we sent
 24 them to --
 25 MS. YASHAR: That was part of the

1 supplemental production that came through?
 2 MR. SPIRO: Right.
 3 BY MS. YASHAR:
 4 Q So other than meeting with your counsel
 5 yesterday -- I'm sorry -- strike that.
 6 Other than meeting with your counsel last
 7 week and attending yesterday's deposition, did you do
 8 anything to prepare for your deposition today?
 9 A No.
 03:56 10 MR. SPIRO: May we take a break?
 11 MS. YASHAR: Sure.
 12 MR. SPIRO: Thank you.
 13 VIDEO OPERATOR: We're going off the record
 14 at 3:56.
 15 (Recess.)
 16 VIDEO OPERATOR: We are back on the record at
 17 4:09.
 18 BY MS. YASHAR:
 19 Q We were talking about Ms. Hunter's deposition
 04:09 20 yesterday prior to taking our break.
 21 You sat through yesterday's deposition of
 22 Ms. Hunter, correct?
 23 A Yes.
 24 Q You listened to the questions asked of
 25 Ms. Hunter?

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1 attorney-client and asked and answered so I'll
 2 instruct her not to answer.
 3 (Instruction not to answer.)
 4 MS. YASHAR: You're instructing her not to
 5 answer?
 6 MR. SPIRO: Yeah, she already answered your
 7 question on did she discuss Ms. Hunter's deposition.
 8 MS. YASHAR: I asked a different question.
 9 MR. SPIRO: Oh, you did, what?
 04:11 10 MS. YASHAR: I said did you discuss anything
 11 that Ms. Hunter had testified to during her
 12 deposition.
 13 MR. SPIRO: Oh, that's the same thing, isn't
 14 it?
 15 Go ahead and answer.
 16 THE WITNESS: No.
 17 BY MS. YASHAR:
 18 Q Did you discuss your deposition?
 19 A No.
 04:11 20 Q But you did discuss topics related to this
 21 lawsuit, right?
 22 A No.
 23 Q You didn't discuss anything that had any
 24 relation to this lawsuit?
 25 MR. SPIRO: It's a little vague. Vague.

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1 A Yes.
 2 Q You were there the entire deposition?
 3 A Yes.
 4 Q Did you meet with your attorney or any of
 5 your attorneys after Ms. Hunter's deposition?
 6 A Yes.
 7 Q Did you meet with Mr. Spiro?
 8 A Yes.
 9 Q Did you meet with any other attorney?
 04:09 10 A No.
 11 Q How long did you meet with Mr. Spiro after
 12 Ms. Hunter's deposition?
 13 MR. SPIRO: Vague as to the term "meet."
 14 But go ahead.
 15 THE WITNESS: We just -- you know, it was
 16 a -- I don't know, maybe an hour, just an hour.
 17 BY MS. YASHAR:
 18 Q Did you discuss Ms. Hunter's testimony?
 19 A No.
 04:10 20 Q You didn't discuss anything that Ms. Hunter
 21 testified to during her deposition?
 22 MR. SPIRO: Wait a minute, asked and
 23 answered.
 24 Now -- you know, I let that happen but --
 25 because the answer was no, but now we're getting into

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1 THE WITNESS: No.
 2 BY MS. YASHAR:
 3 Q Did you discuss Ms. Hunter's testimony with
 4 your counsel at any time prior to your own deposition
 5 that started around 10:00 a.m. this morning?
 6 A Would you repeat the question.
 7 (Record read as follows:
 8 "Q Did you discuss
 9 Ms. Hunter's testimony with your
 10 counsel at any time prior to your
 11 own deposition that started around
 12 10:00 a.m. this morning?")
 13 MR. SPIRO: I see. It's vague, testimony
 14 means what Ms. Hunter said at the deposition.
 15 THE WITNESS: No.
 16 BY MS. YASHAR:
 17 Q Did you discuss anything related to
 18 Ms. Hunter's deposition at any time prior to your own
 19 deposition starting this morning at around 10:00 a.m.?
 20 A No.
 04:12 21 Q And I saw you taking notes during
 22 Ms. Hunter's deposition yesterday; is that correct?
 23 A Yes.
 24 Q Did you bring those notes with you today?
 25 A Yes.

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1 MS. YASHAR: Counsel, I ask that those notes
 2 be produced.
 3 MR. SPIRO: They were -- well, first of all,
 4 there's no grounds to have them produced, but aside
 5 from that, they were notes to me and it's
 6 attorney-client.
 7 BY MS. YASHAR:
 8 Q Ms. Gonzales, why did you take notes during
 9 the deposition?
 04:13 10 A I had questions.
 11 Q So you were writing down questions on a piece
 12 of paper?
 13 A Yes.
 14 Q Directed towards your counsel?
 15 A Yes.
 16 Q Did you discuss those questions with your
 17 counsel?
 18 A Yes.
 19 Q And those questions were a result of what you
 04:13 20 heard during Ms. Hunter's deposition, correct?
 21 A Yes.
 22 Q And did you discuss those questions that you
 23 had with your counsel during that one-hour period that
 24 you spoke with your counsel after Ms. Hunter's
 25 deposition yesterday?

1 are, there's no grounds for them to be produced.
 2 Did I just say yes at the beginning of that?
 3 THE REPORTER: You didn't say yes at the
 4 beginning.
 5 MR. SPIRO: Oh, all right.
 6 So the answer's yes.
 7 MS. YASHAR: You're objecting based on
 8 attorney-client privilege.
 9 MR. SPIRO: Yes.
 04:16 10 MS. YASHAR: I'm handing you what is being
 11 marked as Defendant's Exhibit 21 and what has been
 12 previously Bates-labeled as P3337.
 13 (Defendant's Exhibit 21 marked.)
 14 BY MS. YASHAR:
 15 Q Do you recognize this document?
 16 A Yes.
 17 Q What is it?
 18 A It's an agreement to skip a payment.
 19 Q And why did you request this?
 04:17 20 A My bank offers once a year if you would like
 21 to skip a payment and they just add it to the end of
 22 your -- the end of your payments if you would like.
 23 Q Why did you want to skip a payment?
 24 A I don't remember why I wanted to. I probably
 25 thought it would be nice to have an extra \$343 that

1 A No.
 2 Q When did you speak to your counsel about
 3 those questions that you had?
 4 A On breaks.
 5 Q Breaks during Ms. Hunter's deposition
 6 yesterday?
 7 A Yes.
 8 Q So during the breaks in between Ms. Hunter's
 9 deposition yesterday, you discussed with your counsel
 04:15 10 questions that you had as a result of Ms. Hunter's
 11 deposition?
 12 MR. SPIRO: She just said that.
 13 Asked and answered.
 14 THE WITNESS: Yes.
 15 BY MS. YASHAR:
 16 Q Did you discuss any of those questions with
 17 your counsel after Ms. Hunter's deposition?
 18 MR. SPIRO: She answered that already.
 19 Asked and answered.
 04:15 20 THE WITNESS: No.
 21 MS. YASHAR: And, Counsel, you're objecting
 22 to those notes being produced as attorney-client
 23 privilege?
 24 MR. SPIRO: And also there's no -- even if
 25 they weren't attorney-client privilege, which they

1 month.
 2 Q I want to direct you to Exhibit 4 which was
 3 your responses to defendant's first set of
 4 interrogatories.
 5 Actually put that to the side for now.
 6 I'm handing you what is being marked as
 7 Defendant's Exhibit 22.
 8 (Defendant's Exhibit 22 marked.)
 9 BY MS. YASHAR:
 04:20 10 Q Do you recognize this document?
 11 A No.
 12 Q Have you ever seen this document before?
 13 A No.
 14 Q You don't recall ever reviewing it?
 15 A No.
 16 Q Are you aware that Exhibit 22 was attached as
 17 an exhibit to your responses to defendant's first set
 18 of interrogatories?
 19 A Am I aware of what?
 20 (Record read as follows:
 21 "Q Are you aware that
 22 Exhibit 22 was attached as an
 23 exhibit to your responses to
 24 defendant's first set of
 25 interrogatories?"

1 MS. YASHAR: Let me rephrase that question.
 2 Q Are you aware that Exhibit 22 was attached to
 3 Robin Gonzales's responses to defendant's first set of
 4 interrogatories?
 5 A It's attached to which one --
 6 Q Robin Gonzales's --
 7 A -- Exhibit Number what.
 8 Q Exhibit Number 4.
 9 A Well, it's in there, probably just didn't --
 04:22 10 this just doesn't look familiar. I thought I'd seen
 11 this before. This.
 12 MR. SPIRO: When you say "this," what are you
 13 pointing to?
 14 THE WITNESS: Oh. This graphic page, but I
 15 don't know what it is.
 16 BY MS. YASHAR:
 17 Q And you're referring to page 3 of Exhibit 22?
 18 A Well, it says page -- yeah, it says page 4 of
 19 8.
 04:22 20 Q Do you recall having ever received this,
 21 though? Your answer was no? And by "this" I mean
 22 Exhibit 22.
 23 A Well, I must have received, it's in here,
 24 like you said, I remember -- I remember seeing the
 25 graphic chart before. I --

1 suspended or revoked?
 2 A No.
 3 Q Did you ever buy a brake kit?
 4 A No.
 5 Q Do you own any GM stock?
 6 A No.
 7 Q Have you ever been audited before?
 8 A No.
 9 Q Do you file state and/or federal tax returns?
 04:25 10 A Yes.
 11 Q Even though you have no income?
 12 A Yes.
 13 MR. SPIRO: Argumentative. Also the question
 14 is vague.
 15 BY MS. YASHAR:
 16 Q Are you willing to produce those to GM?
 17 MR. SPIRO: No -- no, she's not.
 18 THE WITNESS: No.
 19 BY MS. YASHAR:
 04:25 20 Q Have you ever declared bankruptcy?
 21 A No.
 22 Q Have you ever been sued for bad debts or
 23 failure to pay bad debts?
 24 A No.
 25 Q Have you ever been sued ever?

1 Q Do you know whether you received it from
 2 counsel or whether you received it from another
 3 source?
 4 A I received it from counsel.
 5 Q And do you remember the first time that you
 6 received it from -- strike that.
 7 Do you remember the first time that you
 8 received Exhibit 22 from counsel?
 9 A I don't remember.
 04:24 10 Q What is your source of income?
 11 A I don't have an income.
 12 Q How do you pay your bills?
 13 A I don't have any bills.
 14 Q How do you pay for food?
 15 A I live with my mom, she helps me out.
 16 Q Your mom supports you?
 17 A She helps me out.
 18 Q Does anyone else help you out financially?
 19 A No.
 04:24 20 Q Your mom is the only one who helps you out
 21 financially?
 22 A Yes.
 23 Q Have you ever been convicted of a crime?
 24 A No.
 25 Q Have you ever had your driver's license

1 A No.
 2 MS. YASHAR: Can we take a ten-minute break
 3 at this time.
 4 VIDEO OPERATOR: We're going off the record
 5 at 4:26.
 6 We are off the record.
 7 (Recess.)
 8 VIDEO OPERATOR: We are back on the record at
 9 4:36.
 10 BY MS. YASHAR:
 11 Q Can you describe to me what you think this
 12 lawsuit is about?
 13 A It's to fix parking brakes for people that
 14 have GM cars, trucks that don't work or reimburse the
 15 people that have fixed their parking brakes.
 16 MS. YASHAR: I don't have any further
 17 questions.
 18 MR. SPIRO: I do.
 19 EXAMINATION
 04:37 20 BY MR. SPIRO:
 21 Q Is the lawsuit for -- look at the camera, --
 22 don't look at me -- is the lawsuit for people who
 23 bought certain GM cars and trucks in which the parking
 24 brakes were defective?
 25 A Yes.

1 Q Take yourself back to around 200- and
 2 whenever it was when you bought the Silverado, back to
 3 the dealership where you bought it, if you -- back
 4 then, if you knew what you know now about the parking
 5 brakes on the vehicle, would you have bought it?
 6 A No.
 7 Q During this lawsuit, say sometime weeks or
 8 months after today, if I told you that I was going to
 9 do something in the lawsuit that you thought was
 04:38 10 really bad for the class, what would you say to me?
 11 A I would have a conversation with you, ask you
 12 not to do it.
 13 Q If you -- and if I said I'm still going to do
 14 it and you had a chance to tell the judge about it,
 15 would you do that?
 16 A Yes.
 17 MR. SPIRO: Okay, that's all I have.
 18 MS. YASHAR: Let me think.
 19 I don't have any further questions.
 04:40 20 MR. SPIRO: Ordinarily I would say let's do
 21 the same stipulation that we had yesterday except I
 22 fouled that up so let's do a different one.
 23 Want me to try again -- sure you want me to
 24 try again?
 25 MS. YASHAR: Go ahead.

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1 And we are off the record.
 2 Thank you very much.
 3 (Discussion off the record.)
 4 MS. YASHAR: So we stipulated that the --
 5 MR. SPIRO: The changes, if there are any,
 6 changes to the transcript, will be E-mailed or faxed
 7 by my office to GM counsel's office by the 5th of
 8 January.
 9 MS. YASHAR: And by the 5th of January,
 04:46 10 counsel will also have sent us the original of the
 11 transcript.
 12 MR. SPIRO: Right, but we're stipulating a
 13 copy -- I mean yes, that's true, and we're stipulating
 14 that a copy can be used equally with an original.
 15 MS. YASHAR: Yes.
 16 //
 17 //
 18 //
 19 //
 20 //
 21 //
 22 //
 23 //
 24 //
 25 //

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1 MR. SPIRO: Just kidding.
 2 All right. So the original deposition
 3 transcript will be sent to my office and within a
 4 certain period of time after that, which we will
 5 discuss, counsel and I, today, the witness will have
 6 that period of time to sign the deposition --
 7 deposition transcript and to notify defense counsel in
 8 writing of any changes in it.
 9 If the deposition is not -- if the transcript
 04:40 10 is not signed within that time, it can be used or any
 11 copy can be used as if it were an original.
 12 And the witness can sign the transcript under
 13 penalty of perjury and it need not be before a notary
 14 public.
 15 Oh, and -- and when the period of time
 16 expires, my office will return the -- will send the
 17 original transcript to counsel for GM.
 18 Now we have to talk about how much time --
 19 why -- why don't we go off for a second.
 04:41 20 VIDEO OPERATOR: This concludes the --
 21 MR. SPIRO: We can go off the video, yes.
 22 VIDEO OPERATOR: This concludes the
 23 deposition of Robin Gonzales. We're going off the
 24 record at 4:41.
 25 This is the end of Media Number 3.

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1
 2
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 8
 9 I, ROBIN GONZALES, do hereby declare under
 10 penalty of perjury that I have read the foregoing
 11 transcript, that I have made any corrections as appear
 12 noted, in ink, initialed by me; that my testimony as
 13 contained herein, as corrected, is true and correct.
 14
 15 EXECUTED this _____ day of _____,
 16 20____, at _____
 (City) (State)
 17
 18
 19
 20
 21
 22
 23
 24
 25

ROBIN GONZALES

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1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth; that
6 any witnesses in the foregoing proceedings, prior to
7 testifying, were duly sworn; that a record of the
8 proceedings was made by me using machine shorthand
9 which was thereafter transcribed under my direction;
10 that the foregoing transcript is a true record of the
11 testimony given.
12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review of
15 the transcript [] was [] was not requested.
16 I further certify that I am neither
17 financially interested in the action nor a relative or
18 employee of any attorney or party to this action.
19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.
21
22 Dated: _____
23
24 _____
25 SHARON LINDSAY-MILNIKEL
CSR No. 5335

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Exhibit H
Certification Order

describes this condition as the parking brake lining – due to the inadequate float problem – sticking out of position and making contact with the spinning parking brake drum. Mr. Bryant asserts this contact grinds down the linings to such a degree that the space between the lining and drum becomes too wide. This results in the linings and drum making no or insufficient contact when the parking brake pedal is depressed.

Mr. Bryant has asserted claims for breach of express and implied warranty of merchantability, both under the Uniform Commercial Code (“UCC”) and the federal Magnusson-Moss Warranty Act. 15 U.S.C. §2301 *et seq.* He has also brought claims for unjust enrichment and fraudulent concealment because, he claims, GM knew about the defective parking brake, yet knowingly concealed its existence from class members, including class members that had not yet purchased class vehicles. Mr. Bryant believes GM concealed the alleged defect so that the limited warranties on certain GM vehicles would expire, facilitating non-payment of warranty claims.

Claiming the parking brakes on his own Tahoe Z-71 are defective and will not hold his vehicle on a hill, and further that he was defrauded by GM, Mr. Bryant has moved for class certification. The Court has received briefing from Mr. Bryant in support of his motion. It has also received briefing from GM in support of its position that Mr. Bryant’s case is not suitable for class certification. Attached to the briefing filed by both Mr. Bryant and of GM is extensive documentary evidence, nearly all of which consists of GM’s own documents produced in this litigation. At the September 28, 2006 class certification hearing, over no objection from the parties, the Court admitted into evidence all documents attached to the parties’ briefing. It also admitted into evidence GM’s responses to Mr. Bryant’s requests for admission; a GM-produced CD containing written limited warranties applicable to class vehicles; affidavits from Mr.

Bryant and William Coleman¹, an expert witness retained by Mr. Bryant; and a document containing the National Highway Traffic and Safety Administration's (NHTSA) finding that it would not further entertain a recall of class vehicles. Moreover, the Court received stipulations from the parties that Mr. Bryant currently owns his 2002 Chevrolet Z-71 Tahoe, that his vehicle is registered in Arkansas, and that Mr. Bryant received a typical GM three year/36,000 mile written limited warranty at the time he purchased his vehicle. Finally, GM stipulated to the Rule 23(a)(1) class-certification element of numerosity. The parties called no live witnesses to testify at the class-certification hearing.

The Court has been asked by GM to make written findings of fact and conclusions of law in connection with ruling on Mr. Bryant's motion for class certification. See Ark. R. Civ. P. 52. The Court has carefully taken notice of and reviewed the pleadings currently on file, the briefing and evidence submitted by the parties, and evaluated their respective oral arguments made at the September 28, 2006 hearing. The Court, exercising its discretion to do so, determines this matter is suitable for class certification under Ark. R. Civ. P. 23(a) and (b) and orders that it be certified as a class action. Its Rule 52 findings of fact and conclusion of law supporting this ruling and order are set forth herein as follows.

II.

Findings of Fact

1. Defendant General Motors Corporation ("GM") manufactured and sold through dealers throughout the United States the following vehicles:

- i) Model-year 1999-2004 C/K 15 Series pickup trucks with a Gross Vehicle Weight Rating ("GVWR") of less than or equal to 6400 lbs. (with the exception of 2003-2004 Silverado SS model);

¹ Attached to Mr. Coleman's affidavit were authenticated pictures of Mr. Bryant's parking brakes, as well as a DVD containing a roll demonstration involving Mr. Bryant's vehicle conducted by Mr. Bryant and Mr. Coleman.

- ii) Model-year 1999-2004 C/K 15 Series SUV/UUVs with a GVWR of less than or equal to 7200 lbs.;
- iii) Model-year 2002 K15706 Cadillac Escalade and 2002 K15936 Cadillac Escalade.

P. Exh. "1", p. 1. The "C" signifies two-wheel drive, while "K" signifies four-wheel drive. P. Exh. "22", p. 101, lines 14-23.

2. GM collectively describes these vehicles as "1500 Series pickups and utilities." P. Exh. 2, *passim*; Exh. 9, *passim*; P. RFA Answers 1-5. GM also refers to these vehicles as "GMT 800 1500 Series vehicles."²

3. All 1500 Series pickups and utilities were originally equipped, manufactured and sold by GM with a single shoe, PBR 210x30 Drum-in-Hat parking brake system. P. Exh. "2", GM000036104 ("The entire population of 1500 Series vehicles is equipped with the PBR single-shoe parking brake system with the exception of certain crew cab models."); P. RFA Answers 1-5.

4. GM is responsible for integrating the PBR 210x30 Drum-in-Hat park brake system into these vehicles. P. Exh. "2", GM000036113; P. Exh. "9", p. 11 of 13; P. Exh. "23", p. 34 (lines 5-9).

5. The PBR 210x30 Drum-in-Hat parking brake system in 1500 Series pickups and utilities is operated by foot pedal near the vehicle floor to the left of the accelerator pedal and service brake. It has an intended use as a parking assist device to be used in conjunction with the transmission in its "park" position (automatic transmission) or in reverse gear (manual transmission). P. Exh. "8", GM000036753; P. Exh. "15", GM000025715; P. Exh. "22", p. 145 (lines 18-25); 146 (lines 1-11); P. Exh. "23", p. 88 (lines 4-9).

² The Court will adopt GM's terminology and refer to the vehicles described in paragraph 1. above as "1500 Series pickups and utilities".

6. In numerous places in its owners' manuals for 1500 Series pickups and utilities, GM cautions "[i]t is dangerous to get out of your vehicle if the shift lever is not fully in PARK (P) with the parking brake firmly set. Your vehicle can roll." P. Exh. "24", pp. 2-32; 2-39; 2-41; 2-42; 4-89; P. Exh. "15", GM000025718. Given this language -- which makes no distinction between manual and automatic transmission vehicles -- the Court finds the parking brake, even on automatic transmission vehicles, is not a superfluous item as GM seems to suggest in its briefing.³

7. GM expects people will use their owner's manuals. The information is there for their benefit in how to maintain their vehicle and how to operate their vehicle. P. Exh. "22", p. 127 (lines 10-18). GM owners' manuals, as a general proposition, prescribe how GM believes 1500 Series pickups and utilities should ordinarily be used by their owners or operators. P. RFA Answer 54.

8. Most vehicles with automatic transmissions experience infrequent parking brake application by their owners, drivers, or users in normal operations. P. RFA Answer 56.

9. The parking brake's linings, made of a friction material known as T103, sit inside a hollow metal cylinder or drum attached to the inboard portion of the vehicle's wheel. Exh.

³ As additional support for the idea that parking brakes on GM vehicles are not unnecessary, even on automatic transmission vehicles, the GM Vehicle Technical Specifications (VTS) for model-year 1999-2002 1500 Series pickups and utilities specify the park brake shall hold the vehicle stationary at Gross Vehicle Weight (GVW) with the transmission in neutral. P. Exh. "15", GM000025714; P. Exh. "19", VTS 3.2.1.13.7.1 "Vehicle Parking Gradesability" ("The park brake shall hold the vehicle stationary at GVW, with the transmission in neutral."); P. Exh. "23", p. 46 (line 25); p. 47 (lines 1-20). Moreover, without distinguishing between manual and automatic transmission vehicles, the GM VTS applicable to the model-year 1999-2002 1500 Series pickups and utilities require the PBR 210x30 Drum-in-Hat parking brake system to enable and endure a total of 20 simulated police style U-turns without loss of function. P. Exh. "19", VTS 3.2.1.5.7.2 "Simulated Police-Style U-turns". The applicable VTS also require the parking brake system to enable and endure 4 dynamic stops at 60 mph without loss of function. P. Exh. "19", VTS 3.2.1.5.7.3 "Dynamic Park Brake Stop". Finally, federal motor vehicle safety regulations governing vehicles such as model-year 1999-2002 1500 Series pickups and utilities state such vehicles "shall be manufactured with a parking brake system of a friction type with a solely mechanical means to retain engagement." P. Exh. "20". GM has admitted that if its vehicles do not meet federal safety standards, it cannot sell such non-compliant vehicles. P. Exh. "23", p. 49 (lines 2-5)

"23", p. 94 (lines 20-24). When the wheel turns, the drum (also referred to as a "rotor") likewise turns. When the parking-brake foot pedal is depressed a cable-actuated piston causes the parking brake's linings to travel or expand outward and contact the inner portion of the drum. See P. Exh. "8", GM000036753. The design intent is that the contact of the parking brake's lining with the drum will, as a matter of friction and torque, prevent the wheel from turning and hold the vehicle motionless while parked, even if the transmission is in neutral or out of gear. *Id.*

10. The PBR 210x30 Drum-in-Hat parking brake system on 1999-2002 model-year 1500 Series pickups and utilities was originally assembled and distributed with what GM calls a "high-force spring clip retainer." P. Exh. "6", GM000036718.

11. The specific GM model codes for the 1999-2002 model-year 1500 Series pickups and utilities containing parking brakes with high-force spring clip retainers are as follows:

1500 Series Pickup: C-K15703 (MY 99-02)
C-K15753 (MY 99-02)
C-K15903 (MY 99-02)
C-K15953 (MY 99-02)

1500 Series Utility: C-K15706 (MY 00-02)
C-K15906 (MY 00-02)
C-K15936 (MY 02 only)

P. Exh. "6", GM000036718. In light of GM's 2005 recall of manual transmission vehicles, discussed *infra*, the automatic-transmission versions of these vehicles are the only ones at issue in Mr. Bryant's proposed class action. That is, the automatic-transmission versions of these model-coded vehicles are the class vehicles.⁴

⁴ GM manufactured 3,905,481 model-year 1999-2002 1500 Series pickups and utilities vehicles with automatic transmissions and equipped with parking brakes containing high-force spring clip retainers. P. Exh. "2", GM000036106.

12. The function of the spring-clip retainer is to ensure the parking brake linings, when not in use, are retracted and properly positioned -- concentric with the drum -- such that when the foot pedal is depressed and the linings travel outward, they are properly centered and make contact with the correct place on the interior of the drum. P. Exh. "8", GM000036754.

13. GM admits the high-force spring clip retainer installed on model-year 1999-2002 1500 Series pickups and utilities does not function properly in that it exerts more retaining force than aligning forces tending to center the parking brake linings in relation to the drum. P. Exh. "2", GM000036107; P. Exh. "8", GM000036754; P. Exh. "9", p. 2 of 13; P. Exh. "23", p. 77 (lines 1-18); p. 78 (lines 1-7).

14. The exertion of excessive retaining force is also characterized by GM as the high-force spring clip retainer not allowing the brake shoe and attached linings to "float" inside the drum and remain concentric with the drum. P. Exh. "2", GM000036102; P. Exh. "9"; P. Exh. "30", GM000038052; P. Exh. "3", GM000036624. Mr. Bryant contends this alleged inadequate shoe/lining float problem is the principle result of the defectively designed high-force spring clip retainer. Mr. Bryant claims the inadequate shoe/lining float problem exists the very moment each class vehicle rolls off its assembly line, and is persistent. That is, it reveals itself each time a class vehicle is driven. Based on a review of Mr. Bryant's cited evidence, and the evidentiary record as a whole, the Court agrees with Mr. Bryant and finds the high-force spring clip retainer, if it is indeed defectively designed (an issue ultimately to be determined by the trier of fact), to create a common, inadequate shoe/lining float problem in all class vehicles, which is persistent, which occurs each time a class vehicle is driven, and which exists, if at all, from the time class vehicles roll off their respective assembly lines.

15. This exertion of excessive retaining force by the high-force spring clip retainer can result in a loss of concentricity between the linings and drum. P. Exh. "2", GM000036102; P. Exh. "9", p. 4 of 13 This loss of concentricity, which may be prompted by inertia-induced movement of the parking-brake linings during vehicle travel, rough road inputs, and/or axle deflection occurring during certain vehicle cornering or loading conditions⁵, can also allow or further result in unintended, intermittent contact between the parking brake linings and drum during vehicle travel. P. Exh. "2", GM000036107; P. Exh. "8", GM000036754; P. Exh. "9", pp. 1 and 2 of 13; P. Exh. "15, GM000025715; Exh. "23" (lines 3-22)("...[a] severe pothole or some other inertial event [] would move the park brake out of its center position, and then this original clip might not allow it to return back to that center position as readily."); P. RFA Answer 35.

16. This unintended, intermittent contact between the linings and drum during travel -- a condition GM has termed parking brake "self-application" or "self-energizing" -- essentially grinds down the parking brake lining and promotes excessive, premature lining wear. See P. Exh. "2", GM000036102; P. Exh. 3, GM000036624 ("Park brakes are wearing out due to 'self energizing.'"); P. Exh. "8", GM000036754 ("Relative motion of the drum during driving acts to self-energize the brake so as to maintain drum/lining contact and may occur even in the absence

⁵ With regard to inertia-induced movement of the parking-brake linings, and how it affects parking brake performance on 1999-2002 model-year 1500 Series pickups and utilities, GM has further admitted to additional design-related shortcomings regarding the PBR 210x30 Drum In Hat parking brake system. First, it has admitted to design failure in that load-induced axle shaft deflection under high-g cornering was not comprehended as a cause of potential parking brake lining wear in the Design Failure Mode Effects Analysis (DFMEA), and that such failure to comprehend is something representing a process non-existent, inadequate or missed by GM. Exh. "2", GM000036107; Exh. "7"; Exh. "9", p. 11 of 13. Similarly, GM has admitted design failure in that the Subsystem Technical Specification (STS) for 1999 through 2002 model year 1500 Series pickups and utilities did not contain a maximum allowable limit for axle shaft deflection, and that such omission is something representing a process non-existent, inadequate or missed by GM. Exh. "2", GM000036107; Exh. "7"; Exh. "9", p. 11 of 13. Finally, GM has admitted design failure in that in the pre-production design phase it did not adequately test or perform durability validation with respect to the PBR 210x30 Drum-in-Hat parking brake system in 1999 through 2002 model year 1500 Series pickups and utilities vehicles. Exh. "2", GM000036107; Exh. "7"; Exh. "9", p. 11 of 13.

of a parking brake application."); P. Exh. "9", p. 2 of 13; P. Exh. "15, GM000025715; P. Exh. "23", p. 83 (lines 6-16) ("The self-energizing is where you get contact between the linings and the rotor that, due to the direction of rotation of the rotor, it tends to pull the lining in. It creates more contact rather than pushing it away.").

17. Excessive lining wear results in too large of a gap between the lining and the drum such that depressing the park brake will not cause the lining to travel far enough to make sufficient contact with the drum and hold the vehicle motionless. P. Exh. "2", GM000036107; P. Exh. "9", pp. 1 and 2 of 13. In GM's own words, parking brake "[l]ining wear can increase the clearance between the linings and the parking brake drum to a point where the required apply lever travel and associated shoe travel exceed the design capabilities of the apply system, reducing its ability to generate sufficient park brake torque to hold the vehicle motionless." P. Exh. "2", GM000036107; P. Exh. "9", pp. 1 and 2 of 13; P. Exh. "15, GM000025716.

18. GM has also admitted the design of the PBR 210x30 Drum-in-Hat parking brake system with the high force spring clip retainer is "... less than optimal because it is overly sensitive to proper lining-to-drum clearances." P. Exh. "2", GM000036107; P. Exh. "7"; P. Exh. "9", p. 11 of 13. The Court finds this admission to describe an additional potential design defect in the PBR 210x30 Drum-in-Hat parking brake system in model year 1999-2002 1500 Series pickups and utilities. This potential defect is significant, given GM's apparent position, based on the affidavit of Jason Petric, that the parking brake linings on Mr. Bryant's vehicle were not excessively worn, but rather were merely out of adjustment and gapped too far away from the brake drum. Even if GM is correct (the Court does not believe it is, especially based on the contents of William Coleman's affidavit and measurements on Mr. Bryant's vehicle Mr. Coleman made), the Court finds the condition of the PBR 210x30 Drum-in-Hat parking brake

system being overly sensitive to proper lining to drum clearances is yet another example of a universal, alleged defect in all class vehicles that persistently exists and is actionable on a class-wide basis.

19. GM maintains a Problem Resolution Tracking System ("PRTS"). P. Exh. "22", p. 63, lines 17-25. The PRTS was triggered regarding the parking brake due to higher-than-expected-warranty claims. *Id.* at 64, lines 15-19.

20. The PRTS regarding the defective parking brakes "was initiated at the end of 2000 and was assigned to engineering in early 2001." P. Exh. "22", p. 64, lines 20-25; p. 65, lines 1-5.

21. The GM Truck Group began 5-Phase Action plan CK800U0331 regarding defective parking brakes on January 29, 2001. P. Exh. 29. In the written document corresponding to that plan, GM noted the park brake "[s]ystem was found in many cases to not be able to hold after a low amount of miles (2500-6000). This condition was found in the system 2A and 2B park brakes."⁶ *Id.*, GM000037499.

22. The component manufacturer of the parking brake, PBR Banksia ("PBR"), performed testing on the PBR 210x30 Drum-in-Hat parking brake system originally utilized in 1999 through 2002 model year 1500 Series pickups and utilities. From its testing it concluded that at 10,048 miles the defective parking brakes needed a first adjustment and that at 27,273 miles the defective parking brakes' linings wear to steel. P. Exh. "10" (bar chart entitled "Wear Life Comparison, Original T800, Low Load, Twin Clip"); P. Exh. "23", p. 23 lines 3-25; p. 24 (entire); p. 25 (lines 1-10); p. 26 (lines 22-25); p. 27 (lines 1-10). PBR has actually estimated the parking brake lining life in 1999-2002 model year 1500 Series pickups and utilities, due to

⁶ The "system 2A and 2B park brakes" are in essence the PBR 210x30 Drum-in-Hat parking brake system. P. Exh. "1".

the alleged defect, to be a mere 30,000 to 35,000 miles, only 1/5 of the expected life of such vehicles, and before expiration of the 36,000 mile written limited warranty provided by GM to vehicle purchasers. P. Exh. "11" ("Lining Life Estimates: Original design = 30-35,000 miles"); P. Exh. "25", p. 7 (Section entitled "1999 General Motors Corporation New Vehicle Warranty").

23. GM expects the life of all 1500 Series pickups and utilities to be 10 years of exposure or 150,000 miles. P. Exh. "19", VTS 3.2.1.1 "Target Life"; P. Exh. "22", p. 124 (lines 11-14); P. Exh. "23", p. 27 lines 23-25; p. 28 (lines 1-4). No criteria or performance standards concerning expected mileage or months of service of the parking brake, including parking brake linings, is set forth in the GM Vehicle Technical Specification (VTS) or GM Sub-System Technical Specification (SSTS) for 1500 Series pickups and utilities. P. Exh. "15", GM000025714; P. Exh. "16", GM000029872; P. Exh. "19"; P. Exh. "22", p. 66 (lines 1-17). Similarly, the VTS for 1500 Series pickups and utilities indicates parking brake linings are not considered items that will "wear out" or are "wear out items". Exh. "19", VTS 3.2.3.1. "Wearout Items"; VTS 3.2.3.1.1 "Brake Wearout Items"; Exh. "22", p. 72 (lines 18-25); p. 73 (line 1) ("The park brake, if adjusted correctly and maintained, I believe the expectation is that they will not wear out based on them not being on this wear-out item matrix."); Exh. 23, p. 28 (lines 2-7) (Question: "Is it your understanding that the park brake linings are supposed to last [the 150,000 mile target life of the vehicles]?" Answer: "Yes"). On the other hand, a performance standard of 40,000 miles for the service brake linings is prescribed in the GM Vehicle Technical Specification (VTS) for 1500 Series pickups and utilities. Exh. "19", VTS 3.2.3.1.1 "Wearout Items"; Exh. "22", p. 66 (lines 18-25; 67 lines 1-10; p. 70, lines 12-22). In the Court's mind, the only inference that can be drawn from these omissions and the existence of a specific standard for

service brakes is that GM has always expected the parking brake linings on these vehicles to last the expected vehicle life, *i.e.* 10 years of exposure or 150,000 miles. Indeed, GM's own VTS confirms this, stating the "Target Life" of the parking brake is essentially 10 years of exposure of 150,000 miles. P. Exh. "19", 3.2.3.1 "Target Life".

24. In October 2001 GM concluded the design of the parking brake, including its spring clip retainer, was faulty. P. Exh. "2", GM000036102; P. Exh. 9, p. 4 of 13.

25. On October 19, 2001 GM initiated an Engineering Work Order (EWO) to release a spring clip retainer with lower retaining force. P. Exh. "2", GM000036102, GM000036106, GM000036109; P. Exh. "9", p. 4 of 13. This release was effective with 2003 model year start of production. *Id.* ; P. RFA 82 Answer.

26. GM believed the reduced force spring clip retainer would "... minimize the lining self energizing by allowing the lining to float easier and not "stick" to the inside of the rotor during operation on rough roads." P. Exh. "30", GM000038052.

27. The implementation of the low-load or reduced force spring clip retainer beginning with model year 2003 1500 Series pickups and utilities has effectively eliminated the intermittent contact condition between the parking brake lining and the parking brake surface or drum during vehicle travel. P. Exh. "9", p. 4 of 13 ("Implementation was effective with 2003 start of production, after which the warranty repair rate due to lining wear became insignificant."); P. Exh. "23", p. 77 (lines 1-18); p. 78 (lines 1-7).

28. All 1999 through 2002 model year 1500 Series pickups and utilities are covered by a GM bumper-to-bumper new vehicle warranty for three (3) years or 36,000 miles. P. Exh "15", GM000025710 ("The subject vehicles, with the exception of the Cadillac vehicles, are covered by a bumper-to-bumper new vehicle limited warranty for three years or 36,000 miles whichever

occurs first.); P. Exh. "16", GM000029865 ("The subject vehicles, with the exception of the Cadillac vehicles, are covered by a bumper-to-bumper new vehicle limited warranty for three years or 36,000 miles whichever occurs first. The Cadillac subject vehicles are covered by a bumper-to-bumper new vehicle limited warranty for four years or 50,000 miles whichever occurs first."); Exh. "25", pp. 7-11 (Section entitled "1999 General Motors Corporation New Vehicle Warranty"); GM CD containing warranty booklets admitted into evidence at the class-certification hearing. In relevant part, the limited warranty language regarding coverage is as follows:

WHAT IS COVERED

WARRANTY APPLIES

THIS WARRANTY IS FOR GM VEHICLES REGISTERED IN THE UNITED STATES NORMALLY OPERATED IN THE UNITED STATES OR CANADA, 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 RELATED TO MATERIALS OR WORKMANSHIP OCCURRING DURING THE WARRANTY PERIOD. NEEDED REPAIRS WILL BE PERFORMED USING NEW OR REMANUFACTURED PARTS.

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. . . .
NO CHARGE**

WARRANTY REPAIRS, INCLUDING TOWING, PARTS AND LABOR, WILL BE MADE AT NO CHARGE, LESS ANY APPLICABLE DEDUCTIBLE.

OTHER TERMS: THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

GENERAL MOTORS 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. GENERAL MOTORS SHALL NOT BE LIABLE FOR

INCIDENTAL OR CONSEQUENTIAL DAMAGES (SUCH AS, BUT NOT LIMITED TO, LOST WAGES OR VEHICLE RENTAL EXPENSES) RESULTING FROM THE BREACH OF THIS WRITTEN WARRANTY OR ANY IMPLIED WARRANTY.

The Court finds this coverage language is identical in material respects for all 1999 through 2002 model year 1500 Series pickups and utilities. *Id.*

29. On September 17, 2002 (eleven months after issuance of the GM engineering work order to re-engineer the high-force spring clip retainer) GM released technical service bulletin #02-05-26-011 to its dealers. P. Exh. "22", p. 46, lines 2-7. In this bulletin it was noted "[a] rear parking brake retaining spring clip kit has been released for service." Significantly, however, it also stated "Important – The spring clip kits mentioned in this bulletin do not address any parking brake concerns." Exh. "13" The Court finds, as Mr. Bryant has argued, that this language is troubling and can be construed as an effort on GM's part to conceal – to the detriment of all class members – its responsibility for problems with the PBR 210x30 Drum-in-Hat parking brake system to avoid paying warranty claims. To begin with, the Court does not understand why GM waited eleven (11) months after it re-engineered the high-force spring clip retainer on October 19, 2001 to issue a bulletin regarding vehicles that had been manufactured with the high-force clip. For the bulletin to then contain this language, in the Court's view, is triable evidence GM wanted to conceal its responsibility for the design problem from all class members. The fact the three-year GM limited warranties were beginning to expire in August 2001 only reinforces the Court's view that GM's conduct may have been inappropriate, designed either to avoid paying warranty claims or to induce prospective sales of class vehicles.

30. On January 28, 2003 – roughly two years after GM engineering received notice of parking brake problems – GM published technical service bulletin 02-05-26-002A and sent it to dealers. It was in this service bulletin that GM first acknowledged to outside entities such as

dealers that scraping noise from the rear of vehicles "may [sic] due to the parking brake shoe contacting the drum in hat rotor without the parking brake being applied, causing premature wear on the shoe lining." P. Exh. "2", GM000036109; P. Exh. "14"; P. Exh. "22", p. 46.

31. In December 2003 the National Highway Traffic and Safety Administration (NHTSA) issued Preliminary Evaluation Information Request ("IR") PE03-057 regarding allegations of parking brake ineffectiveness on model year 1999-2003 full-size pickup trucks built on the GMT 800 platform and equipped with manual transmissions and drum-in-hat parking brakes. P. Exh. "2", GM000036103; P. Exh. "9", p. 4 of 13

32. In mid-February 2004 GM provided a response to the NHTSA IR and thereafter engaged in vehicle testing regarding the defective parking brake. P. Exh. "2", GM000036103; P. Exh. "15".

33. On November 18, 2004 NHTSA issued engineering analysis IR EA04-011, which expanded the scope of the initial IR to include all model year 1998-2004 full-size pickup trucks and utilities built on either the GMT 400 or GMT 800 platform and equipped with either a manual or automatic transmission. P. Exh. "2", GM000036102.

34. The primary concern of the NHTSA investigation directed at the PBR 210x30 Drum-in-Hat parking brake system in 1999 through 2002 model year 1500 Series pickups and utilities was vehicle rollaways. P. Exh. "8", GM000036756.

35. On April 18, 2005, after the issue of the defective parking brake was presented to the Senior Management Committee, GM's Field Action Decision Committee decided to conduct a safety recall. P. Exh. "17", p. 2

36. On April 20, 2005 GM sent NHTSA written notification of this decision. P. Exh. "17"
In that correspondence GM stated "General Motors has decided that a defect, which relates to

motor vehicle safety, exists in certain 1999-2002 C/K Series (PBR parking brake system). . . pickups with manual transmissions. Some of these vehicles have a condition in which the parking brake friction linings may wear to an extent where the parking brake can become ineffective in immobilizing a parked vehicle." P. Exh. "17", p. 1

37. In July 2005 GM issued Recall Bulletin 05042, which applied only to manual transmission versions of 1999-2002 1500 Series pickups and utilities. P. Exh. "18".

38. GM projected the cost to recall only 1999-2002 1500 Series pickups and utilities manual transmission vehicles with defective parking brakes to be \$6,645,793. P. Exh. "4", GM000036679-80.

39. In contrast, GM projected the cost to recall both the manual and automatic transmission version of such vehicles to be fifty (50) times greater, or \$350,083,047. P. Exh. "4", GM000036679-80.

40. To date GM has neither contacted owners of nor recalled any of the 3,905,481 model-year 1999-2002 1500 Series pickups and utilities with automatic transmissions, the class vehicles here, based on parking brake concerns. Exh. "22", p. 39, lines 13-17; p. 42, lines 7-10.

41. The PBR 210x30 Drum-in-Hat park brake system utilized in manual transmission 1999-2002 1500 Series pickups and utilities is identical to the PBR 210x30 Drum-in-Hat park brake system installed on automatic-transmission 1999-2002 1500 Series pickups and utilities. Moreover, "the same physical parking brake wear mechanism is also present on vehicles with automatic transmissions. . . ." P. Exh. "5"; P. Exh. "22", p. 43, lines 5-9; P. P. Exh. "23", p. 36 (lines 20-25); p. 37 (lines 1-25); p. 38 (lines 1-8).

42. The remedy in Recall Bulletin 05042 is that GM instructs dealers to "inspect the parking brake lining thickness on both rear brakes, and depending on the amount of lining remaining,

install either a reduced force parking brake retainer spring clip on both rear brakes or parking brake shoe kits, which includes the reduced force clip." P. Exh. "18", p. 1.

43. In all cases GM's recall remedy is to supply a reduced force spring clip retainer. *Id.* This is consistent with GM's belief that implementation of the low-load or reduced force spring clip retainer beginning with model year 2003 1500 Series pickups and utilities effectively eliminates the intermittent contact condition between the parking brake lining and the parking brake surface or drum during vehicle travel.

44. GM's recall test for excessive lining wear is that the parking brake lining thickness must equal or exceed 1.5 millimeters (.06 inches) in at least 6 places on each side of the vehicle. P. Exh. 2, GM000036108; P. Exh. "18", p.4. As per GM's recall materials, in the event parking brake lining thickness is less than 1.5 millimeters (.06 inches) on any of at least 6 places on each side of the vehicle, GM instructed its dealers to install a new parking brake lining on both sides of the vehicle. Exh. 2, GM000036108; Exh. "18", p.4.

45. In sum, if the linings are not sufficiently worn, Recall Bulletin 05042 only entails installation of a reduced force parking brake retainer spring clip on both rear brakes. However, if the linings are excessively worn, the recall requires both the replacement of the linings and a reduced force spring clip retainer.

46. GM's dealer sales and service agreement requires its dealers nationwide to perform recall-related repairs. P. RFA Answer 157.

47. GM has estimated .9 hours per vehicle at an hourly labor rate of \$71.19 to represent labor costs in terms of dealers inspecting and correcting the parking brake defect. P. Exh. "2", GM000036115; *see also* P. Exh. "4", GM000036679-80; P. RFA Answer 153.

48. GM has estimated \$4.93 to represent its cost for corrective parts, per vehicle, in terms of dealers inspecting and correcting the parking brake defect. P. Exh. "2", GM000036115; *see also* P. Exh. "4", GM000036679-80; P. RFA Answer 154.
49. GM has estimated \$1.00 per initial notice letter per vehicle (First Class Mail) and \$0.36 for "customer follow up" per vehicle as administrative costs associated with dealers inspecting and correcting the parking brake defect. P. Exh. "2", GM000036115; *see also* P. Exh. "4", GM000036679-80; P. RFA Answer 155.
50. On May 10, 2005 NHTSA's Office of Defect Investigations (ODI) issued an "ODI Resume" and "Engineering Analysis Closing Report" closing its engineering analysis investigation EA 04-011 regarding the defective parking brakes. P. Exh. "8"
51. NHTSA closed the investigation because it determined vehicle rollaways – again, the primary concern of the investigation – would be prevented by GM's recall of manual-transmission 1999-2002 1500 Series pickups and utilities. P. Exh. "8", GM000036756-000036757.
52. In closing its investigation NHTSA stated, "The Engineering Analysis is closed because GM's recall action will remedy the defect condition in the MY 1999-2003 C/K 1500 pickup trucks equipped with manual transmissions." P. Exh. "8", GM000036757.
53. As demonstrated by responses to NHTSA and the recall campaign in general, GM has the ability to conduct a Vehicle Identification Number (VIN) search within its internal databases and identify the name, address and telephone number of each original purchaser or owner of 1999 through 2002 model year 1500 Series pickups and utilities. P. Exh. "15", GM000025708; *see also* P. RFA Answers 97-101.

54. In addition, on-line internet access at GM's owner website, www.mygmink.com, provides a way for owners of 1999 through 2002 model year 1500 Series pickups and utilities to obtain personalized information for their specific vehicles. GM controls the format and content of this website, with some limitations. P. Exh. "17", p. 16; *see also* P. RFA Answers 159-161.
55. GM also has the ability to obtain contact information (name and address) for current or used vehicle owners by contacting an "outside supplier" and having it obtain registration information for all desired or affected VINs. P. Exh. "22", p. 38, lines 14-25.
56. On April 4, 2002 Plaintiff Boyd Bryant, at the time and currently a resident of Fouke, Miller County, Arkansas, purchased and took delivery of a new 2002 Chevrolet Tahoe Z-71, VIN 1GNEK13282R268414 ("the Bryant vehicle") from Tom Morricks Chevrolet, Inc. in Ashdown, Arkansas. P. Exh. "26". By stipulation of the parties, Mr. Bryant received a standard GM three-year/36,000 mile written limited warranty (as identified and discussed above) at the time he purchased the Bryant vehicle.
57. Mr. Bryant presently owns the Bryant vehicle; it has approximately 81,000 miles on it.
58. The Bryant vehicle falls within the description of 1999 through 2002 model year 1500 Series pickups and utilities and, more particularly, is one of the "utilities" in that description.
59. The Bryant vehicle was originally equipped with a PBR 210x30 Drum-in-Hat park brake system utilizing high-force spring clip retainers. P. Exh. "28", p. 8 ("... the parking brake on Mr. Bryant's vehicle was a PBR parking brake."). The Bryant vehicle is still equipped with a PBR 210x30 Drum-in-Hat park brake system utilizing high-force spring clip retainers. *See* photographs attached to William Coleman's affidavit.
60. Plaintiff's engineer expert, William Coleman, measured the parking brake lining thickness on the Bryant vehicle, and in at least one place on the passenger side it is less than 1.5

millimeters (.06 inches). See William Coleman affidavit; photographs attached to and authenticated by Mr. Coleman's affidavit. Based on this measurement, the Court finds the Bryant vehicle is exhibiting lining wear consistent with the inadequate lining float Mr. Bryant alleges is associated with GM's use of the high-force spring clip retainers.

61. Mr. Coleman also tested the Bryant vehicle for parking brake functionality. With the parking brake fully depressed and the transmission in neutral, the Bryant vehicle rolls on both steep and lesser hills or grades. William Coleman affidavit; see DVD containing videotaped footage of the hill testing of the Bryant vehicle. Accordingly, the Bryant vehicle⁷ is exhibiting lack-of-parking-brake functionality consistent with the presence of the defect associated with GM's use of the high-force spring clip retainers.

62. As per his affidavit, Mr. Bryant has reviewed the original and amended pleadings in this matter, and understands the allegations against GM. He also understands his duties and obligations as a class representative and has testified that he has complied with them by, among

⁷ According to GM, the 1500 Series utilities like the Bryant vehicle (i.e. sport utility vehicles such as Chevrolet Tahoes and Suburbans, and GMC Yukons and Yukon XLs) have experienced the defect-related premature lining wear more than any other category of vehicles in the 1999 through 2002 model year 1500 Series pickups and utilities class of vehicles. P. Exh. "5". By GM's own admission, the reason the 1999-2002 1500 series utilities are more prone to poor parking brake performance is that 1500 Series utilities have the following unique design characteristics or traits:

Small axle shaft diameters relative to other vehicles in the 1999 through 2002 model year 1500 Series pickups and utilities class of vehicles;

The highest GVW ratings relative to other vehicles in the 1999 through 2002 model year 1500 Series pickups and utilities class of vehicles;

The greatest unladen weights relative to other vehicles in the 1999 through 2002 model year 1500 Series pickups and utilities class of vehicles,

They have coil-spring suspensions with unique spring and shock absorber calibrations compared to other vehicles in the 1999 through 2002 model year 1500 Series pickups and utilities class of vehicles.

P. Exh. "2", GM000036106; Exh "5". These factors subject the 1500 Series utilities to greater parking brake shoe inertia and axle shaft deflection, resulting in accelerated parking brake lining wear. *Id.*

other things, giving a deposition in this case, assisting with written discovery answers, and by staying in touch with representative counsel during this litigation to keep aware of status and progress of this lawsuit. In that vein, the Court notes Mr. Bryant not only participated in at least two inspections of Z-71 Tahoe, as well as a roll test of this vehicle, but he also attended part of the class-certification hearing, even though it occurred on one of his off days from his employment.

63. Mr. Bryant further agrees to fairly and adequately represent other members of any designated class with similar claims and damages because of the importance that all benefit from this lawsuit equally.

64. Finally, he states there is no collusion or conflicting interest between members of the proposed class and him.

III.

Conclusions of Law

A. Mr. Bryant's Class Definition.

1. Before the six (6) criteria for class certification under Rule 23 are analyzed, the trial court must determine whether a class, in fact, exists. *E.g. State Farm Fire & Cas. Co. v. Ledbetter*, 355 Ark. 28, 129 S.W.3d 815 (2003). A class must be susceptible to precise definition. Its description must be sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member of the proposed class, and the identity of the class members must be ascertainable by reference to objective criteria. *Arkansas Blue Cross and Blue Shield v. Hicks*, 349 Ark. 269, 78 S.W.3d 58 (2002). Part of the "objective criteria" requirement is that a class may not be defined in a manner that would require the trial

court to inquire into the merits of each class member's case in order to determine whether he is a suitable class member. *Ledbetter*, 355 Ark. at 37.

2. Mr. Bryant has moved under Ark. R. Civ. P. 23 for certification of the following nationwide class of GM vehicle owners:

"Owners" or "subsequent owners" of 1999-2002 1500 Series pickups and utilities originally equipped with an automatic transmission and a PBR 210x30 Drum-in-Hat parking brake system utilizing a high-force spring clip retainer³, that registered his vehicle in any state in the United States.

Excluded from Mr. Bryant's proposed class are the following individuals or entities:

- a. Individuals or entities, if any, who timely opt out of this proceeding using the correct protocol for opting out that will be formally established by the Court;
- b. Any and all federal, state, or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions;
- c. Any currently sitting Arkansas state court judge or justice in the current style and/or any persons within the third degree of consanguinity to such judge or justice;
- d. Any person who has given notice to GM, by service of litigation papers or otherwise, and alleged he or she has suffered personal injury or collateral property damage due to an alleged defect in any braking component, including the parking brake, in 1999-2002 1500 Series pickups and utilities originally equipped with an automatic transmission and a PBR 210x30 Drum-in-Hat parking brake system utilizing a high-force spring clip retainer;

³ The term "1999-2002 1500 Series pickups and utilities originally equipped with an automatic transmission and a PBR 210x30 Drum-in-Hat parking brake system utilizing a high-force spring clip retainer" as utilized in his class definition refers to the following GM model-year and model-coded vehicles equipped with automatic transmissions:

- 1500 Series Pickup: C-K15703 (MY 99-02)
C-K15753 (MY 99-02)
C-K15903 (MY 99-02)
C-K15953 (MY 99-02)
- 1500 Series Utility: C-K15706 (MY 00-02)
C-K15906 (MY 00-02)
C-K15936 (MY 02 only)

e. Any person, "owner", or "subsequent owner" whose GM vehicle was included in GM's July 2005 recall bulletin No. 05042, or any supplements or amended versions of that bulletin that have previously been issued.

3. The Court concludes the nationwide class for which Mr. Bryant seeks certification both exists and is susceptible to precise definition. The terms "owners" and "subsequent owners" are taken from GM's own warranty publications. Thus GM cannot complain of the class not being susceptible to precise definition, nor of it not being ascertainable by reference to objective criteria. Moreover, GM has admitted it has the ability to provide personal information (name, address, telephone number) regarding original vehicle purchasers via its warranty database, as well as current vehicle owners via third party vendors that conduct VIN searches. Finally, the fact GM has conducted a recall on the manual-transmission versions of class vehicles demonstrates it is administratively feasible for GM not only to identify class members, but also to contact them.

4. GM contends the class is not susceptible to precise definition because class member status is dependent upon "when the alleged damage (parking brake failure) occurred." GM also contends Mr. Bryant's class definition is flawed because it "continu[es] to shift on a daily basis as large numbers of the four million vehicles are sold. . . ." Both of GM's arguments lack merit. First, the Court has concluded the "failure" as alleged by Mr. Bryant -- the inadequate lining float -- occurs from day one off the assembly line. Consequently, all "owners" and "subsequent owners" experienced the "failure" at delivery and are continuing to experience it, if it is ultimately proven to exist. There is no single post-purchase date of "failure" which might taint Mr. Bryant's class definition here. As for GM's other argument, there will obviously be some daily shift in class vehicle ownership that may occur. But this would be the case in most any products-based class action. The Court fails to see how this shift in product ownership, alone,

provides any basis to attack Mr. Bryant's class definition. GM has admitted its warranty database provides the identity of and contact information for all original owners of class vehicles. In addition, GM personnel have admitted third-party firms can conduct VIN searches and obtain a snapshot regarding present owners of class vehicles. So there are numerous ways to objectively determine the individuals that are members of Plaintiff's proposed class. GM's concerns are unwarranted.

B. Rule 23(a)(1) Numerosity.

5. As noted, GM has stipulated to the Rule 23 element of numerosity. The Court accepts this stipulation and concludes the nationwide class proposed by Mr. Bryant is sufficiently numerous to satisfy Ark. R. Civ. P. 23(a)(1).

C. Rule 23(a)(2) Commonality.

6. The second requirement, set forth in Rule 23(a)(2), is commonality. As written by Professor Newberg, a legal scholar frequently cited by the Arkansas Supreme Court in class action opinions,

Rule 23(a)(2) does not require that all questions of law or fact raised in the litigation be common. The test or standard for meeting the rule 23(a)(2) prerequisite is ... that is there need be only a single issue common to all members of the class... When the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all of the persons affected.

Herbert B. Newberg, *Newberg on Class Actions*, § 3.10 (3d ed. 1993); *BPS, Inc. v. Richardson*, 341 Ark. 34, 20 S.W.3d 403, 407 (2000).

7. These common issues of law and fact asserted to exist by Mr. Bryant arise principally from Mr. Bryant's allegation that the class vehicles contain defectively designed PBR 210x30 Drum-in-Hat parking brake systems, and that GM engaged in a cover up to avoid paying

warranty claims. Among others, Mr. Bryant believes the common issues of law and fact satisfying Rule 23(a)(2) in this matter are:

BREACH OF EXPRESS WARRANTY: Whether, based on the terms of GM's written limited warranty, the alleged design flaw in the parking brakes in class vehicles constitutes a "vehicle defect related to materials or workmanship occurring during the Warranty Period."

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY: Whether the alleged design flaw in the parking brakes on class vehicles has rendered those vehicles "not fit for [their] ordinary purpose."

MAGNUSON-MOSS WARRANTY ACT: Whether GM, by virtue of the parking brake's allegedly defective design, has failed to comply with its own "written warranty" or an "implied warranty."

UNJUST ENRICHMENT: Whether GM, by allegedly defectively designing the parking brake and concealing the defect to avoid paying warranty claims, has unjustly retained benefits that it should restore to Plaintiff and class members.

FRAUDULENT CONCEALMENT: Whether GM, once it acquired knowledge of the parking brake's defect in late 2000 (or sometime later), was clothed with a duty to speak to existing owners of class vehicles so they could obtain warranty relief. In addition, whether GM, once it acquired knowledge of the parking brake's defect in late 2000 (or some time later), owed a duty to speak to prospective purchasers of class vehicles, alerting them to the existence of the defect.

DAMAGES: Whether Mr. Bryant and the class members have suffered and are entitled to damages.

RESTITUTION: Whether Mr. Bryant and class members are entitled to restitution based on, without limitation, GM's unjust-enrichment-related misconduct and/or having previously paid for repairs to the defective parking brakes.

8. In view of its factual findings regarding the alleged defective parking brake and GM's alleged cover up, and Mr. Bryant's pleadings, the Court agrees with Mr. Bryant and concludes the foregoing issues of law and fact are sufficiently common to establish Rule 23(a)(2)'s element of commonality.

D. Rule 23(a)(3) Typicality.

9. The Arkansas Supreme Court has also cited Professor Newberg's work in defining the contours of typicality required by Rule 23(a)(3):

Typicality determines whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct. In other words, when such a relationship is shown, a plaintiff's injury arises from or is directly related to a wrong to a class, and that wrong includes the wrong to the plaintiff. Thus, a plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory. When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of varying fact patterns which underlie individual claims. [Footnotes omitted.]

Summons v. Missouri Pac. R.R., 306 Ark. 116, 813 S.W.2d 240, 243 (1991)(citing H. Newberg, *Class Actions*, § 3.13 (2d ed. 1985)); *Cheqnet Systems, Inc. v. Montgomery*, 322 Ark. 742, 911 S.W.2d 956, 959 (1995); *Mega Life & Health Ins. Co. v. Jacola*, 330 Ark. 261, 954 S.W.2d 898, 904 (1997). When analyzing typicality, the focus should be "upon the defendant's conduct and not the injuries or damages suffered by the plaintiffs." *Jacola*, 954 S.W.2d at 904. Similarly, "even if allegations about injuries or damages are different, claims are typical when they 'arise from the same wrong allegedly committed against the class.'" *Farm Bureau Mutual Ins. Co. of Ark., Inc. v. Lee*, 323 Ark. 706, 918 S.W.2d 129, 131 (1996)(citing *Cheqnet Systems, Inc.*, 911 S.W.2d at 959); *THE/FRE, Inc. v. Martin*, 349 Ark. 507, 78 S.W.3d 723, 729 (2002)("Our case law is clear that the essence of the typicality requirement is the conduct of the defendants and not the varying fact patterns and degree of injury or damage to individual class members").

10. With regard to defenses GM may raise, the Arkansas Supreme Court has repeatedly refused to examine such defenses at the certification stage, especially in the course of evaluating typicality. See *Lee*, 918 S.W.2d at 130 (Characterizing as "false" appellee's premise that a

plaintiff "individually must have a claim before he can seek certification of a class."); *Jacola*, 954 S.W.2d at 905 (explicit refusal to consider merits-based argument that Jacolas were inadequate representatives because they did not read their insurance policy); *BNL Equity Corp. v. Pearson*, 340 Ark. 351, 10 S.W.2d 838, 841 (2000) (accusing defendant of "plowing old ground" in arguing potential defenses against the putative class representatives should be examined in the course of, among other things, addressing typicality); *Direct General Ins. Co. v. Lane*, 328 Ark. 476, 944 S.W.2d 528, 531 (1997) ("Moreover, it is apparent that Direct Insurance, by asserting that Ms. Lane has not suffered any damages, has attempted to defeat class certification by delving into the merits of the case. That is inappropriate."); *USA Check Cashers of Little Rock, Inc. v. Island*, 349 Ark. 71, 76 S.W.3d 243, 248 (2002) ("Moreover, this court has repeatedly held that we will not look either to the merits of the class claims or to the appellant's defenses in determining the procedural issue of whether the Rule 23 factors are satisfied.").

11. The Court is satisfied a sufficient relationship exists between the alleged injury to Mr. Bryant and GM's alleged conduct affecting the class to satisfy the requirement of typicality. Mr. Bryant purchased and currently owns a class vehicle. He has also received GM's written limited warranty with his purchase. Mr. Bryant has suffered the alleged parking brake problem this litigation concerns. The wrong allegedly committed against the class -- GM designing and implementing a defectively designed parking brake into class vehicles, then engaging in a cover up -- is the precise wrong Mr. Bryant contends he has suffered, especially because he purchased his vehicle in April 2002, which is after October 21, 2001 but before the issuance of GM's January 28, 2003 service bulletin. Finally, because the damages sought in this matter appear to be essentially uniform, there is no concern Mr. Bryant's damages are any different from or at

odds with those of other class members (which is not a concern the Arkansas Supreme Court would entertain anyway). In fact, the apparent uniformity of damages here does nothing but strengthen the case for typicality and for fulfillment of the other Rule 23 requirements.

12. GM contends Mr. Bryant is subject to "unique defenses" that defeat typicality because he didn't give pre-suit notice to GM, and he didn't maintain his vehicle according to his owner's manual. The Court disagrees. First, if the notice issue has any significance whatsoever (the Court believes it does not, *see* footnote 16, *infra*), it only affects the warranty claims asserted by Mr. Bryant and class members. Mr. Bryant has asserted claims other than for breach of warranty. Lack of notice will not be a defense, let alone a "unique defense" to those claims. Second, Mr. Bryant's assertion of parking brake "failure", with which the Court agrees, negates GM's lack-of-maintenance argument. Not even daily maintenance could cure the alleged parking brake defect and the "failure" it allegedly produces. Third, and finally, even assuming Mr. Bryant is subject to GM's lack of notice and failure-to-maintain defenses, then a population of class members will almost certainly be as well. If class representatives and class members have potential exposure to the same defenses, such defenses are not sufficiently "unique" to defeat typicality. *Barnes*, 349 Ark. at 529, 78 S.W. 3d at 736; *USA Check Cashers of Little Rock, Inc.*, 349 Ark. at 81; 76 S.W.3d at 248. GM's lack of typicality argument based on these factors is rejected. The Court concludes Mr. Bryant has established Rule 23(a)(3) typicality.

E. Rule 23(a)(4) Adequacy of Representation.

13. Rule 23(a)(4)'s requirement of adequacy of representation was first addressed in the Arkansas Supreme Court's decision in *First National Bank of Fort Smith* as follows:

The elements of the requirement are: (1) the representative counsel must be qualified experienced and generally able to conduct the litigation; (2) that there be no evidence of collusion or conflicting interest between the representative and the class; and (3) the representative must display some minimal level of interest

in the action, familiarity with the practices challenged, and ability to assist in decision making as to the conduct of the litigation.

First National Bank of Fort Smith v. Mercantile Bank, 304 Ark. 196, 801 S.W.2d 38, 40-41 (1990)(citing *Gentry v. C&D Oil Co.*, 102 F.R.D. 490, 493 (W.D. Ark. 1984)).

14. As for the first element, absent a showing to the contrary, it is presumed that the representative's attorney will vigorously and competently pursue the litigation. *BPS, Inc.*, 20 S.W.3d at 408 (citing *Jacola*, 954 S.W.2d at 904). Mr. Bryant's counsel has entered their firm resumes into evidence detailing their various backgrounds and experiences handling complex civil litigation, including class actions. Representative counsel have also vigorously pursued this litigation, diligently conducting voluminous discovery, hiring expert witnesses, seeking class certification, and preparing for trial on the merits. This first element is established.
15. With regard to the second element, there is no evidence that collusion or conflicting interests exist between Mr. Bryant and the class. That element is easily satisfied.
16. Third, and finally, Mr. Bryant owns a class vehicle, alleges he has been harmed by GM's misconduct affecting all class members, and has educated himself concerning GM's alleged practices bringing about that harm. He is very much interested in obtaining relief for himself and class members both in Arkansas and throughout the United States. He is not at all reluctant to assist with written discovery requests, participate in oral discovery, and generally assist representative counsel with the decisions that need to be made during the course of this litigation.
17. All in all, Mr. Bryant has satisfied the Court that he is an adequate class representative. The Rule 23(a)(4) element of adequacy is met.

F. Rule 23(b) Predominance.

18. Mr. Bryant, as noted, has established the existence of common issues of law and fact as required by Rule 23(a)(2). *BPS, Inc.*, 20 S.W.3d at 408 ("We have held that the starting point for our examination of the predominance issue is whether a common issue of law or fact exists in the case for all class members."); *Lenders Title Co. v. Chandler*, No. 04-41, 2004 Ark. LEXIS 399 *15 (Ark. June 17, 2004)("Lender's II"). Accordingly,

the next issue is whether the common question predominates over individual questions. When deciding whether common questions predominate over other questions affecting only individual members, [the Arkansas Supreme Court] does not merely compare the number of individual versus common claims. [*BPS, Inc.*, 20 S.W.3d at 408] Rather, [it] decides if the issues common to all class members "predominate over" the individual issues, which can be resolved during the decertified stage of a bifurcated proceeding. *Id.* Thus, the mere fact that individual issues and defenses may be raised regarding the recovery of individual members cannot defeat class certification where there are common questions concerning the defendant's alleged wrongdoing that must be resolved for all class members. *USA Check Cashers*, 349 Ark. 71, 76 S.W.3d 243.

Id. It is the element of Rule 23(b) predominance that GM contends is most lacking in this case.

The Court will address GM's contentions in turn.

I. Individual Inspections and Use Factors.

20. GM principally argues predominance is lacking because each class member's vehicle must be inspected in order to determine whether a parking brake "failure" has occurred, and because individual-use factors such as related component failure, rough road conditions, excessive dirt in the brake, owner modification, lack of service or maintenance, overloading, error by third-party service technician, or prior accident all may contribute to parking brake "failure". GM attempts to shore up these arguments by claiming parking brake "failure" can only be defined in ultimate, safety-related terms -- that is, as the parking brake's linings excessively wearing to the point of not being able to hold a vehicle on a hill or grade. GM also

cites two Arkansas cases – *Mittry* and *Baker* – as establishing a rule that “where no one set of operative facts establishes liability, no single proximate cause equally applies to each potential class member” Rule 23(b) predominance cannot be found. *Mittry v. Bancorpsouth Bank*, No. 04-829, 2005 Ark. LEXIS 6 (Ark. Jan. 6, 2005); *Baker v. Wyeth-Aherst Labs Division*, 338 Ark. 242, 992 S.W.2d 797, 800 (1999).

21. The Court disagrees that Rule 23(b) predominance is lacking due either to a requirement of individual vehicle inspections, or the individual-use factors alleged by GM. Both Mr. Bryant’s pleadings and the evidence adduced demonstrate the primary alleged “failure” in the parking brake is the allegedly defective high-force spring clip retainer not permitting the shoe and attached linings to adequately float inside the brake drum. The Court has seen nothing to convince it that this alleged defect is not present in all class vehicles, or that it doesn’t occur or manifest itself each time a class vehicle is used. To the contrary, and as stressed by Mr. Bryant at the class certification hearing, the alleged inadequate float problem appears to be something that is present in all class vehicles and which occurs each time a class vehicle is used. This is because all class vehicles utilize the PBR 210x30 Drum-in-Hat park brake system, and GM has admitted in numerous documents, with little to no equivocation, that the inadequate float problem regarding that brake system is a real one.

22. As for *Mittry* and *Baker*, even if those cases stand for what GM says they stand for, the presence of this common inadequate float problem negates GM’s argument that there is no one set of operative facts that establishes liability, or no single proximate cause that equally applies

to each potential class member. For that reason, neither *Mittry* nor *Baker* gives the Court any pause whatsoever.⁹

23. Even assuming *arguendo* the parking brake "failure" should, as GM says, be defined more broadly such that individual inspections for lining wear and/or consideration of individual use factors might be necessary, Rule 23(b) predominance still exists. The Court views any need for individual inspections and/or the individual use factors merely as individual determinations relating to right to recovery or damages that pale in comparison to the common issues surrounding GM's alleged defectively designed parking brake and cover up to avoid paying warranty claims. In *Seeco*, the Arkansas Supreme Court discussed the significance of such individual, right-to-recover determinations as follows:

Challenges based on the statute of limitations, fraudulent concealment, releases, causation, or reliance have usually been rejected and will not bar predominance satisfaction because those issues go to the right of a class member to recover, in contrast to underlying common issues of the defendant's liability.

Seeco, Inc. v. Hales, 330 Ark. 402, 954 S.W.2d 234, 238 (1997) quoting 1 Herbert B. Newberg, NEWBERG ON CLASS ACTIONS § 4.26, at 4-104 (3d ed. 1992).¹⁰

24. The predominance concerns arising from individual use factors or inspections are no different from the ones the Arkansas Supreme Court in recent years addressed and rejected in

⁹ As discussed in paragraph 18 of the Court's findings of fact, GM has also admitted the design of the PBR 210x30 Drum-in-Hat parking brake system with the high force spring clip retainer is ". . . less than optimal because it is overly sensitive to proper lining-to-drum clearances." P. Exh. "2", GM000036107; P. Exh. "7"; P. Exh. "9", p. 11 of 13. In the Court's view, this is yet another potential defect in the parking brake system that existed from day one off the assembly line in all class vehicles, and which reveals itself each time class vehicles are driven. This alleged defect also defeats GM's argument that there is no common defect that uniformly harms Mr. Bryant and class members.

¹⁰ The identical excerpt from Professor Newberg's treatise is also cited for the same proposition in both *USA Check Cashers and Tay-Tay, Inc.* in support of the Arkansas Supreme Court's affirming the trial court's finding of predominance. See *USA Check Cashers of Little Rock, Inc.*, 76 S.W.3d at 249-250; *Tay-Tay, Inc. v. Young*, 349 Ark. 675, 80 S.W.3d 365, 372 (2002).

Seeco and other cases.¹¹ Mr. Bryant relies on these cases in his briefing, and rightly so. GM has not convinced the Court these cases should not have direct bearing on the predominance analysis in this case.

25. In fact, it appears the Arkansas Supreme Court in *Snowden* addressed and rejected an argument nearly identical to GM's regarding the need for individual inspections as they pertain to wrecked cars.¹² The inspections of wrecked cars in *Snowden* were required to make an assessment of diminished value. The *Snowden* inspections, in the Court's view, are more individualized than anything that may be required in this case, as they required not only individual inspections, but individual, case-by-case damage calculations based on what was seen. By contrast, the Court understands Mr. Bryant to allege that new, non-defective low-force

¹¹ See *Jacola*, 954 S.W.2d at 903; *Sesco*, 954 S.W.2d at 238; *Fraleigh v. Williams Ford Tractor & Equip. Co.*, 339 Ark. 322, 5 S.W.3d 423, 438 (1999); *BNL Equity*, 10 S.W.3d at 842-843; *Arkansas Blue Cross and Blue Shield v. Hicks*, 349 Ark. 269, 78 S.W.3d 58, 63 (2002); *Lenders II*, 2004 Ark. LEXIS 399 at **16-17; *American Abstract & Title Co. v. Rice*, No. 03-754, 2004 Ark. LEXIS 401 at **12-14 (July 17, 2004); *Farmers Ins. Co., Inc. v. Snowden*, No. 05-527, 2006 Ark. LEXIS 298 at *19 (April 13, 2006).

¹² In *Snowden* the plaintiff filed class action against defendant auto insurer claiming it had breached insurance contracts by refusing to pay, in addition to cost of repairs, diminished value of policyholders' automobiles that had endured collision damage. The trial court determined two predominating issues existed: 1) whether the Arkansas Personal Auto Policy in issue obligated the defendant to compensate insureds for diminished value; and 2) whether Plaintiff and class members had any obligations other than presenting their claim to Farmers to receive compensation for diminished value. In affirming the trial court's finding, the Court wrote

In the instant case, the class is made up of insureds who all had the same policy with Farmers. The overarching issue is whether the policy owned by all the insureds bound Farmers to pay proper claims for diminished value, which is a question that does not rely on factors such as meeting of the minds or when the contract was created. It is a question on which this case turns and is a strict question of Arkansas law and contract interpretation.

Snowden, 2006 Ark. LEXIS 298 at *19. In addressing the insurer's complaint that the damages each aggrieved policyholder suffered would be vastly different and thus defeat predominance, the Court responded,

As previously noted, the common questions in the instant case do not rely on individualized factors, rather they turn on Arkansas law and contract interpretation. The individualized factors, including the factors discussed by appellant's expert, are only relevant to the issue of damages, determining whether or not a certain insured has a valid claim for diminished value and is entitled to that compensation from Farmers.

Id. at **21-22.

spring retaining clips are necessary for all class members. No individual inspections are required for class members to obtain that relief. GM's inspection concern arises only because Mr. Bryant's contends that if the alleged defect has cause excessive lining wear as per GM's service bulletin or recall criteria, then lining replacement is also necessary. But the inspection of brake linings can occur in conjunction with the clip replacement, requires only a few measurements, and is a task Mr. Bryant asserts must occur anyway, incidental to the clip replacement. Moreover, the cost of new parking brake linings appears to be certain or fixed, unlike the diminution-in-value damages assessment discussed in *Snowden*. In sum, because the Arkansas Supreme Court found no unconquerable predominance problems in *Snowden* on the basis of individual inspections, the Court will find none in this case.

ii. Potential Application of Multiple States' Laws.

26. GM also insists that the potential application of multiple states' laws to create predominance concerns. The Court disagrees.

27. First, beginning with *In re Prempro*, the cases GM cites for the proposition that application of multiple states' laws is necessary are all federal cases requiring a "rigorous analysis" of Fed. R. Civ. P. 23 class-certification factors, including the impact state-law variations has on predominance.¹³ Importantly, the Arkansas Supreme Court requires no such "rigorous analysis". *Lenders II*, 2004 Ark. LEXIS 399 at *7-8 ("As stated in *Lenders I*, [Ark. R. Civ. P. 23] does not require the trial court to conduct a rigorous analysis; rather, the trial court

¹³ E.g. *In re Prempro Prod. Liab. Litig.*, 230 F.R.D. 555, 565 (E.D. Ark. 2005) ("A class should not be certified until the district court has found through rigorous analysis, that all the prerequisites of Rule 23(a) have been satisfied.") (internal quotes omitted); *Zinter v. Accuflex Research Inst.*, 253 F.3d 1180, 1186 (9th Cir. 2001) ("Before certifying a class, the trial court must conduct a 'rigorous analysis' to determine whether the party seeking certification has met the prerequisites of Rule 23."); *Spence v. Glock*, 227 F.3d 308, 313 (5th Cir. 2000) ("Before *Castano*, then-Judge Ginsburg wrote that class action plaintiffs must provide an 'extensive analysis' of state law variations to reveal whether these pose 'insuperable obstacles' to certification."); *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1078-79 (6th Cir. 1996) ("The Supreme Court has required district courts to conduct a rigorous analysis into whether the prerequisites of Rule 23 are met before certifying a class.")

must undertake enough of an analysis to enable [the reviewing court] to conduct a meaningful review of the certification issue.”); *Lender’s Title Co. v. Chandler*, 353 Ark. 339, 107 S.W.3d 157 (2003)(“Lender’s I”); *Jacola*, 330 Ark. 261, 954 S.W.2d 901 (“We have not, as argued by the dissent, previously required the court to enter into the record a detailed explanation of why it concluded that certification was proper, and we refuse to impose such a requirement on the trial court at this time.”). The Court prefers to follow Arkansas Supreme Court precedent in determining whether class certification is appropriate. GM’s attempt to engraft a “rigorous analysis” requirement onto the elements of class certification under Ark. R. Civ. P. 23 is not well taken and is rejected.

28. Second, the Court agrees with Mr. Bryant that trial judges in Arkansas have wide discretion to certify class actions. It also agrees with Mr. Bryant that trial courts have wide discretion to *manage* class actions. *BNL Equity Corp.*, 10 S.W.3d at 838. *BNL Equity* was a securities class action which, by all accounts, would require complex and individual inquiries into the level of knowledge each class member possessed about a fraudulent investment. The appellants, similar to GM regarding application of multiple states’ laws here, “rais[ed] the spectre that with the potential for individual suits splintering on issues like investor knowledge, trial of the class action could unravel and turn into a procedural nightmare.” *Id.* at 844. The Arkansas Supreme Court, however, viewed appellants’ concern as no deterrent to predominance or superiority, or to class certification in general:

We will not speculate on this eventuality. We simply hold that at this stage there is a common issue related to the appellants’ conduct and liability that predominates over individual questions and renders a class action the superior method for litigating the matter.

Id. The Court in *BNL Equity* then observed:

This court has recognized that the ability to manage and guide a class action is a necessary part of a trial court's decision to certify. *See International Union of Elec., Radio & Mach. Workers v. Hudson, supra*. We further have alluded to the substantial power in the trial court to manage a class action. *Id.*; *see also Summons v. Missouri Pac., R.R., supra*.

We have also noted the ability of the trial court to decertify should the action become too unwieldy. Rule 23 specifically contemplates that circumstance when it states: "An order under this section may be conditional and it may be altered or amended before the decision on the merits." Ark. R. Civ. P. 23(b). In the recent case of *Fraleigh v. Williams Ford Tractor & Equip. Co., supra*, we quoted from *Newberg On Class Actions* regarding the decertification option and the fact that this flexibility in the trial court is vital to "judicious use of the class device." *See 1 Newberg On Class Actions* § 7.47, at 146 (3d ed. 1992).

We have no hesitancy in placing the management of this class action in the trial court. That is what the rule contemplates, and, as already described, real efficiencies can be obtained by resolving common issues, both for the plaintiff class and the appellants. Were we, on the other hand, to speculate on class management or direct the trial court at this stage to present the parties with a management plan, we would be interfering in matters that clearly fall within the trial court's bailiwick.

Id. at 845. *BNL Equity's* message is that an important component of a trial court's discretion to certify class actions is its autonomy or "substantial powers" to manage them. Thus trial courts are not required to justify their certification decisions by, for example, rigorously analyzing the Rule 23 certification elements. *Lenders II, Lender's I, Jacola, supra*. Nor are they required to justify certification decisions by creating detailed "management plan[s]" addressing how a case may be managed and tried. *BNL Equity, supra*.

29. Importantly, the Arkansas Supreme Court alluded to trial court autonomy and "substantial [class management] powers" in addressing the precise issue GM now raises: application of multiple states' laws. *Security Benefit Life Ins. Co. v. Graham*, 306 Ark. 39, 810 S.W.2d 943 (1991). *Graham* involved a potential class of 1,419 annuitants residing in thirty-nine (39) different states. The annuitants claimed Security Benefit remained liable for annuity obligations because it never provided notice another company, now insolvent, had assumed the

obligations. Security Benefit argued, in part, the doctrine of novation might provide it a defense, and claimed "... the law of thirty-nine states relative to novation would have to be explored and [] would splinter the class action into individual lawsuits," thus creating Rule 23(b) predominance concerns. *Id.* at 945. The Court rejected the defendant's argument:

The mere fact that choice of law may be involved in the case of some claimants living in different states is not sufficient in and of itself to warrant a denial of class certification. *Cf., Sun Oil Co. v. Wortman*, 486 U.S. 717 (1988). And though we are not convinced at this stage that reference to the laws of thirty-nine states will be necessary, should it be required, this does not seem a particularly daunting or unmanageable task for the parties or for the trial court.

Id. at 946. In footnote 18 of its Brief In Opposition GM contends "*Security Benefit* does not help Plaintiff. In that matter, the court determined that 'Arkansas law is the law to be applied' under the contract at issue." GM's contention is wrong. The choice of law issue confronted by the Court in *Graham* concerned novation; it did not, as GM says, center on a contractual term.

Id. In any event, the Court in *Graham* clearly saw potential application of many states' laws as not germane to class certification. It instead viewed choice of law as a task for the trial court to undertake later in the course of exercising its autonomy and "substantial powers" to manage the class action.

30. This leads the Court to its third reason why Arkansas law does not support GM's argument, especially GM's suggestion the Court must resolve the apparent choice of law dispute before class certification. Arkansas trial courts are not permitted to delve into the merits of a case in deciding whether to certify it as a class action. *BNL Equity, Fraley, supra.* In truth, there is no greater merits-intensive determination than the one regarding choice of law. Choice of law has everything to do with a case's merits. In many cases it is not briefed, analyzed and determined until the litigation's later stages. So it would be premature for the Court, at this stage in the case, to make the call on choice of law.

31. Fourth, and finally, it is not as if a decision to certify this matter as a class without resolving the choice of law issue will create incurable problems. The Arkansas Supreme Court has repeatedly stated "... a circuit court can always decertify a class should the action become too unwieldy." *THE/FRE, Inc.*, 78 S.W. 3d 723; *USA Check Cashers of Little Rock, Inc. v. Island*, 349 Ark. 71, 76 S.W.3d 243, 248 (2002); *The Money Place v. Barnes*, 349 Ark. 518, 78 S.W. 3d 730 (2002); *F&G Fin. Servs. v. Barnes*, 349 Ark. 675, 80 S.W. 3d 365 (2002). If application of multiple states' laws is eventually required here, and it proves too cumbersome or problematic, the Court can consider decertifying the class. As noted in the Arkansas Supreme Court's *Fraley* decision:

Rule 23 of the Arkansas Rules of Civil Procedure specifically states that "an order under this section may be conditional and it may be altered or amended before the decision on the merits." Ark. R. Civ. P. 23; *See also* NEWBERG ON CLASS ACTIONS, § 7.47. Class rulings are often reconsidered, and subsequently affirmed, altered, modified, or withdrawn. *Id.*

Although the court's initial decision under Rule 23(c)(1) that an action is maintainable on a class basis in fact may be the final resolution of the question, it is not irreversible and may be altered or amended at a later date. This power to change the class certification decision has encouraged many courts to be quite liberal in certifying a class when that decision is made at an early stage, noting that the action always can be decertified or the class description altered if later events suggest that it is appropriate to do so.

WRIGHT, MILLER & KANE; FEDERAL PRACTICE & PROCEDURE 2D § 1785 at pp. 128-31 (2d Ed. 1986)(citations omitted). "The ability of a court to reconsider its initial class rulings . . . is a vital ingredient in the flexibility of courts to realize the full potential benefits flowing from the judicious use of the class device." NEWBERG ON CLASS ACTIONS, § 7.47 at pp. 7-146. Class action certification is necessarily an ongoing process in light of Rule 23's opt-out and decertification provisions.

Fraley, 5 S.W.3d at 438-39 (1999). A trial court's ability to decertify class actions is an additional component of its wide discretion to manage class actions. These flexible standards

likely frustrate GM, particularly as to its assertion that application of multiple states' laws will create Rule 23(b) predominance problems and frustrate management of this case. However, Mr. Bryant filed this case in an Arkansas state court, not in federal court. GM is therefore bound by Ark. Civ. P. 23 and the Arkansas Supreme Court decisions interpreting it.

III. GM's Issues With Mr. Bryant's Proposed Trial Plan.

32. Further contesting Rule 23(b) predominance and other Rule 23(b) elements, manageability in particular, GM contends Mr. Bryant's trial plan does not feasibly deal with potential state law variations, or supposed individual class member issues such as: notice of warranty breach; whether an individual's parking brake has been repaired under warranty; expiration of factory warranty based on mileage; individual knowledge of parking brake defect; fraud-related materiality and reliance; the entity to recover with regard to leased vehicles; application of statutes of limitation; comparative fault, if available; and the damages a given class member can recover. GM argues all these factors create incurable Rule 23(b) predominance, superiority and manageability concerns. The Court disagrees with GM.

33. As just discussed, now is not the time to decide whether the laws of multiple states will apply. Neither is Mr. Bryant required, at this juncture, to submit a detailed trial plan which the Court must analyze and adopt, reject or modify in determining whether class certification is proper. Nevertheless, for the sake of addressing GM's criticism of Mr. Bryant, the Court, in the past, has examined many of the variations in state warranty, fraudulent concealment and unjust enrichment laws GM contends here to be insurmountable. While some legal variations may exist amongst different states, the Court does not perceive them to create any barrier to class certification. Second, in the event application and additional analysis of multiple states' laws yields a concern, it is important to note that Arkansas trial courts have multiple tools at their

disposal to negotiate matters such as state-law variations, as well as the supposed individual issues GM complains of. Many of those tools, such as the option to decertify, have already been discussed. But perhaps the most useful tool, not yet discussed, is case bifurcation:

This court has repeatedly recognized that conducting a trial on the common issue in a representative fashion can achieve judicial efficiency. *See Summons v. Missouri Pac. R.R.*, 306 Ark. 116, 813 S.W.2d 240 (1991); *International Union of Elect., Radio & Mach. Workers v. Hudson*, 295 Ark. 107, 747 S.W.2d 81 (1988). Moreover, this court has routinely found the bifurcated process of class actions to be consistent with Rule 23(d), which allows the trial court to enter orders necessary for the appropriate management of the class action. *Mega Life*, 330 Ark. 261, 954 S.W.2d 898; *Hudson*, 295 Ark. 107, 747 S.W.2d 81. In fact, this court has expressed its approval for the bifurcated approach to the predominance element by allowing trial courts to divide the case into two phases: (1) certification for resolution of the preliminary, common issues; and (2) decertification for the resolution of the individual issues. *Mega Life*, 330 Ark. 261, 954 S.W.2d 898. The bifurcated approach has only been disallowed where the preliminary issues to be resolved were individual issues rather than common ones. *See Arthur v. Zearley*, 320 Ark. 273, 895 S.W.2d 928 (1995).

Arkansas Blue Cross & Blue Shield v. Hicks, 349 Ark. 269, 286, 78 S.W. 3d 58, 68 (2002). In this case, numerous common issues exist and are suitable to resolve in a "phase I" trial. The Court has previously described many of those issues, all centering on GM's alleged defective design and subsequent cover up to avoid paying warranty claims.

34. First, as Mr. Bryant discusses in his trial plan, given the identical wording in GM's written warranty to him and class members, GM's express-warranty liability can be litigated unconstrained by variations in state law warranty defect standards. In addition, despite what GM argues, the Uniform Commercial Code ("UCC") as adopted and applied by all states except Louisiana does provide uniform legal standards governing the sales of goods.¹⁴ In particular, it

¹⁴ *See e.g. Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022-23 (9th Cir. 1998) ("In this case, although some class members may possess slightly differing remedies based on state statute or common law, the actions asserted by the class representatives are not sufficiently anomalous to deny class certification. On the contrary, to the extent distinct remedies exist, they are local variants of a generally homogenous collection of causes which include products liability, breaches of express and implied warranties, and 'lemon laws.'"); *Chemnova Am. Corp. v.*

provides a nearly universal defect standard for implied warranties: whether the defect renders the good in issue "fit for its ordinary purpose."¹⁵ The issue of whether the parking brake defect meets or falls short of that standard is perfectly suitable for a "phase I" trial. Warranty causation can also be addressed during "phase I", especially given Mr. Bryant's contention, with which the Court agrees, that the parking brake "failure" at issue is the inadequate lining float. Because inadequate lining float is alleged to occur in each GM vehicle owned by class members, the causation question should be a universal, class-wide one. Finally, during "phase II" individual warranty-related concerns, if any, can be litigated. These include, without limitation, whether an individual class member has provided notice¹⁶; when, if at all, a class member's warranty expired due to mileage; the type of ownership a given class member

Corker, 779 So. 2d 1175, 1180 (Ala. 2000) ("The principles of the Uniform Commercial Code ("U.C.C.") can be easily applied on a classwide basis. Under U.C.C. Article 2, some version of which has been adopted in all states except Louisiana, a description of a product on a label creates an express warranty."); *Tesaro v. Quigley Corp.*, No. 1011, Control 051340, 2002 WL 372947 at * 5-6, 9 (Pa. Com. Pl. Jan. 25, 2002) (certifying nationwide class of consumers who purchased "Cold-Eze" under implied warranty and unjust enrichment theories); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 957 (E.D. Tex. 2000) (recognizing the law under the UCC is uniform and that "[f]or decades, courts have certified [national] product defect class actions.").

¹⁵ As noted by one group of legal scholars:

A multistate class action based on breach of implied warranty of merchantability need not be further subclassed because after the exclusion of relatively few states that still require vertical privity for economic loss claims (and also excluding used goods and business purchasers in a few other states), state implied warranty law under UCC §2-314(2)(c) (whether the product is "fit for the ordinary purposes") is uniform as incorporated by Magnuson-Moss (15 U.S.C. §2301(7), both in terms of statutory language and judicial interpretation.

Brantley, Logan, and Moore, *Class Action Reports*, "Commonality of Applicable State Law in Nationwide or Multistate Class Actions - Breach of Implied Warranty", I. Introduction, p. 2 of 58 (2000).

¹⁶ However, because GM had actual notice of the parking brake issue in late 2000, well before Mr. Bryant and many class members purchased their vehicles, the Court does not agree with GM's contention that individual notice under UCC §2-607 is a required showing in this case, especially now that Mr. Bryant has given additional notice by filing suit. *E.g. Prutch v. Ford Motor Co.*, 618 P.2d 657, 661 (Colo. 1980) ("When, as here, the purposes of the notice requirement have been fully served by actual notice, the notice provision should not operate as a technical procedural barrier to deny claimants the opportunity to litigate the case on the merits."); *City of Wichita v. U.S. Gypsum Co.*, 828 F. Supp. 851, 857 (D. Kan. 1993) ("For example, "[a] comparably strict application of the notice requirement . . . may not be appropriate in a case involving a consumer's claim of breach.") *rev'd on other grounds*, 72 F.3d 491 (10th Cir. 1996); *Shooshanian v. Wagner*, 672 P.2d 455, 462 (Alaska 1983) ("We . . . are of the opinion that a complaint filed by a retail consumer within a reasonable period after goods are accepted satisfies the statutory notice requirement.").

possesses (eg. purchase v. lease); and limitations-related issues. Warranty damages -- which the Court believes will be essentially uniform -- can also be addressed during a "phase II" trial.

35. Next, as to Mr. Bryant's fraudulent concealment claim, during "phase I" Mr. Bryant can present evidence not only of GM's defective design, but also concerning GM's alleged later cover up to avoid paying warranty claims. Mr. Bryant may then submit jury interrogatories¹⁷, appropriately accounting for state-law variations, if any, concerning non-individualized elements of fraudulent concealment, *ie.* GM's knowledge of the defect and its *scienter* (*ie.* whether its withholding of knowledge was done with the fraudulent purpose to induce class members to buy defective vehicles or avoid paying warranty claims). The more individualized issues of whether GM owed a given class member a duty to disclose or whether a particular class member relied on GM's failure to disclose can be reserved for a "phase II" trial. The issue of damages can also be reserved for "phase II".

36. Finally, Mr. Bryant envisions trying nearly all elements of unjust enrichment in "phase I". The Court, at this point, cannot say this would be an altogether impossible task. During such a trial Mr. Bryant may present evidence not only of GM's alleged defective design, but also of its alleged cover up. Mr. Bryant may then submit jury interrogatories, appropriately accounting for state-law variations, if any, concerning the basic liability issue of whether GM was unjustly enriched by its alleged conduct. Mr. Bryant also believes that during "phase I" it can ask the jury, for purposes of disgorgement, to calculate the sum of money GM wrongfully retained. The jury in "phase I" may also make individual fault determinations regarding class members residing in states, if any, which recognize comparative fault or the like as a defense to unjust

¹⁷ "We have consistently held that the question of submitting special interrogatories to a jury is within the sound discretion of the trial court." *Shearer v. Morgan*, 240 Ark. 616, 623, 401 S.W.2d 21, 23 (1966) (citing *Missouri Pacific Transportation Co. v. Parker*, 200 Ark. 620, 140 S. W. 2d 997 (1940)).

enrichment. Finally, the equitable division of the disgorged sum amongst deserving class members can be reserved for a "phase II" trial.

37. GM attacks Mr. Bryant's bifurcated trial plan as unconstitutional under *Castano* and similar cases. See *Castano v. The American Tobacco Co.*, 84 F.3d 734 (5th Cir. 1996). GM cites *Castano* for the Seventh Amendment "mandate" that "parties [] have fact issues decided by one jury, and prohibits a second jury from reexamining those facts and issues." *Castano*, 84 F.3d at 750. The Court agrees *Castano* provides authority for this general rule. See also *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1303 (7th Cir.), cert denied, 133 L.Ed. 2d 122, 116 S.Ct. 184 (1995) ("The right to a jury trial. . . is a right to have jurable issues determined by the first jury impaneled to hear them (provided there are no errors warranting a new trial), and no reexamined by another finder of fact.") But the court in *Castano* also noted bifurcated trials are permissible when ". . . [the] issues are so separable that the second jury will not be called upon to reconsider findings of fact by the first[.]" *Id.* GM is not in a position argue Mr. Bryant's trial plan in this case is unconstitutional. The reason is obvious: the final trial plan, if one is even required, has not been developed by the Court. The issue is simply not ripe for determination. Still, the trial plan Mr. Bryant has described, in the Court's view, creates no constitutional concerns at all. Mr. Bryant contemplates trying fundamental or core liability issues in "phase I", leaving "phase II" for the individualized issues such as GM's affirmative defenses, reliance and the like. In some cases damages may also be tried in "phase II." The issues tried in each phase will be sufficiently separable; there will be no risk the jury in "phase II" will reconsider findings by the "phase I" jury. The Court is confident it can, as Judge Posner described in *Rhone-Poulenc*, "carve at the joint" in such a way that the same issues are not reexamined by different juries.

38. In sum, Mr. Bryant's trial plan, while not necessary at this stage, is appropriate and adequately accounts for potential application of multiple states' laws. GM's arguments to the contrary are rejected. The Court concludes Mr. Bryant has established Rule 23(b) predominance.

G. Rule 23(b) Superiority.

39. Rule 23(b) requires that a class action be superior to other available methods for the fair and efficient adjudication of the controversy. Ark. R. Civ. P. 23(b); *see USA Check Cashers*, 349 Ark. at 71, 76 S.W.3d at 243. The superiority requirement is satisfied if class certification is the more efficient way of handling the case, and it is fair to both sides. *Id.* The Arkansas Supreme Court has held that where a cohesive and manageable class exists, "real efficiency can be had if common, predominating questions of law or fact are first decided, with cases then splintering for the trial of individual issues, if necessary." *BPS, Inc.*, 20 S.W.3d at 410; *Lender's II*, 2004 Ark. LEXIS at *18. The Court, for several reasons, concludes Mr. Bryant has satisfied the Rule 23(b) requirement of superiority.

40. First, the Arkansas Supreme Court affirmed the trial court's finding of superiority in *Jacola, Seeco, Fraley, BNL Equity, Hicks, Lenders II, American Abstract & Title Co.*, and *Snowden* cases cited in footnote 11, *supra*. This speaks volumes to the wide discretion trial judges possess in deciding class certification issues, managing class trials, to superiority being found even where numerous individualized issues exist, and to the fact real efficiency can be gained by disposing of basic liability questions on a class-wide basis. *See Cheqnet Systems, Inc. v. Montgomery*, 322 Ark. 742, 911 S.W.2d 956, 960 (1995) ("The question of predominance of common questions *and of superiority* are 'very much related to the broad discretion conferred on a trial court faced with them.'") (Citation omitted) (Emphasis added). In its first modern-era

class action opinion, *Hudson*, the Arkansas Supreme Court addressed all of these concepts thusly:

By limiting the issue to be tried in a representative fashion to the one that is common to all, the trial court can achieve real efficiency. The common question here is whether the unions can be held liable for the actions of their members during the strike. If that question is answered in the negative, then the case is over except for the claims against the named individual defendants which could not be certified as a class action. If the question is answered affirmatively, then the trial court will surely have "splintered" cases to try with respect to the damages asserted by each member of each of the subclasses, but efficiency will still be achieved, as none of the plaintiffs would have to prove the unions' basic liability.

Is that unfair? It is not unfair to the unions, as they will be able to defend fully on the basic liability claim, and they will have the opportunity to present individual defenses to the claims of individual class members if their liability has been established in the first phase of the trial. They lose nothing. Would it be fair to the class members to require them to sue individually? The evidence so far shows that each putative class member has a claim that is too small to permit pursuing it economically. If they cannot sue as a class, the chances are they will not sue at all. We agree with the unions' argument that the sole fact that the claims are small is not a reason to permit a class action, but it is a consideration which has appeared when other courts, as we must do, have considered whether the class action is superior to other forms of relief. See *C. Wright, A. Miller, and M. Kane, supra*, § 1779, n. 21, citing *Roper v. Conserve, Inc.*, 578 F.2d 1106 (5th Cir. 1978), affirmed on other grounds, sub nom. *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326 (1980); *Werfel v. Kramarsky*, 61 F.R.D. 674 (D.C.N.Y. 1974); and *Buchholtz v. Swift & Co.*, 62 F.R.D. 581 (D.C. Minn. 1973).

We recognize that the trial court has substantial power to manage a class action even though the directions given in our Rule 23 are not as extensive as those given in the comparable federal rule. This power to manage the action contributes to the discretion we find in the trial court to determine whether a class should be certified. We conclude there was no abuse in this case.

Int'l Union of Electrical, Radio, and Machine Workers v. Hudson, 295 Ark. 107, 747 S.W.2d 81, 87 (1988).

41. Second, the uniform relief sought by Mr. Bryant and the class is relatively small if sought on an individual basis. Accordingly, it is not economically feasible for members of the class to pursue GM on an individual basis. The Arkansas Supreme Court has recognized real

efficiencies and benefits inure to plaintiffs and class members in small-individual-damages cases. *Lenders II*, 2004 Ark. LEXIS 399 at *18 (“The smallness of the claims is a factor to be considered in deciding superiority; however, it may not be the sole basis for certifying a class.”)¹⁸; *BNL Equity*, 10 S.W.3d at 844.

42. Third, the Arkansas Supreme Court has identified the possibility of multiple trials supplying inconsistent results and wasting judicial resources as a factor supporting rather than detracting from superiority. *Lenders II*, 2004 Ark. LEXIS 399 at *18 (“...we think it is apparent from the context that the inconsistent results envisioned by the trial court are those that would arise from the individual cases having to be tried in different courts, by different judges and juries. In this respect, the trial court’s finding supports its conclusion on the criterion of superiority.”); *BNL Equity*, 10 S.W.3d at 844 (“Furthermore, here the alternative to a class action would be numerous joinders, wholesale intervention, and several hundred small lawsuits which would be totally inefficient and wholly unmanageable. Surely, neither the parties nor the judicial system would benefit from a legion of lawsuits that are numerous, duplicative, and time consuming.”).

43. Fourth, the Arkansas Supreme Court has expressed concern that absent certification of a class “numerous meritorious claims might go unaddressed.” *BNL Equity*, 10 S.W.3d at 844 (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 86 L.Ed. 2d 628, 105 S.Ct. 2965 (1985)). This principle is of unique importance here since, by GM’s own admission, some population of owners of automatic-transmission class vehicles may not regularly use their parking brake and thus be aware of the defect. If nothing else, this class action will serve to alert class members

¹⁸ The fact attorney fees may be recoverable as a component of one or more asserted causes of action does not, in general, affect the superiority analysis. *Lender’s II*, 2004 Ark. LEXIS 399 at *20 (“However, we do not view the availability of attorney’s fees, standing alone, as negating the trial court’s analysis on superiority.”).

that their parking brakes may be defective and need service. It would indeed be unfortunate for one or more class members to be deprived notice of the defect. Such deprivation could have harmful consequences.

44. Fifth, even GM may derive substantial benefit from class certification. In *BNL Equity*, the Court wrote,

We also note that there is a real benefit to the appellants in a class action in that they have the opportunity to nip multiple claims in the bud with common defenses such as the investors' knowledge of the investment purchased, lack of the appellants' knowledge concerning the misrepresentations, and statute of limitations. We conclude that the superiority requirement has been met.

BNL Equity, 10 S.W.3d at 844. There is no reason to believe GM cannot potentially achieve some of the same benefits the defendant in *BNL* achieved, post-certification.

45. GM challenges Rule 23(b) superiority on manageability grounds. Apart from the potential application of multiple states' laws, which the Court has addressed, GM raises manageability concerns arising from the prospect of 4,000,000 individual trials having to be conducted in this matter.

46. First, the Court does not believe for one moment that 4,000,000 individual, phase II trials will be conducted in this case. Among other things, potential opt outs and claims dismissed under a summary disposition procedure that can be developed will greatly reduce the number of potential phase II trials.

47. Second, *Lenders II* concerned a class of 50,000 potential members and the Arkansas Supreme Court took no issue with it proceeding as a class action. *Lenders Title Co. v. Chandler*, No. 04-41, 2004 Ark. LEXIS 399 (Ark. June 17, 2004) ("Lender's II"). In the Court's view, the prospect of trying 50,000 cases is no different, from a manageability standpoint, than trying a potentially greater number of cases.

48. Third, the fact GM's allegedly defective design has adversely affected so many consumers is not Mr. Bryant's fault. Mr. Bryant and the class should not be penalized for the widespread nature of GM's alleged defect and subsequent cover up. See *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 660-661 (7th Cir. 2004) ("But although the district judge might have said more about manageability, the defendants have said nothing against it except that there are millions of class members. That is no argument at all. The more claimants there are, the more likely a class action is to yield substantial economies in litigation. It would hardly be an improvement to have in lieu of this single class action 17 million suits each seeking damages of \$ 15 to \$ 30.").

49. Finally, in at least in the context of discussing class definition, the Arkansas Supreme Court has rejected lack of administrative feasibility as an excuse to avoid class certification. *Lenders II*, 2004 Ark. LEXIS 399 at *11-12 ("We are not persuaded by the argument that it is not administratively feasible for Lenders to have to manually review each of the more than 50,000 closing files to identify the class members. Instead, we agree with Chandler that Lenders should not be allowed to defeat class certification by relying on its inadequate filing and record system."). The Court believes the Arkansas Supreme Court would similarly reject GM's similar argument that class size, alone, counsels against a finding of Rule 23(b) predominance.

50. GM also argues the NHTSA recall process is superior to Mr. Bryant's proposed class action. However, none of the cases GM's cites hold the availability of a NHTSA recall remedy *ipso facto* negates superiority. See *Amalgamated Workers Union v. Hess Oil Virgin Islands Corp.*, 478 F.2d 540, 543 (3rd Cir. 1973) ("As we view it, it would appear [Federal Rule 23(b)(3)'s superiority component] was not intended to weigh the superiority of a class action

against possible administrative relief.”). Rather, the courts in each of these cases determined the class wasn’t certifiable for other reasons, then mentioned – in dicta – that the class members could still petition NHTSA.

51. Here, there are multiple reasons why a class action is a superior method to resolve the claims of Mr. Bryant and the class. Moreover, as brought to light at the class certification hearing, the record reveals frustrated consumers have at least twice (most recently in mid 2006) petitioned NHTSA about the alleged parking brake defect in automatic transmission vehicles, and NHTSA rejected the petitions. Accordingly, the Court does not understand why GM believes NHTSA will provide a superior remedy to Mr. Bryant and class members. The Court concludes GM’s NHTSA-based superiority argument has no merit. Mr. Bryant has established Rule 23(b) superiority.

H. The *Wallis* Matter.

52. The Court also takes note of GM’s assertion in its briefing that Mr. Bryant’s claims concerning the allegedly defective parking brake are not cognizable because they, at most, assert a “no injury” case against GM barred under the Arkansas Supreme Court’s *Wallis* case. *Wallis v. Ford Motor Company*, No. 04-506, 2005 Ark. LEXIS 301 (May 12, 2005). The Court, however, is unwilling to rule on that assertion at this time for two reasons.

53. First, the proper mechanism by which to raise such an assertion is either a motion to dismiss or motion for summary judgment. GM previously filed a motion to dismiss based on *Wallis*, among other things. But that motion is now moot, given the fact Mr. Bryant amended his pleadings before the class certification hearing.

54. Second, the determination of whether class certification is appropriate is essentially procedural in nature. *BNL Equity Corp.*, 340 Ark. at 356-57, 10 S.W.3d at 841. Accordingly,

neither the trial court nor an appellate court may delve into the merits of the underlying claim when deciding whether the requirements of Rule 23 have been met. *Id.*; *Fraleay*, 339 Ark. at 335, 5 S.W.3d at 431. The Court views the *Wallis* "no injury" issue to be inherently merits oriented and thus irrelevant to the class certification motion at hand.

IV.

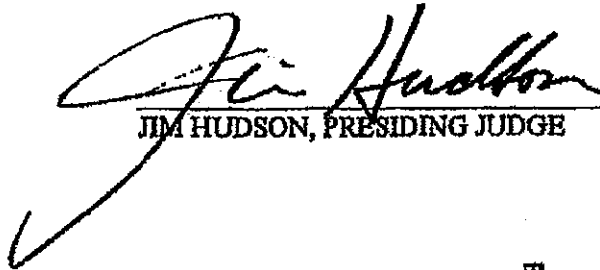
Conclusion and Order


On the basis of the foregoing findings of fact and conclusions of law establishing Mr. Bryant has satisfied all class-certification elements in Ark. R. Civ. P. 23, the Court hereby **GRANTS IN ALL THINGS** Mr. Bryant's motion for class certification and **ORDERS** that the nationwide class of individuals described above (in paragraph III. A. 2.) is certified as a class for purposes of litigating this matter under Ark. R. Civ. P. 23. Mr. Bryant is appointed as class representative of the certified class and shall adhere to all duties such an appointment entails. In addition, the law firms of Patton, Roberts, McWilliams, & Capshaw, L.L.P. (James C. Wyly and Sean F. Rommel) and Bailey/Crowe & Kugler, L.L.P. (David Crowe and John Arnold) are appointed representative counsel to represent Mr. Bryant and the class in prosecuting this matter to final judgment. The Court, by separate order, will at some time in the near future issue a briefing schedule regarding the manner in which notice of class certification is to be given under Ark. R. Civ. P. 23(c) and/or (d).

Finally, the evidence the Court had before it in ruling on the issue of class certification was evaluated only in the context of considering the elements of Mr. Bryant's underlying claims in order to determine, for example, whether questions arising from those claims are common to the class and whether they will resolve the issue. *E.g. Williamson v. Sanofi Winthrop Pharmaceuticals, Inc.*, 347 Ark. 89, 98, 60 S.W.3d 428, 432 (2001). The Court has fully

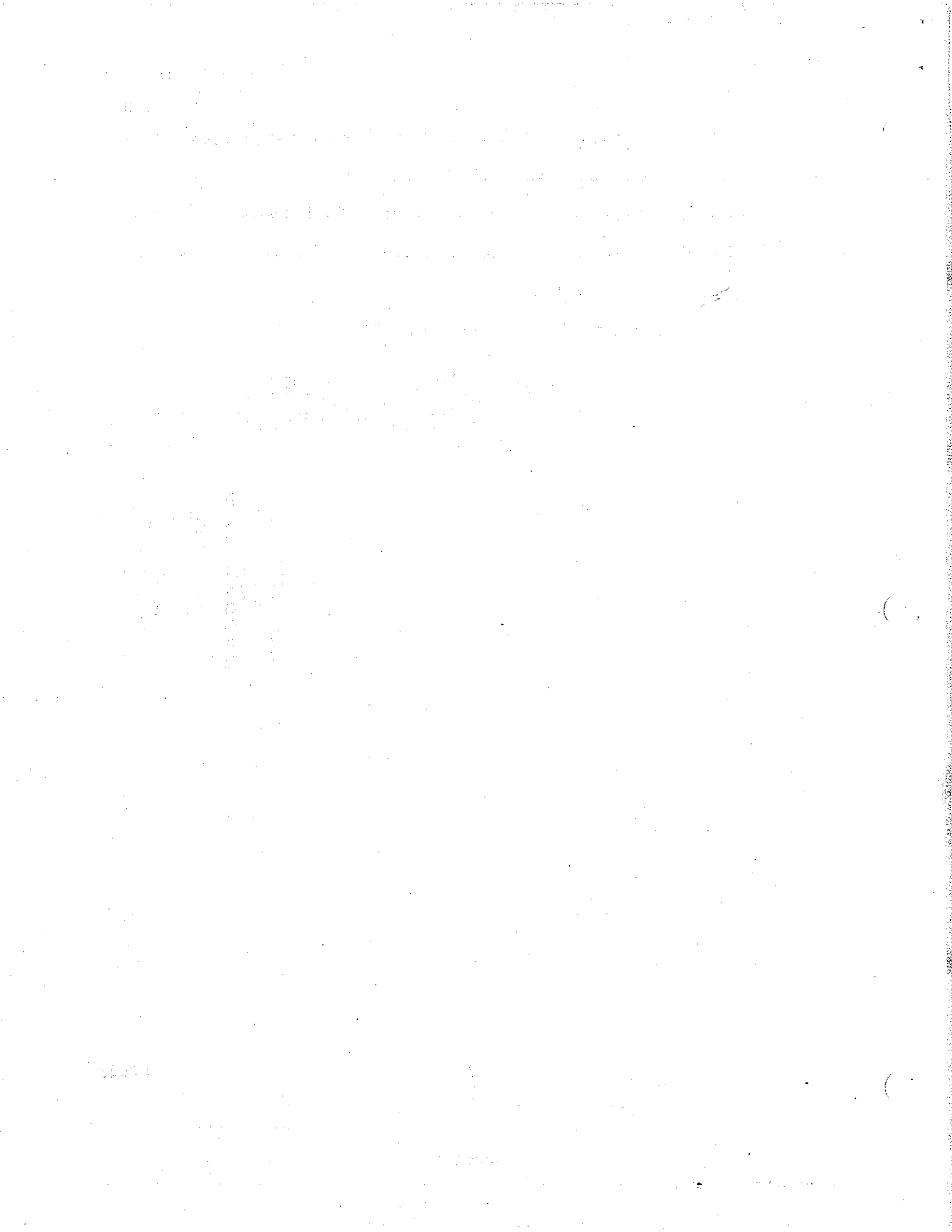
complied with the general rule that trial courts are not to delve into the merits of the underlying claims in determining whether class certification is appropriate. *BNL Equity, Fraley, supra*. In ordering that class certification is appropriate in this case, the Court has not, in any way, made findings of fact or conclusions of law regarding the merits of the claims or causes of action Mr. Bryant has asserted in his pleadings.

IT IS SO ORDERED this 11th day of January, 2007.


JIM HUDSON, PRESIDING JUDGE

2007 JAN 11 P 4 10
MARY PANNEY, CIRCUIT CLERK
BY  DEPUTY

FILED



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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:
In re : **Chapter 11 Case No.**
:
MOTORS LIQUIDATION COMPANY, et al., : **09-50026 (REG)**
f/k/a General Motors Corp., et al. :
:
Debtors. : **(Jointly Administered)**
:
-----X

**ORDER GRANTING DEBTORS' OBJECTION TO PROOF OF CLAIM
NO. 19633 FILED BY LARONDA HUNTER AND ROBIN GONZALES**

Upon the Objection dated December 17, 2010 (the “**Objection**”) to Proof of Claim No. 19633 filed by LaRonda Hunter and Robin Gonzales (the “**Putative Class Claim**”) of Motors Liquidation Company (f/k/a General Motors Corporation) and its affiliated debtors, as debtors in possession (collectively, the “**Debtors**”), pursuant to section 502(b) of title 11, United States Code (the “**Bankruptcy Code**”), Rule 3007(d) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and this Court’s Order Pursuant to Section 502(b)(9) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(3) Establishing the Deadline for Filing Proofs of Claim (Including Claims Under Bankruptcy Code Section 503(b)(9)) and Procedures Relating Thereto and Approving the Form and Manner of Notice Thereof (the “**Bar Date Order**”) [ECF No. 4079], seeking entry of an order disallowing and expunging claim number 19633, on the grounds that the Putative Class Claim fails to comply with Bankruptcy Rules 9014 and 7023, as more fully described in the Objection; and due and proper notice of the Objection having been provided, and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Objection is in the best interests of the Debtors, their estates, creditors, and all parties in interest and that the legal and factual

bases set forth in the Objection establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the relief requested in the Objection is granted as provided herein; and it is further

ORDERED that, pursuant to section 502(b) of the Bankruptcy Code, the Putative Class Claim is disallowed and expunged in its entirety; and it is further

ORDERED that the Debtors shall have no obligation to establish reserves for claim number 19633 for purposes of the confirmation of a chapter 11 plan or plans in these chapter 11 cases; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York
_____, 2011

United States Bankruptcy Judge