

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION - COLUMBUS

THOMAS HOCKMAN,
3830 Glade Run Road
London, Ohio 43140

individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

MANN+HUMMEL PUROLATOR
FILTERS, LLC,
c/o Corporation Service Company,
2711 Centerville Road
Wilmington, DE 19808

and

ABC CORPS. 1-3, JOHN DOES 1-3,

Defendants.

Case No.: 15-cv-2899

The Hon.

COMPLAINT

Class Action

(Jury Demand Endorsed Hereon)

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National Class and Ohio Subclass*

Plaintiff, Thomas Hockman, individually and on behalf of all others similarly situated, by
and through his attorneys, Taylor R. Ward (subject to pro hac vice admission) and Pamela A.

Borgess, for his complaint against the above-named Defendants, jointly, severally, or in the alternative, states and avers as follows:

INTRODUCTION

1. This is an action brought for damages by Plaintiff, Thomas Hockman, on behalf of himself and all others similarly situated, for relief from the wrongful actions of the Defendant. Specifically, Defendant, Mann+Hummel Purolator Filters, LLC (“Defendant Purolator”) advertised, marketed, distributed, and also designed, manufactured, and constructed an oil filter which was misrepresented to be safe and compatible with a 2014 Volkswagen Routan.

2. However, the oil filter was not safe and was not compatible with the 2014 Volkswagen Routan. Volkswagen had changed the Routan’s design in model year 2014, and as a result, required a different size and shape of an oil filter to properly distribute oil within the engine for safe and proper operation of the vehicle. Defendant Purolator failed to change the design of the size and shape of the oil filter, and also continued to misrepresent that the old oil filter model would be safe and compatible with the 2014 Volkswagen Routan. Defendant Purolator continued to advertise, market and affirmatively represent the unsafe and incompatible old oil filter for use in the 2014 Volkswagen Routan through its website, instructional material, product manuals, and other representations made to the general public.

3. Plaintiff and other members of the classes set forth below reasonably relied on the representations of Defendant Purolator. As a direct and proximate result of the installing the old, incompatible oil filter, Plaintiff and other members of the classes set forth below suffered severe vehicle damage, especially to the engine, because of the failure of the oil filter to properly distribute oil.

JURISDICTION AND VENUE

4. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the aggregate sum or value of \$5,000,000 and members of the National Class and the Ohio Subclass are citizens of a state different from Defendant.

5. This Court has jurisdiction over Defendant Purolator because a substantial portion of the wrongdoing alleged in this Complaint took place in the State of Ohio and because Defendant Purolator is authorized to do business in the State of Ohio.

6. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because many of the acts and transactions giving rise to this action occurred in this District; Defendant Purolator has intentionally availed itself of the laws and markets within this District through the promotion, advertising, marketing, distribution and sale of its products, including the model #L36135 oil filter, in this District. Defendant Purolator does substantial business in this district; and because Defendant is subject to personal jurisdiction in this District.

PARTIES

7. Plaintiff, Thomas Hockman (“Plaintiff”), is a natural person at all times relevant hereto, resides at 3830 Glade Run Road, London, Ohio.

8. Defendant, Mann+Hummel Purolator Filters, LLC (“Defendant Purolator”), is a Delaware corporation, and is registered to do business in the State of Ohio. Defendant Purolator has an address for service of process at c/o Corporation Service Company, 2711 Centerville Road, Wilmington, DE 19808. Defendant Purolator maintains a principal place of business at 3200 Natal Street Fayetteville, North Carolina.

9. Defendant, John Does 1-3 and ABC Corps. 1-3 are fictitious parties who are entities and/or individuals who have yet to be identified by plaintiffs as defendants but whose identity as defendants may be revealed during the period of discovery that will occur relative to

this action and who may be liable for plaintiffs' damages as referenced herein. Said fictitious names and Defendant Purolator are collectively hereinafter referred to as "Defendant Purolator".

CHOICE OF LAW

10. Plaintiff, and the members of the National Class and the Ohio Subclass are unable, through reasonable investigation, to obtain information of many of the factors relevant to a final choice-of-law determination. Defendant Purolator is in possession of such information.

11. On information and belief, Delaware, North Carolina and Ohio law apply to all claims asserted in this litigation. Delaware is Defendant Purolator's state of incorporation. The transaction involving Plaintiff and all members of the Ohio Subclass' occurred in Ohio and the vehicles for which Subject oil filters were sold were substantially located and damaged in Ohio. Ohio statutory law applies. Common law claims are similar under Ohio, Delaware, and North Carolina common law.

12. To the extent that Defendant Purolator's engaged in unlawful practices in other jurisdictions, on information and belief, that conduct originated, emanated, and was orchestrated in Delaware and conducted from its principal place of business in North Carolina.

FACTUAL ALLEGATIONS

13. On or about April 25, 2015, Plaintiff purchased an oil filter manufactured by Defendant Purolator for his 2014 Volkswagen Routan. The particular model number for the oil filter Plaintiff purchased was model #L36135.

14. Defendant Purolator represented through various means that the oil filter model #L36135 was compatible and was of merchantable quality for the 2014 Volkswagen Routan. Defendant advertised on their website, through product booklets available at stores, instructional material, affirmatively stating the model #L36135 could safely and properly be used for the 2014 Volkswagen Routan.

15. Defendant Purolator's advertisements, marketing, instructional statements were made and/or distributed nationally, including but not limited to, the State of Ohio. Such representations were reasonably available to the general public.

16. Plaintiff purchased the Defendant's oil filter model #L36135 for his 2014 Volkswagen Routan in reliance on the representations made by Defendant Purolator regarding the ability of the oil filter to properly function in a 2014 Volkswagen Routan.

17. Defendant Purolator's oil filter model #L36135 is of a shape and quality that is compatible with Volkswagen Routan model years up through 2013. It is not safe or compatible with the 2014 Volkswagen Routan.

18. Because of differences in the model year, Defendant Purolator's oil filter model #L36135 does not filter oil in a proper manner for the correct functioning of the 2014 Volkswagen Routan's engines and parts.

19. Use of Defendant Purolator's oil filter model #L36135 causes severe and catastrophic damage if installed in a 2014 Volkswagen Routan because the engine and related parts do not receive the correct amount, distribution, and delivery of oil.

20. As a direct and proximate result of the Defendant's actions, Plaintiff has suffered and will continue to suffer damages and loss. Plaintiff's engine suffered severe and critical damage.

21. Defendant Purolator's conduct caused the same or similar damage to other members of the National and Ohio subclass, as set forth below. The same advertisements, instructions, and marketing conducted by Defendant Purolator for which Plaintiff relied were also general available to the public and relied upon by other class members. Such reliance on the representations of Defendant Purolator were reasonable.

22. As a direct and proximate result of Defendant Purolator's conduct, class members suffered damages similar to the Plaintiff in that the model #L36135 oil filter is generally not safe or compatible with the 2014 Volkswagen Routan. The same or similar defect that existed in Plaintiff's circumstance is the same or similar defect that occurred in the circumstance of other class members.

CLASS ALLEGATIONS

23. Plaintiff brings this action on behalf of himself as a class action, pursuant to the provisions of Rules 23 of the Federal Rules of Civil Procedure on behalf of the following class and subclass (collectively, the "Classes"):

The Nationwide Class

24. Nationwide Class: The Nationwide Class is composed of all persons or entities in the United States who are current or former purchasers of a model #L36135 oil filter for use in the 2014 Volkswagen Routan. Model #L36135 oil filters are those which are labeled the model #L36135 and were labeled, advertised, marketed, and affirmatively stated by Defendant Purolator to be safe and compatible for installation in the 2014 Volkswagen Routan.

The Ohio Subclass

25. Ohio Subclass: The Ohio Subclass is composed of all persons or entities in Ohio who are current or former purchasers of a model #L36135 oil filter for use in the 2014 Volkswagen Routan. Model #L36135 oil filters are those which are labeled the model #L36135 and were labeled, advertised, marketed, and affirmatively stated to be safe and compatible for installation in the 2014 Volkswagen Routan.

26. Excluded from the National Class and the Ohio Subclass are individuals who have not purchased the model #L36135 oil filter; all persons who purchased the model #L36135 oil filter for use in a vehicle other than the 2014 Volkswagen Routan; all persons who make a timely

election to be excluded from the Class; governmental entities; and the judge to whom this case is assigned and his/her immediate family. Plaintiff reserves the right to revise the Class definition based upon information learned through discovery.

27. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

28. This action has been brought and may be properly maintained on behalf of each of the Classes proposed herein under Federal Rule of Civil Procedure 23.

29. Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of the Classes are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. While Plaintiff is informed and believes that there are not less than thousands of members of the Class, the precise number of Class members is unknown to Plaintiff, but may be ascertained from defendant's books and records, and adequate public notices. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

30. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3): This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- a. whether Defendant Purolator engaged in deceptive, false, misleading, or otherwise unfair business practices in its marketing, promotion, advertising, and sale of its model #L36135 oil filter;
- b. whether Defendant Purolator concealed, omitted, or otherwise suppressed material facts pertaining to its Subject oil filter with the intent that Plaintiff and all

National Class and/or Ohio Subclass members rely on such concealment, omission, or other suppression in connection with its marketing, promotion, advertising, and sale of its model #L36135 oil filter;

c. whether Defendant Purolator knew or should have known that its representations and advertisements regarding its model #L36135 oil filter were unsubstantiated, false, deceptive, and/or misleading;

d. whether Defendant Purolator's conduct, as alleged herein, violates Delaware, North Carolina and Ohio law;

e. whether Defendant Purolator breached its express representations to Plaintiff and National or Ohio class members and such reliance on the Defendants' representations was reasonable.

f. whether Defendant Purolator's conduct as alleged herein, violates the Ohio Consumer Sales Practices Act, R.C. §1345.01, et. seq.;

g. whether Defendant Purolator's conduct violates other similar state consumer protection statutes;

h. whether Plaintiff and all other National Class and Ohio Subclass members who purchased and/or installed the model #L36135 oil filter had their vehicles or other property damaged or suffered personal injury or were otherwise affected and suffered monetary damages;

i. Whether Defendant Purolator manufactured, designed, formulated, produced, created, made, constructed and/or assembled a defective oil filter, namely, the model #L36135, with foreseeable risks for which the risks of harm outweighed the benefits.

j. Whether Defendant Purolator's model #L36135 oil filter was unsafe, defective, and inherently dangerous condition which was unreasonably dangerous to its users and, in particular, Plaintiff and the other members of the Ohio Subclass, and Defendant Purolator knew or had reason to know of such conditions.

k. Whether the nature and magnitude of such risks is high in light of the intended and foreseeable use of the oil filter, and that the design did not conform to any applicable public or private product standard that was in effect for the 2014 Volkswagen Routan when the oil filter left the control of Defendant Purolator.

l. Whether the design of the oil filter is more dangerous than a reasonably foreseeable consumer would expect when used for an intended purpose; the utility does not justify the risk of damage; an alternative design was feasible; and not caused by an inherent characteristic.

m. Whether Defendant Purolator failed to provide warnings or instructions that a manufacturer, exercising reasonable care, would have provided concerning the risk of severe damage to vehicles from the use of the model #L36135 oil filter in 2014 Volkswagen Routans, knew or reasonably should have known of the aforesaid risk of damages, and whether Defendant Purolator's model #L36135 oil filter was defective by the failure to provide adequate warnings or instructions for the non-obvious risk.

n. Whether Defendant Purolator's representations about its model #L36135 oil filter for use in the 2014 Volkswagen Routan were false, misleading, and accurate, and Defendant's Purolator's product failed to conform to the representations made;

o. Whether Defendant Purolator owed a duty to warn Plaintiff and other members of the classes that the model #L36135 oil filter was not safe or compatible with

the 2014 Volkswagen Routan; owed a duty of reasonable care in designing, marketing, advertising, distributing, or selling an oil filter and whether Defendant Purolator had a duty to represent the correct make, model and year of the vehicles for which the model #L36135 was compatible and safe for installation.

p. Whether Defendant breached its duties of care by negligently advertising, marketing, packaging, and/or representing by other means that the model #L36135 oil filter was safe and compatible with the 2014 Volkswagen Routan.

q. Whether Defendant Purolator made an express warranty by representing through advertisements, marketing, instructional guides, its website, and other means, that the model #L36135 oil filter was safe and compatible with the 2014 Volkswagen Routan, and thereby breached the express warranties made because the model #L36135 oil filter was not safe or compatible with the 2014 Volkswagen Routan.

r. Whether Defendant Purolator breached implied warranties of merchantability and fitness for a particular purpose which proximately caused damage to Plaintiff and members of the National class and Ohio subclass.

s. Whether Defendant's wrongful actions set forth above proximately caused damages to Plaintiff and other members of the National class and Ohio Subclass.

31. Defendant Purolator engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff, on behalf of himself and all other National Class and Ohio Subclass members. Similar or identical statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action.

32. Typicality: Federal Rule of Civil Procedure 23(a)(3): Plaintiff's claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through defendant's wrongful conduct as described above.

33. Adequacy: Federal Rule of Civil Procedure 23(a)(4): Plaintiff is an adequate Class representative because his interests do not conflict with the interests of the other members of the Classes he seeks to represent; Plaintiff has retained counsel competent and experienced in complex class action litigation; and Plaintiff intends to prosecute this action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiff and his counsel.

34. Declaratory and/or Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2): Defendant has acted or refused to act on grounds generally applicable to Plaintiff and the other members of the Classes, thereby making appropriate relief, as described below, with respect to the Class as a whole.

35. Superiority: Federal Rule of Civil Procedure 23(b)(3): A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would be impracticable for Nationwide and Ohio Subclass members to individually seek redress for Defendants' wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

FIRST CAUSE OF ACTION
(Violations of the Ohio Consumer Sales Practices Act)

36. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

37. Plaintiff is a “consumer” as defined by R.C. §1345.01(D). the model #L36135 oil filter sold by Defendant Purolator to Plaintiff is a “good” within the meaning of the CSPA.

38. Defendant Purolator is a “supplier” as defined by R.C. §1345.01(C).

39. The above mentioned facts and circumstances are a “consumer transaction”, as defined by RC 1345.01.

40. Defendant’s acts and practices set forth above are also violations rules promulgated under the Consumer Sales Practices Act, and are unconscionable, false and deceptive, as defined by Ohio Revised Code §§1345.02, 1345.03 et seq. Defendant’s acts and practices were knowingly and intentionally false and misleading and thereby unconscionable and a violation of the Consumer Sales Practices Act.

41. Defendants’ acts and practices have been determined by courts of this state to violate RC 1345.02 and RC 1345.03. Defendants’ acts and practices were committed after the decisions containing these determinations were made available for public inspection under RC 1345.05(A)(3). These decisions include, but are not limited to: *State ex. rel. Fisher v. National Information Group*, Case No. 93 CVH 09 6323 (C.P. Franklin Co. 10-19-94); *State ex rel. Celebrezze v. Elliot, One Stop Repair Shop*, Case No. 89 CV 100, 355 (C.P. Tuscarawas Co., 2-13-90); *State ex rel. Celebrezze v. Moore; Bob’s Appliance Services*, 1987 WL 421778, Case No. 86 CV 021297 (C.P. Franklin Co., 4-30-87); *Fletcher v. Don Foss of Cleveland, Inc.*, 90 Ohio App.3d 82, 628 N.E.2d 60 (Ct. App. 8th Dist., Cuyahoga Co., 8-2-93); *Fleck v. Custom Sound*

Co., 1981 WL 4343 (Case. N. 2960 (Ct. App. 11th Dist., Trumbull Co., 12-31-81); *Delahunt v. Cytodyne Technologies*, 241 F.Supp. 2d 827, Prod. Liab. Rep. (CCH) P16524 (S.D. Ohio 2003).

42. As a direct and proximate result of defendants' violative acts and practices, plaintiff has suffered damages.

43. Because Defendants' actions violated the Consumer Sales Practices Act, RC 1345.01, et. seq., and/or have been determined by courts of this state to violate RC 1345.02 and RC 1345.03 and were committed after the decisions containing these determinations were made available for public inspection under RC 1345.05(A)(3), plaintiffs are entitled to treble their actual damages, pursuant to RC 1345.09(B).

44. Defendants' intentional and knowing actions, including the above-mentioned misrepresentations and coercive sales methods and practices were wanton, malicious and wilful.

45. The Defendants negligently and recklessly misrepresented various material facts regarding the quality and character of the product, under circumstances where Defendant either knew, or in the exercise of reasonable care, should have known, the various facts made the subject of the misrepresentations were not true or were not known to be true.

46. Such misrepresentations made by Defendant were contained in various advertising media by Defendant, and such misrepresentations were further reiterated and disseminated by the officers, agents, representatives, servants or employees of the Defendant acting within the line and scope of their authority.

47. Defendant's advertising information and representations made by Defendant's officers, agents, representatives, servants, or employees were delivered by Defendant to the general public, including Plaintiff.

48. As a direct and proximate result of Defendant's negligent misrepresentations made regarding the oil filter, Plaintiff suffered damages.

**SECOND CAUSE OF ACTION
(Ohio Product Liability Act – Defective Design or Formulation)**

49. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

50. At all times relevant to this action, Defendant manufactured, designed, formulated, produced, created, made, constructed and/or assembled the model #L36135 oil filter, used by Plaintiff and other members of the Ohio Subclass.

51. Defendant Purolator's model #L36135 oil filter was defective in that at the time the model #L36135 oil filter left Defendant Purolator's control, the foreseeable risks associated with its design or formulation exceeded the benefits associated with that design or formulation.

52. Defendant Purolator's model #L36135 was in an unsafe, defective, and inherently dangerous condition which was unreasonably dangerous to its users and, in particular, Plaintiff and the other members of the Ohio Subclass.

53. At all times relevant to this action, Defendant Purolator's model #L36135 oil filter was in a defective condition and unsafe, and Defendant Purolator knew, had reason to know, or should have known that its model #L36135 oil filter was defective and unsafe, especially when used as instructed and in the form and manner as provided by Defendant.

54. The nature and magnitude of the risk of harm associated with the design and formulation of Defendant Purolator's model #L36135 oil filter, including the substantial likelihood of severely damaging the engine of the vehicle for which it was installed, is high in light of the intended and reasonably foreseeable use as an oil filter.

55. It is highly unlikely that the ultimate consumers of Defendant Purolator's model #L36135 oil filter would be aware of the risks associated with the use of Defendant Purolator's model #L36135 oil filter through either warnings, general knowledge or otherwise.

56. The likelihood was high that the design or formulation would cause severe and permanent engine damage in light of the intended and reasonably foreseeable use of the model #L36135 oil filter.

57. The design or formulation did not conform to any applicable public or private product standard that was in effect when model #L36135 left the control of its manufacturer, Defendant Purolator.

58. The design and formulation of Defendant Purolator's model #L36135 oil filter is more dangerous than a reasonably prudent consumer would expect when used in its intended or reasonably foreseeable manner. It was more dangerous than Plaintiff and other members of the Ohio Subclass expected.

59. The intended or actual utility of Defendant Purolator's model #L36135 oil filter is not of such benefit to justify the risk of severe engine damage or failure of consumers.

60. There was both technical and economic feasibility, at the time the Defendant Purolator's model #L36135 left Defendant Purolator's control, of using an alternative design or formulation that would not cause severe engine damage or engine failure.

61. The defective design or formulation of Defendant Purolator's model #L36135 was not caused by an inherent characteristic of the model #L36135 which is a generic aspect of oil filters that cannot be eliminated without substantially compromising the model #L36135's usefulness or desirability and which is recognized by the ordinary person. This is demonstrated by numerous safer and compatible oil filters for the 2014 Volkswagen Routan.

62. A practical and technically feasible alternative design or formulation was available that would have prevented the harm for which Plaintiff and the other members of the Ohio Subclass suffered.

63. By reason of the foregoing, the Defendant is liable to the Plaintiff and members of the Ohio Subclass for the manufacturing, designing, formulating, producing, creating, making, constructing and/or assembling a product that is defective in design and formulation.

THIRD CAUSE OF ACTION
(Ohio Products Liability Act – Defect Due to Inadequate Warning/Instruction)

64. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

65. Defendant had a duty to warn Plaintiff and the other members of the Ohio Subclass of the risks associated with model #L36135 oil filter, namely, severe engine damage or engine failure.

66. Defendant Purolator knew, or in the exercise of reasonable care, should have known about the risk of harm the model #L36135 oil filter would cause in 2014 Volkswagen Routans.

67. Defendant Purolator failed to provide warnings or instructions that a manufacturer, exercising reasonable care would have provided concerning the risk of severe engine damage or engine failure, in light of the likelihood that their product would cause such destruction, for which Plaintiff and all members of the Ohio subclass suffered.

68. Defendant Purolator's model #L36135 oil filter is defective due to inadequate post-marketing warning or instruction.

69. Defendant Purolator knew, or in the exercise of reasonable care, should have known about the risk that its model #L36135 oil filter causes severe engine damage or engine failure for 2014 Volkswagen Routans.

70. Defendant failed to provide post-marketing warnings or instructions that a manufacturer exercising reasonable care would have provided concerning the risks of severe

engine damage or engine failure for which Plaintiff and other members of the Ohio Subclass suffered.

71. Defendant Purolator's product does not contain a warning or instruction regarding the incompatibility and unsafe nature of utilizing the model #L36135 oil filter for a 2014 Volkswagen Routan.

72. The risk of harm is not an open and obvious risk or a risk that is a matter of common knowledge.

73. By reason of the foregoing, the Defendant Purolator is liable to the Plaintiff and other members of the Ohio Subclass, for the manufacturing, designing, formulating, producing, creating, making, constructing, and/or assembling a product that is defective due to inadequate warning or instruction.

74. Defendant Purolator's conduct proximately caused damage to Plaintiff and other members of the Ohio Subclass.

**FOURTH CAUSE OF ACTION
(Ohio Products Liability Act – Defect for Failure to Conform to Representation)**

75. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

76. Defendant Purolator's model #L36135 oil filter was defective in that, when it left Defendant Purolator's control, it did not conform to Defendant's representations relating thereto.

77. Defendant Purolator's representations about its model #L36135 oil filter are false, misleading, and inaccurate.

78. Defendant Purolator represents and describes that the model #L36135 oil filter is compatible and safe to install in the 2014 Volkswagen Routan.

79. Defendant Purolator's representations proximately caused damage to Plaintiff and other members of the Ohio Subclass.

80. While Plaintiff believes and avers that Defendant Purolator acted negligently and recklessly in making the representations, in the event Defendant Purolator is not found to have acted negligently or recklessly, Defendant Purolator is still liable for damages and injuries suffered by Plaintiff and the other members of the Ohio Subclass, pursuant to R.C. 2307.77.

81. By reason of the foregoing, the Defendant Purolator is liable to the Plaintiff and the other Ohio Subclass members for manufacturing, designing, formulating, producing, creating, making, constructing, and/or assembling a product that is defective in that it did not conform, at the time it left Defendant Purolator's control to representations made by Defendant.

FIFTH CAUSE OF ACTION
(Negligence)

82. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

83. Defendant Purolator owed a duty to warn Plaintiff and other members of the classes that the model #L36135 oil filter was not safe or compatible with the 2014 Volkswagen Routan and that severe engine damage, failure, or other damages and personal injuries could arise from the installation of Defendant Purolator's oil filter into the vehicle.

84. Defendant Purolator owed a duty to Plaintiff and other members of the classes not to design, market, and sell an oil filter that was unsafe and incompatible with a year, make and model of a vehicle for which Defendant Purolator advertised, marketed, and instructed the oil filter was compatible.

85. Defendant Purolator owed a duty to represent to Plaintiff and other members of the classes the correct make, model, and year of the vehicle for which it was compatible and safe for installation.

86. Defendant Purolator breached its duty of care to Plaintiff and other members of the classes by misrepresenting through advertisements, marketing, and instructions that the model #L36135 oil filter was safe and compatible with the year, make and model of a vehicle, namely the 2014 Volkswagen Routan, for which it was not in fact safe or compatible.

87. Defendant Purolator breached its duty of care to Plaintiff and other members of the classes by failing to warn that the model #L36135 oil filter was not safe or compatible with the 2014 Volkswagen Routan.

88. Defendant Purolator breached its duty of care by failing to design, create, manufacturer, construct and/or produce an oil filter correctly for use in a 2014 Volkswagen Routan as advertised and marketed and instructed.

89. Absent Defendant Purolator's misrepresentations, failure to warn, and defective design and manufacturing of the product, Plaintiff and other class members would not have suffered harm to their property and/or person.

90. As a direct and proximate result of the above-mentioned conduct of Defendant Purolator, Plaintiff and other members of the classes have suffered damages.

**SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)**

91. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

92. Defendant represented that the model #L36135 oil filter was safe and compatible with the engine of a 2014 Volkswagen Routan.

93. On the packaging, instructions, on their website, and booklets and guides provided to retail sellers, Defendant Purolator represented that the model #L36135 oil filter was safe and compatible with the engine of a 2014 Volkswagen Routan.

94. These representations were material facts that influenced Plaintiff and other class members to purchase the product.

95. Defendant Purolator made these representations with the intent to induce Plaintiff and other class members to act upon them in purchasing the model #L36135 oil filter for the 2014 Volkswagen Routan.

96. At the time Defendant made these representations, Defendant knew or should have known that these representations were false or made them without knowledge of their truth or veracity.

97. Plaintiff and other members of the class justifiably relied and detrimentally relied on these representations, and as a proximate result thereof, have and will continue to suffer damages.

SEVENTH CAUSE OF ACTION
(Express Warranty)

98. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

99. Defendant Purolator, expressly warranted and represented through advertisements, marketing, packaging and labels, its website and other material, that the model #L36135 oil filter was safe and compatible with the 2014 Volkswagen Routan. For example, Defendant Purolator supplied and advertised a graph instructing purchasers, such as Plaintiff and class members, each of the vehicles for which the model #L36135 oil filter was safe and compatible. One of the vehicles advertised was the 2014 Volkswagen Routan.

100. However, the model #L36135 oil filter was not compatible or safe for installation into the 2014 Volkswagen Routan.

101. Defendant Purolator breached its said express warranty because the model #L36135 oil filter did not conform to Defendant Purolator's promises, descriptions or affirmations of fact in that it was and is not safe or compatible with the 2014 Volkswagen Routan. Installation of the oil filters into the vehicles has caused and causes severe damage to the vehicles.

102. Defendant Purolator has been put on notice of its breach of express warranties by Plaintiff and class members.

103. As a direct and proximate result of Defendant Purolator's breach, Plaintiff and other members of the National and Ohio Subclass suffered damages.

EIGHTH CAUSE OF ACTION
(Implied Warranty of Merchantability and Fitness for a Particular Purpose)

104. Plaintiff incorporates by reference the allegations contained in the proceeding paragraphs of this Complaint.

105. Defendant Purolator, impliedly warranted and represented through advertisements, marketing, packaging and labels, its website and other material, the merchantability and fitness for a particular purpose of the model #L36135 oil filter, specifically that said oil filter was safe and compatible with the 2014 Volkswagen Routan.

106. Defendant Purolator breached its said warranty because at the time of the sale with Plaintiff and class members, such oil filters were not safe and compatible with the 2014 Volkswagen Routan.

107. At all times relevant hereto, Defendant Purolator had a duty implied by law which requires manufacturers or seller's products to be reasonably fit for their ordinary purpose for

which such products are used, and that the product be acceptable in the trade for the product description. This implied warranty of merchantability is a part of the basis of the bargain between Defendants and Plaintiff and class members.

108. Notwithstanding the aforementioned duty, at the time of delivery, Defendant Purolator breached the implied warranty of merchantability in that the model #L36135 oil filters were defective and posed serious safety and compatibility risks at the time of sale, are not fit for the ordinary purposes for which such goods are used, and failed to conform to the standard performance of like products used in the trade.

109. Defendant Purolator knew or should have known, that the model #L36135 oil filters posed a safety and compatibility risks and were defective and knew, or should have known, of these breaches of implied warranties prior to sale of the defective products to Plaintiff and class members.

110. As a direct and proximate result of Defendant Purolators' breaches of its implied warranties, Plaintiff and class members bought the model #L36135 oil filter for 2014 Volkswagen Routan without knowledge of the defect or their serious safety and compatibility risks and purchased unsafe products which could not be used for their intended use.

111. As a direct and proximate result of Defendant Purolator's breach, Plaintiff and other members of the National and Ohio Subclass suffered damages.

NINTH CAUSE OF ACTION
(Breach of Implied Warranty of Fitness for a Particular Purpose)

112. Plaintiff incorporates by reference the allegations contained in the proceeding paragraphs of this Complaint.

113. Plaintiff and class members purchased the model #L36135 oil filter, and intended to use the goods for the particular purpose of safely and compatibly installing the oil filter into

motor vehicles, specifically 2014 Volkswagen Routans. At the time of purchase of the oil filters, Defendant Purolator had reason to know of this particular purpose and this implied warranty of fitness for a particular purpose was part of the basis of the bargain.

114. Plaintiff and class members relied on Defendant Purolator's skill and judgment to design and manufacture oil filters suitable for this particular purpose. At the time of the purchase, Defendant Purolator had reason to know that Plaintiffs and class members relied on its skill and judgment. The model #L36135 oil filters, however, when sold the Plaintiff and class members, and at all times thereafter, were not fit for their particular purpose of safely and compatibly operating within 2014 Volkswagen Routans. The oil filters were defectively designed and posed a serious safety and compatibility risk immediately upon purchase.

115. Accordingly, Defendant Purolator breached the implied warranty of fitness for a particular purpose in that the model #L36135 oil filters are defective and not fit for their intended purpose of safely and compatibly operating within a 2014 Volkswagen Routan.

116. As a direct and proximate result of Defendant Purolators' breaches of implied warranties, Plaintiff and National and Ohio class members bought the model #L36135 oil filters for installation in 2014 Volkswagen Routans without knowledge of the risks and suffered damages.

TENTH CAUSE OF ACTION
(Unjust Enrichment)

117. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

118. Plaintiff pleads this Count in the alternative.

119. Defendant Purolator derived profits and was otherwise unjustly enriched from its marketing and sale of the model #L36135 oil filter for the 2014 Volkswagen Routan.

120. Plaintiff and other members of the classes have been impoverished because they paid for the defective and misrepresented product that causes substantial damage to their property far in excess of any benefit the product may have.

121. Plaintiff and other members of the classes have been impoverished because Defendant Purolator has been enriched.

122. Defendant Purolator has no justification for selling Plaintiff or other members of the classes an oil filter that is not compatible with the year, make and model of a vehicle for which Defendant Purolator advertises and markets the product.

123. Plaintiff and other member of the classes do not have an adequate remedy at law.

WHEREFORE, Plaintiff on his own behalf and on behalf of the other members of the National Class and Ohio Subclass respectfully request that this Honorable Court enter judgment against Defendant Purolator, awarding the following relief:

(a) An Order certifying this action as a class action (and certifying, if necessary, appropriate subclasses), appointing Plaintiff Class Representative for the National Class and the Ohio Subclass and his counsel as Class Counsel for the National Class and Ohio Subclass;

(b) Compensatory damages, including the cost of replacing and/or repairing damaged or destroyed vehicles or parts;

(c) Declaratory relief pursuant to O.R.C. 1345.09, and statutory damages and treble damages and such other relief as provided by applicable statutes;

(d) Prejudgment and post-judgment interest on such monetary relief;

(e) Costs of bringing suit, and reasonable attorneys' fees and costs where allowed by law; and

(f) All other relief to which Plaintiff, the National Class and Ohio Subclass may be entitled and which the Court deems proper.

Respectfully submitted,

Law Office of Taylor R. Ward, LLC

/s/ Taylor R. Ward

Taylor R. Ward (#0092383)

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JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff and other members of the National Class and Ohio Subclass demand a trial by jury on all claims in this Complaint so triable.

/s/ Taylor R. Ward

Taylor R. Ward (#0092383)

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: