

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

GENERAL MOTORS LLC,
a Delaware limited liability company, and
GM GLOBAL TECHNOLOGY
OPERATIONS LLC,
a Delaware limited liability company,

Plaintiff,

Case No. 15-cv-12917-GER-
EAS

vs.

Hon. Gerald E. Rosen

DORMAN PRODUCTS, INC., a Delaware
corporation, and ELECTRONICS
REMANUFACTURING COMPANY, LLC, a
Delaware limited liability company

Defendants.

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SECOND AMENDED COMPLAINT AND JURY DEMAND

Plaintiffs General Motors LLC and GM Global Technology Operations LLC (collectively “General Motors” or “GM”), bring their Complaint against Defendants Dorman Products, Inc. (“Dorman”) and Electronics Remanufacturing Company, LLC (“ERC”) (collectively, “Defendants”) as follows:

NATURE OF THIS ACTION

1. This is an action for copyright infringement, unlawful circumvention under the Digital Millennium Copyright Act, unlawful trafficking under the Digital Millennium Copyright Act, and trade secret misappropriation.

PARTIES

2. Plaintiff General Motors LLC is a Delaware limited liability company having a principal place of business located at 300 Renaissance Center, Detroit, Michigan, 48243.

3. Plaintiff GM Global Technology Operations LLC is a Delaware limited liability company having a principal place of business located at 300 Renaissance Center, Detroit, Michigan, 48243.

4. Upon information and belief, Defendant Dorman is a Delaware corporation having a principal place of business at 3400 Walnut Street, Colmar, Pennsylvania 18915.

5. Upon information and belief, Defendant Electronics Remanufacturing Company, LLC is a Delaware limited liability company having a principal place of business at 2001 Dallavo Drive, Suite 101, Walled Lake, Michigan 48390.

JURISDICTION

6. Count I of this Complaint arises under the Copyright Act, 17 U.S.C. §§ 101 *et seq.* This Court has subject matter jurisdiction over this cause of action pursuant to 28 U.S.C. §§ 1331 and 1338.

7. Counts II and III arise under the Digital Millennium Copyright Act, 17 U.S.C. § 1201 *et seq.* This Court has subject matter jurisdiction over this cause of action pursuant to 28 U.S.C. §§ 1331 and 1338.

8. This Court has supplemental subject matter jurisdiction over the state law claim set forth in Count IV of this Complaint pursuant to 28 U.S.C. § 1367 because this claim is so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution and derive from a common nucleus of operative facts.

FACTS RELATING TO PERSONAL JURISDICTION AND VENUE

9. This Court has personal jurisdiction over the Defendants. As further detailed in the allegations in this Complaint, the Defendants have worked separately and together to carry out at least some of the unlawful acts reported below.

10. Defendants' illegal conduct intentionally targets and causes injury to GM in the Eastern District of Michigan by, *inter alia*, making and selling vehicle control modules in this district that are pre-loaded with unauthorized and infringing copies of GM's copyrighted control software.

11. Defendant ERC resides in this district and does business here.

12. Defendant Dorman has done and/or does business with ERC in this district by providing ERC with blank modules (i.e. modules that are not fully programmed), and receiving refurbished modules from ERC that ERC has programmed with unauthorized and infringing copies of GM's copyrighted control software. Dorman purchased blank modules from an authorized GM distributor for this purpose.

13. Defendants sold and/or sell refurbished modules containing infringing copies of GM's copyrighted software in this district. In doing so, Defendants have committed and/or continue to commit at least some of the acts (e.g. copyright infringement) that give rise to this litigation in this district.

14. Further, since the filing of GM's previous complaint, Defendant Dorman began making, marketing, promoting, advertising, offering for sale, and selling a new product referred to by Dorman as a "Software Transfer Tool" or "STT."

15. Dorman's Software Transfer Tool is a tool or dongle that circumvents GM's technological protection measure ("TPM") or "Security Access" in order to allow Service Technicians and other users of the tool to access, copy, and transfer General Motors' copyrighted software and data files contained on General Motors' vehicle modules onto Dorman's Software Transfer Tool. The Dorman Software Transfer Tool then manipulates and transfers this software and data to Dorman's modules.

16. Dorman's Software Transfer Tool is offered for sale, and is available for purchase, in this district. According to Dorman, the tool "eliminates the need for the OE Dealer programming" and "eliminates a costly trip to the Dealer." In other words, this advertisement touts that Dorman's Software Transfer Tool allows its users to obtain "free" copies of GM's software and data files to program a module rather than obtaining a legitimate subscription for them. As Dorman is aware, GM makes subscriptions available not just to technicians at GM dealerships, but also independent service technicians in the aftermarket, as well as individual "do-it-yourself" mechanics.

17. Thus Defendant Dorman also intentionally targets and causes injury to GM in the Eastern District of Michigan by, *inter alia*, selling the Software Transfer Tool in this district that is primarily designed and produced for the purpose of circumventing protection afforded by GM's technological protection measure and

does in fact accomplish such circumvention, thus enabling a Service Technician or other user of the tool to access GM's software (contained on vehicle control modules in GM vehicles) and copy, transfer, and manipulate it.

18. As a result of Defendants numerous copyright infringements and other violations of GM's intellectual property rights and various tortious acts, GM has been grievously and irreparably harmed and now brings this action against Defendants.

BACKGROUND ALLEGATIONS

19. General Motors Corporation was founded in 1908 in Flint, Michigan. General Motors acquired many of the assets of General Motors Corporation, including ownership of copyrights, in the bankruptcy proceedings of General Motors Corporation in 2009.

20. GM designs, manufactures, markets, and distributes automobiles and automobile parts throughout the world.

21. GM vehicles are designed to include a number of electronic control modules that control various systems on GM's vehicles. One type of module is known as a Transmission Electro-Hydraulic Control Module or TEHCM.

22. GM has developed proprietary vehicle servicing software for its paying subscribers for diagnosing, servicing, and repairing GM vehicles. This software is referred to as Techline Information System ("TIS").

23. There are several components of TIS. TIS is a web-based system that runs on General Motors servers, but paying subscribers can obtain a license and download portions of the TIS software and other computer files to be loaded onto and run on GM's vehicle control modules. Such software and related software are sometime referred to as vehicle calibration or "cal" files.

24. The vehicle calibration files can include software executable by the vehicle control module and data files related to the vehicle control module operation.

25. Paying subscribers can access General Motors' TIS and other software via one of two websites: www.gmglobalconnect.com ("GM Global Connect Website") for GM dealerships, and www.acdelcotds.com ("ACDelco TDS Website") for non-dealership aftermarket technicians (collectively, the "GM Websites").

26. General Motors is the registrant and owner of both of the GM Websites. The servers for both GM Websites are located in this district.

27. In order to access TIS through either GM Website, a user must establish a user account with General Motors. The user selects a user name and password. Both of the GM Websites prompt the user to enter the user name and password in order to gain access to TIS.

28. Individuals associated with Defendant ERC have set up accounts to use the ACDelco TDS Website. It is unknown to GM at this time whether individuals associated with Defendant Dorman have done so because individuals may set up an account without identifying a company affiliation. On information and belief, individuals associated with one or both Defendants have made improper and unlawful use of TIS to enable Defendants' unlawful conduct alleged herein.

29. GM requires users of the GM Websites to agree to certain Terms of Use and an End User License Agreement. Users are prohibited from sharing passwords or use privileges with others outside their company. There are also restrictions on copying materials on the websites. Further, GM's software and data may not be used for purposes of selling a "pre-programmed" part or module to a third party. There are still other restrictions against reproducing, modifying, adapting, transmitting, transferring, republishing, compiling or decompiling, reverse engineering, etc. GM's intellectual property or the content and information provided by GM.

30. Through this subscription service, GM also provides aftermarket updates to the software and other computer files that run on these control modules. This ensures that the correct software and files are loaded onto the control modules.

31. GM has registered its copyrights in this material as reflected in at least the following U.S. copyright registrations:

Registration Number	Title
TXu1-311-704	Techline Information Systems TIS 05 5
TXu1-311-702	Techline Information System TIS 11 35 2005 Data CD
TX 6-956-845	Techline TIS v. 07.5 Application/Data 10 2007
TX 7-924-803	Techline Information Systems TIS 14.5
TXu 1-917-502	Techline Information System TIS NAO Vehicle Calibration Software 2014

32. Copies of the registrations are attached as Exhibit A. In addition, GM is in the process of filing with the U.S. Copyright Office a registration on another version of its software.

33. These registrations cover copyrighted works – namely, original software owned by GM – that is installed on control modules in GM vehicles.


34. GM provides aftermarket control modules for repair shops and dealerships. GM also provides equipment and subscriptions to allow repair shops to program and re-program control modules installed in GM vehicles. The GM aftermarket system ensures that, when a new control module is installed in a GM vehicle, the appropriate software and other computer files are loaded into the control module.

Defendants’ Sale of Refurbished, Preprogrammed TEHCMs

35. Defendants have made unauthorized copies of GM’s software and data in order to make and sell the refurbished, preprogrammed TEHCMs.

36. Exactly how Defendants obtained such unauthorized copies is presently unknown to GM. However, upon information and belief, individuals acting on behalf of ERC and/or Dorman have done so by making improper and unlawful use of one or both of GM's Websites to illicitly copy the software from GM's servers to use for the unlawful purposes described herein. Others in the industry have obtained unauthorized copies of GM's software in this manner. *See, e.g., General Motors LLC v. Autel US Inc., et. al.*, Case No. 14-14864 (E.D. Mich.), Dkt. 1.

37. Dorman operates an internet web site www.dormanproducts.com showing that Dorman has offered and/or is offering to sell vehicle control modules with infringing copies of GM's copyrighted software and other computer files loaded on them:



609-003 **DORMAN**
SOLUTIONS

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Remanufactured Transmission Electro-Hydraulic Control Module

Application Summary: Cadillac 2010-08, Chevrolet 2013-07, GMC 2013-07, Hummer 2009-08, Pontiac 2009-08

AVAILABLE IN THE US ONLY (Ships same day if placed before 5:00PM EST). Must have VIN# to order. TEHCM Units come pre-programmed.

CHECK YOUR FIT

[Description](#) [Specifications](#) [Applications](#) [OE Numbers](#) [Technical Info](#) [Where To Buy](#)

PRODUCT DESCRIPTION

The Transmission Control Module combines the TCM, valve body solenoids, pressure and temperature switches into one unit.

- The Transmission Control Module restores the ability to shift the vehicle in and out of gear without hesitation or rough shift
- 100% replacement of gaskets, grommets and seals
- Fully remanufactured and vehicle simulator tested for durability and quality assurance
- Plug and play design - each Transmission Control Module is programmed to match the vehicle's VIN

38. According to its own advertisements, Dorman has sold and/or sells TEHCM units pre-programmed with GM software.

39. The offer above also suggests the modules are pre-programmed with the operating software for Cadillac, Chevrolet, GMC, Hummer and Pontiac modules from GM by saying that they have a “plug and play design.”

40. “Plug and play design” means that the Dorman modules are ready to be used immediately after installation. Immediate use after installation is made possible because GM’s copyrighted software has been loaded onto the modules. In other words, the modules would not operate without GM’s software running on them.

41. Dorman is not authorized by GM to sell copies of its software.

42. GM purchased in Michigan a sample of a module sold by Dorman. It was not easy or simple for GM to obtain this Dorman module. GM made numerous efforts over several months to obtain it. Dorman canceled the order for this module at least three times over a period of at least three months.

43. After GM ultimately obtained the Dorman module, GM confirmed that it has an unauthorized copy of GM's copyrighted software on it.

44. In particular, the Dorman module tested by GM showed verbatim copying of original software covered by GM's registration number TXu 1-917-502 for Techline Information System TIS NAO Vehicle Calibration Software 2014.

45. GM software found on the Dorman module was not installed by GM. GM confirmed this through technical inspection.

46. Upon information and belief, the GM software found on the Dorman module was copied and loaded onto a blank module by ERC, which then provided the refurbished, pre-programmed module to Dorman.

47. As alleged above, Dorman has provided and/or provides ERC with blank modules (i.e. modules that are not fully programmed), and has received and/or receives refurbished modules from ERC that ERC has programmed with unauthorized and infringing copies of GM's copyrighted control software.

Accordingly, the software contained on the tested Dorman module was copied by ERC when it programmed the module and was thereafter sold by Dorman.

48. This tested Dorman module is but one example. GM plausibly believes, based on inter alia this confirmed example in a tested Dorman module, Dorman's advertising and marketing statements touting its products, as well as GM's knowledge that Dorman's modules could only be immediately used after installation if GM's copyrighted software were loaded onto them, that Defendants' copying of GM's copyrighted software is extensive. Such copying includes, upon information and belief, direct copying of original software covered by at least these copyright registrations: TXu1-311-704 (Techline Information Systems TIS 05 5), TXu1-311-702 (Techline Information System TIS 11 35 2005 Data CD), TX 6-956-845 (Techline TIS v. 07.5 Application/Data 10 2007), TX 7-924-803 (Techline Information Systems TIS 14.5), TXu 1-917-502 (Techline Information System TIS NAO Vehicle Calibration Software 2014).

49. In other words, all of the modules refurbished and reprogrammed by ERC to work with GM vehicles and then sold by Dorman contain GM's software protected by one or more copyright registrations. On information and belief, Defendants' various preprogrammed modules directly copy original expression covered by the asserted GM copyrights.

50. Defendants' preprogrammed modules do not ensure that the appropriate software and other computer files are installed in the GM vehicle being serviced.

51. GM has notified Dorman that it is not authorized to sell pre-programmed GM modules.

52. GM has notified ERC that it is not authorized to manufacture pre-programmed GM modules.

Dorman's Sale of TEHCMS Sold with a "Software Transfer Tool"

53. Upon information and belief, the Dorman Software Transfer Tool was first introduced for sale in or around the summer of 2016. Dorman's Product Announcement for the Software Transfer Tool refers to a release date of May 23.

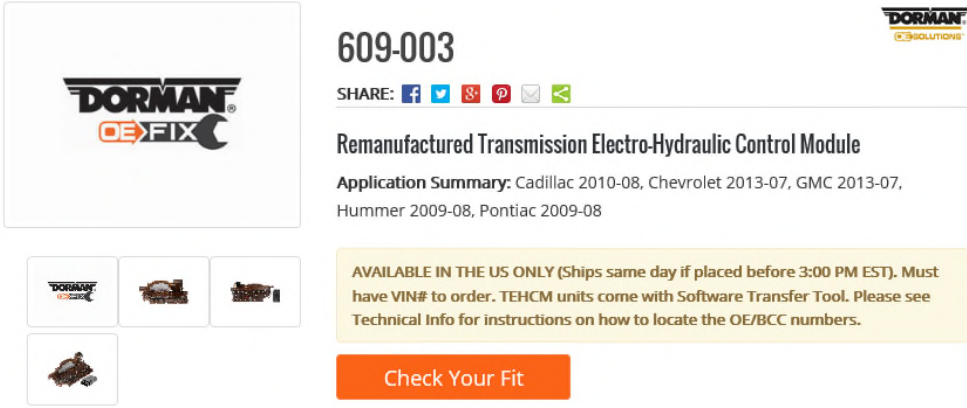
54. Dorman's Remanufactured TEHCMS and Remanufactured Transmission Control Modules ("TCM") now come with the Software Transfer Tool. Indeed, Dorman's website (www.dormanproducts.com) advertises that Dorman's TEHCM Units "come with Software Transfer Tool" and that the Software Transfer Tool comes with "every" TCM.

55. On information and belief, Dorman has ceased, or substantially reduced, its sales of refurbished, preprogrammed TEHCMS in favor of selling the new product, i.e., the TECHMS with the Software Transfer Tool.

56. It is unknown to GM at this time whether ERC has assisted and/or collaborated with Dorman on the Software Transfer Tool.

57. Dorman's webpage provides print materials, as well as a video tutorial, explaining how to use the Dorman Software Transfer Tool.

58. Dorman's website has changed to reflect the new Software Transfer Tool sold with the TEHCMs. As shown below, the website states that "Software Transfer Tool included with every GM TEHCM unit, eliminating a costly trip to the Dealer[.]" As with the refurbished TEHCMs, the website touts the resulting "plug and play" TEHCM.



609-003

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Remanufactured Transmission Electro-Hydraulic Control Module

Application Summary: Cadillac 2010-08, Chevrolet 2013-07, GMC 2013-07, Hummer 2009-08, Pontiac 2009-08

AVAILABLE IN THE US ONLY (Ships same day if placed before 3:00 PM EST). Must have VIN# to order. TEHCM units come with Software Transfer Tool. Please see Technical Info for instructions on how to locate the OE/BCC numbers.

[Check Your Fit](#)

Product Description

Dorman's OE FIX repair solution improves upon the original Transmission Control Module (TEHCM) design. The original TEHCM design uses a material called Kapton for its pressure switch film; a material that is not durable enough to maintain its proper form when the TEHCM becomes contaminated. All Dorman TEHCMs are completely remanufactured using a material called Polyether Ether Ketone, also known as PEEK. PEEK is a form of plastic that is resistant to thermal decomposition and remains in its original form with it comes into contact with debris. Additionally, our TEHCM units include 100% replacement of gaskets, grommets, and seals for a complete repair.

- Software Transfer Tool included with every GM TEHCM unit, eliminating a costly trip to the Dealer
- Direct replacement restores the ability to shift the vehicle in and out of gear without hesitation or rough shift
- Fully remanufactured and vehicle simulator tested for durability and quality assurance
- Plug and play design - each Transmission Control Module is programmed to match the vehicle's VIN

59. In a Product Announcement related to its new Software Transfer Tool, Dorman touted it as “*fitting GM applications*” and explained that it “*allows Service Technicians to transfer a copy of the software* from the motor vehicle owners’ failed TEHCM to Dorman’s remanufactured TEHCM....” (emphasis added). This is shown below:



DORMAN
NEW SINCE 1918

**Product Announcement:
TEHCM Transfer Tool**

Dorman Now Offers a TEHCM Replacement Solution!

OE PROBLEM:
TEHCM replacement requires a trip to the dealer for expensive programming

OE FIX
Exclusive transfer tool eliminates the need for the OE Dealer programming



Beginning May 23rd, Dorman's remanufactured Transmission Electro-Hydraulic Control Modules (TEHCMs) fitting GM applications will include an exclusive, and patent pending, Software Transfer Tool.

This innovative tool allows Service Technicians to transfer a copy of the software from the motor vehicle owners' failed TEHCM to Dorman's remanufactured TEHCM for the vehicle they are servicing. An easy-to-follow, detailed set of installation instructions is also included.

Additionally, a new installation video demonstrating the entire software transfer process is available now.

Dorman's Remanufactured TEHCMs will remain available through special order, and will continue to be drop shipped via free FedEx Priority Overnight.

[INSTALL VIDEO](#) [PRODUCT TRAINING](#) [ADDITIONAL INFO](#)

THINK IT'S DEALER ONLY? CHECK DORMAN FIRST

Dorman Products
Customer Service: 1-800-523-2492

f t y

NEW PRODUCTS • NEW OPPORTUNITIES • NEW SOLUTIONS

60. GM uses a technological protection measure to protect access to the software contained on its vehicle control modules.

61. Dorman's Software Transfer Tool is designed and produced to enable Service Technicians to circumvent GM's technological protection measure to access the software contained on GM's vehicle control modules.

62. After circumvention occurs, the Dorman Software Transfer Tool allows a Service Technician or other user of the tool to copy GM's software, transfer it, and manipulate it.

63. GM obtained a Software Transfer Tool for Vehicle Identification Number (VIN) 3GTEC13CX8G24571 and confirmed that it functions in the manner described above. In the test performed by GM, the Software Transfer Tool caused direct copying of original software covered by GM's registration number TXu 1-917-502 for "Techline Information System TIS NAO Vehicle Calibration Software 2014."

64. As with the Dorman preprogrammed module, GM encountered difficulty and delay when it attempted to obtain a Dorman Software Transfer Tool. GM made numerous efforts over several months to obtain it.

65. Upon information and belief, the Dorman Software Transfer Tool, when used as directed by Dorman, enables users to directly copy original

expression covered by the asserted GM copyrights. GM's test of the Software Transfer Tool is but one example of such copying.

66. Dorman is not authorized to circumvent GM's technological protection measure to access GM's software or to enable, encourage, induce, assist, or facilitate Service Technicians or other users to do so. Dorman is not authorized to copy or manipulate GM's software or to enable, encourage, induce, assist, or facilitate third parties to do so.

67. Defendants' Software Transfer Tool does not ensure that the appropriate software and other computer files are installed on the module in the GM vehicle being serviced.

68. This problem with the Dorman Software Transfer Tool has been noted by GM and others in the industry. For example, in an online forum discussion on the International Automotive Technicians Network ("iATN"), a technician expressed his concern that Dorman was offering an "incomplete solution" because it means that "you are putting an old calibration back in[]" and "[m]any of these units have updates to correct issues and if shops use this [Dorman] procedure it won't be done." Other technicians indicated similar concerns.

CAUSES OF ACTION

COUNT I – COPYRIGHT INFRINGEMENT

69. GM repeats and re-alleges herein each of the foregoing paragraphs.

70. As alleged above, GM owns copyrighted software and other computer files, including a large number of vehicle calibration files, firmware, data compilations, and other computer files for its vehicle electronic control modules.

71. GM has registered its copyrights in this material.

72. On information and belief, Defendant ERC has copied original expression embodied in GM's copyrighted software. ERC has infringed and/or is infringing these copyrights by, among other things, selling vehicle control modules with infringing copies of GM's copyrighted software and other computer files loaded on them.

73. On information and belief, Defendant ERC obtained at least some blank modules from Dorman, programmed them with unlawful copies of GM's software, and sold them to Dorman or to others.

74. On information and belief, Defendant Dorman has infringed and/or is infringing these copyrights by, among other things, selling vehicle control modules with infringing copies of GM's copyrighted software and other computer files loaded on them, where at least some of these modules come from ERC.

75. In addition, Defendant Dorman's Software Transfer Tool circumvents GM's technological protection measure to access GM's copyrighted software installed on the vehicle control modules, and then "inhales" and copies the software, transfers it, and manipulates it.

76. On information and belief, when developing the Software Transfer Tool, Dorman used its Software Transfer Tool on GM vehicle modules (and in particular, to test the Software Transfer Tool prior to market release), thereby directly copying original expression embodied in GM's copyrighted software.

77. Dorman markets its Software Transfer Tool to Service Technicians and other third parties with full knowledge that it will allow such users to circumvent GM's technological measure and unlawfully copy GM's original software. Accordingly, Dorman induces, causes, and materially contributes to the infringing conduct of users of the Software Transfer Tool.

78. GM is being and has been irreparably damaged by such infringement.

79. This infringement is a violation of 17 U.S.C. § 101 et seq., and especially § 501 et seq.

80. Defendants' activities have caused harm to GM, and Defendants have profited from their acts of infringement. Upon information and belief, the activities of Defendants have diminished and will continue to diminish the exclusivity, inherent value, and marketability of GM's copyrighted software.

81. Defendants' infringement is willful.

82. GM has no adequate remedy at law.

83. Defendants' conduct has caused and, unless enjoined, will continue to cause, irreparable harm to GM.

**COUNT II – ILLEGAL CIRCUMVENTION OF SECURITY MEASURES
UNDER 17 U.S.C. §1201**

84. General Motors repeats and re-alleges herein each of the foregoing paragraphs.

85. General Motors utilizes a variety of technologic protection measures to control access to and copying of its copyrighted computer programs.

86. For example, GM uses a technological protection measure or “Security Access” that includes a software-based lock to effectively control access to (and unauthorized programming of) original GM software that is installed on vehicle control modules in GM vehicles.

87. The lock requires a software-based security key to open the lock so as to access the software that is installed on the modules. Such access allows new or updated software to be written onto the module. In this way, only authorized users can access the software contained on the modules for programming and re-programming.

88. The lock thus effectively controls access to and copying of GM’s copyrighted control module software, because the lock is designed to prevent people from accessing GM’s software contained on the module and making unauthorized copies of it.

89. On information and belief, Defendants have defeated and are defeating this security measure and accessing the software contained on the

modules in order to program the modules with unauthorized copies of GM's copyrighted vehicle control software and related files.

90. On information and belief, the Defendants are defeating the security measure either by making an illegal copy of the software-based security key or by otherwise hacking through or circumventing the software-based lock to gain access to software installed on the vehicle control module.

91. In addition to the preprogrammed modules sold by Defendants, Dorman's Software Transfer Tool circumvents GM's technological protection measure so that Service Technicians and other users of the tool can access, copy, and transfer General Motors' copyrighted software and data files contained on General Motors' vehicle modules.

92. The Defendants' conduct has caused and, unless enjoined, will continue to cause, irreparable harm to General Motors. For example, as a result of the circumvention, every preprogrammed module sold by Defendants includes an unauthorized copy of GM's copyrighted software, and this deprives GM of revenue it would have otherwise derived from the software. Further, when the Software Transfer Tool is used as directed, it copies and transfers GM's copyrighted software and data files—without ensuring that the appropriate (up-to-date) software and files have been obtained from GM. This, too, deprives GM of revenue and, upon information and belief, has diminished and will continue to

diminish the exclusivity, inherent value, and marketability of GM's copyrighted software.

93. Accordingly, the Defendants have violated 17 U.S.C. § 1201(a)(1); and this violation is willful.

94. As the result of the Defendants' unlawful circumvention, General Motors is entitled to actual damages and any additional profits of Defendants pursuant to 17 U.S.C. § 1203(c)(2) or statutory damages pursuant to 17 U.S.C. § 1203(c)(3).

95. General Motors is entitled to costs, including reasonable attorney's fees pursuant to 17 U.S.C. § 1203(b).

**COUNT III – TRAFFICKING IN ILLEGAL MEANS FOR
CIRCUMVENTION OF SECURITY MEASURES UNDER 17 U.S.C. §1201**

96. General Motors repeats and re-alleges herein each of the foregoing paragraphs.

97. Defendant Dorman is making, offering to the public, providing, and otherwise trafficking its Software Transfer Tool.

98. The Software Transfer Tool is primarily designed and produced for the purpose of circumventing GM's technological measure that effectively controls access to GM's software installed on vehicle control modules and/or effectively protects GM's rights as the copyright owner of such software or a portion thereof.

99. The Software Transfer Tool has limited, if any, commercially significant purpose for use other than to circumvent GM's technological measure.

100. Indeed, if Dorman's Software Transfer Tool did not circumvent GM's technological measure to access GM's software installed on vehicle control modules, then it would not be able to do what it is designed to do: access, copy, and transfer such software.

101. The Software Transfer Tool is marketed by Dorman with Dorman's knowledge that it is to be used to circumvent GM's technological measure so that users of the tool can access GM's software installed on vehicle control modules and thereafter, transfer and copy it.

102. Through the Software Transfer Tool, Dorman is assisting, facilitating, encouraging, inducing, and causing Service Technicians and other users of the tool to defeat GM's technological protection measure or Security Access that controls access to GM's software contained on control modules on GM vehicles and/or protects GM's rights as the copyright owner of such software or a portion thereof.

103. Dorman has violated 17 U.S.C. § 1201(a)(2) and § 1201(b)(1); and these violations have been willful.

104. Dorman's conduct has caused and, unless enjoined, will continue to cause, irreparable harm to General Motors.

105. As a result of Dorman's unlawful trafficking in means for illegal circumvention, General Motors is entitled to actual damages and any additional profits of Dorman pursuant to 17 U.S.C. § 1203(c)(2) or statutory damages pursuant to 17 U.S.C. § 1203(c)(3).

106. General Motors is entitled to costs, including reasonable attorney's fees pursuant to 17 U.S.C. § 1203(b).

**COUNT IV – MISAPPROPRIATION OF TRADE SECRETS UNDER
THE MICHIGIAN UNIFORM TRADE SECRETS ACT**

107. General Motors repeats and re-alleges herein each of the foregoing paragraphs.

108. General Motors, and General Motors Corporation before it, invested substantial resources to develop the following items to service the vehicles it manufactures: vehicle data, data files, data compilations, data arrays, calibration files, lookup tables, software and firmware (hereinafter, "trade secrets").

109. These trade secrets have value because they can be used to service millions of vehicles worth hundreds of billions of dollars in an efficient and optimum way.

110. GM's trade secrets are not commonly known by or available to the public. They derive economic value from not being generally known to others or readily ascertainable using proper means.

111. GM uses reasonable security measures to maintain the secrecy of its trade secrets. For example, GM takes measures to obfuscate computer files so that they are difficult or impossible to read or decipher.

112. GM also uses a subscription program to limit access to its trade secrets to TIS subscribers who a) agree to specific terms and conditions; b) use confidential user names and passwords; and c) pay for the use.

113. GM otherwise keeps its trade secrets through various safeguards including employment agreements, confidentiality agreements, and other processes and procedures for limiting access to a limited number of authorized people. GM also employs various forms of encryption and obfuscation so that even its subscribers who use the trade secrets cannot actually see what they are.

114. GM has not authorized Defendants to use and copy its trade secrets in Defendants' preprogrammed TEHCMs.

115. GM has not authorized Dorman to use and copy its trade secrets with Dorman's Software Transfer Tool.

116. On information and belief, Defendants, individually and/or in concert with one another, misappropriated GM's trade secrets by, inter alia, making improper and unauthorized use of Defendant ERC's TIS subscriptions in violation of the Terms of Use and End User License Agreement, by making improper and unauthorized use of their own or others' TIS subscriptions in violation of the

Terms of Use and End User License Agreement, and/or by otherwise hacking into TIS and/or GM's vehicle control modules to copy GM's trade secrets.

117. At the time of Defendants' unauthorized access and use of GM's trade secrets, which included copying files, Defendants knew or had reason to know that they had no right to do this, and that they were obtaining GM's trade secrets through improper means.

118. Defendants' conduct has caused, and unless enjoined, will continue to cause, irreparable harm to GM.

119. Defendants' conduct has been willful and intentional.

120. As a result of Defendants' trade secret misappropriation, GM is entitled to recover damages both for the actual loss caused by the misappropriation and the unjust enrichment caused by the misappropriation. At a minimum, GM is entitled to damages caused by misappropriation measured in terms of a reasonable royalty for Defendants' unauthorized use of GM's trade secrets.

121. GM is being irreparably harmed by the misappropriation, and therefore seeks injunctive relief.

RELIEF REQUESTED

Accordingly, GM prays that this Court enter a judgment in its favor and against Defendants as follows:

- A. An order finding and declaring that Defendants have infringed GM's copyrights and preliminarily and permanently enjoining Defendants, their employees, agents, officers, directors, shareholders, members, subsidiaries, related companies, affiliates, distributors, dealers, servants, and all parties in active concert or participation with them or in privity with them, from infringing GM's copyrights;
- B. An order finding and declaring that Defendants have engaged in illegal circumvention of copyright security measures and preliminarily and permanently enjoining Defendants, their employees, agents, officers, directors, shareholders, members, subsidiaries, related companies, affiliates, distributors, dealers, servants, and all parties in active concert or participation with them or in privity with them from any further illegal circumvention of GM's copyright security measures;
- C. An order finding that Defendant Dorman has engaged in unlawful trafficking in illegal means for circumvention of copyright security measures and preliminarily and permanently enjoining Dorman, its employees, agents, officers, directors, shareholders, members, subsidiaries, related companies, affiliates, distributors, dealers, servants, and all parties in active concert or participation with Dorman

or in privity with Dorman, from any further unlawful trafficking in illegal means for circumvention of copyright security measures;

- D. An order finding that Defendants have misappropriated GM's trade secrets and preliminarily and permanently enjoining Defendants, their employees, agents, officers, directors, shareholders, members, subsidiaries, related companies, affiliates, distributors, dealers, servants, and all parties in active concert or participation with them or in privity with them, from misappropriating GM's trade secrets;
- E. An order impounding and destroying Defendants' infringing and unlawful goods;
- F. An order awarding GM:
 - 1. damages to compensate GM for the injuries caused by the Defendants, together with any applicable interest;
 - 2. statutory and other damages as provided under the Copyright Act;
 - 3. GM's costs, expenses, and attorney fees as provided under the Copyright Act and the Michigan Uniform Trade Secrets Act;
 - 4. enhanced damages for willful and intentional infringement;

5. monetary damages including disgorgement of Defendants' profits and unjust enrichment as provided for in the Michigan Uniform Trade Secrets Act;

6. all other money to which GM may be entitled by law and equity.

G. Other relief as the Court may deem appropriate.

JURY DEMAND

Plaintiff General Motors hereby demands a trial by jury on all issues so triable.

Dated: October 21, 2016

Respectfully submitted;

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2016, I electronically filed the foregoing paper with the Clerk of Court using the CM/ECF system, which will cause notice of same to be sent to all counsel of record.

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