

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re GENERAL MOTORS CORP., *et al.*,  
Debtor,

KELLY CASTILLO, NICHOLE  
BROWN, BRENDA ALEXIS  
DIGIANDOMENICO, VALERIE  
EVANS, BARBARA ALLEN,  
STANLEY OZAROWSKI, and  
DONNA SANTI, *Individually and on  
behalf of all others similarly situated,*

Plaintiffs,

v.

GENERAL MOTORS COMPANY,  
f/k/a NEW GENERAL MOTORS  
COMPANY, INC.,  
Defendant.

Chapter 11 Case No.

09-50026 (REG)

(Jointly Administered)

Adv. Proc. No. 09-00509

**MOTION FOR TEMPORARY RESTRAINING ORDER**

Come now the Plaintiffs, Kelly Castillo, Nichole Brown, Brenda Alexis Digiandomenico, Valerie Evans, Barbara Allen, Stanley Ozarowski, and Donna Santi, individually and on behalf of all others similarly situated (collectively “Plaintiffs”), by and through their undersigned attorneys, and for their Motion for Temporary Restraining Order pursuant to Fed. R. Civ. P. 65 and Fed. R. Bankr. P. 7065, and state as follows:

1. Plaintiffs in the above captioned adversary proceeding are class representatives, representing a certified class of approximately 150,000 Saturn consumers, in a class action against General Motors Corp. (“Old GM”) prosecuted in the United States District Court for the Eastern District of California (Case No. 2:07-CV-02142 WBS-GGH, “the Class Action”), in which it was alleged that Old GM manufactured, sold, and/or distributed certain Saturn vehicles containing VTi transmissions that were inherently prone to premature failure.

2. On April 14, 2009, United States District Judge William B. Shubb entered final judgment certifying the class and approving the parties' settlement agreement.

3. This action seeks a declaration that Defendant General Motors Company, f/k/a New General Motors Company, Inc. ("New GM") expressly assumed liability under the Agreement and Final Judgment pursuant to the Amended and Restated Master Sale and Purchase Agreement executed between Old GM and New GM dated June 26, 2009 as part of Old GM's bankruptcy proceedings. The allegations of the complaint are that New GM, by virtue of express or implied assumption of liability, stands in the shoes of Old GM with respect to the class action settlement.

4. Despite the existence of the certified class, its appointed class counsel, and the existing settlement, New GM is currently contacting class members on an *ex parte* basis to offer reimbursement in an amount less than the class members are owed under the settlement.

5. Though details of the substance and manner of the communication are set forth more fully in plaintiffs' supporting memorandum, New GM is making this offer via direct mail to all class members, through its authorized service providers when class members seek repair to their vehicles, and by telephone conversations between its customer service agents and class members.

6. New GM's communications with the class members, as represented parties, regarding the substance of the litigation, particularly offers to individual class members that New GM may later claim constitute accord and satisfaction, are inappropriate under New York Rule of Professional Conduct 4.2 and should be prevented under Rule 23, Fed.R.Civ.P. as set forth more fully in Plaintiffs' brief in support.

7. Part of New GM's *ex parte* offer to class members seeks to induce them to

relinquish their existing vehicle in exchange for customer credit towards the purchase of a new GM vehicle. Such a transaction, in addition to giving up their vehicles, requires the class members to spend thousands of dollars with New GM in addition the customer credit, often involving third-party lien holders, such that class members are at risk of irreparable harm.

8. Plaintiffs, hereby, incorporate their brief in support into this motion as if fully set forth herein.

9. Plaintiffs have complied with all notice requirements set forth in Rule 65 of the Fed. R. Civ. P.. On November 11, 2009, notice of Plaintiffs' intent to seek a temporary restraining order and proposed pleadings was forwarded to New GM's counsel. See Exhibit 3 to Plaintiffs' brief in support of this motion. Following telephone consultation with opposing counsel on the subject matter of the temporary restraining order on November 12 and 13, 2009, final versions of the pleadings and notice of the time for hearing on the temporary restraining order were provided to opposing counsel. See Exhibits 3 and 4 to Plaintiffs brief in support of this motion.

WHEREFORE, the plaintiffs request that the Court enter an order granting their request for a temporary restraining order:

a. preserving the status quo by prohibiting New GM from engaging in *ex parte* communications or business transactions, directly or through others, with the represented Plaintiffs and other class members in a manner inconsistent with the terms of the Class Judgment, except to the extent they are simultaneously advised of their rights under the Class Judgment, in particular, that the class member may be entitled to reimbursement of up to 100% of his or her VTi transmission related expenses, that this Court is reviewing Plaintiffs' claim that New GM assumed Old GM's liability under the Class Judgment, and that additional information

regarding class members' rights may be obtained at no cost through class counsel (along with contact information);

- b. prohibiting New GM from obtaining releases or arguing accord and satisfaction;
- c. setting a briefing schedule and a date for hearing on a preliminary injunction at the Court's earliest convenience; and
- d. expedited discovery on issues pertinent to a preliminary injunction, including communications to class members regarding the new special policy.

Dated: November 16, 2009

Respectfully submitted,



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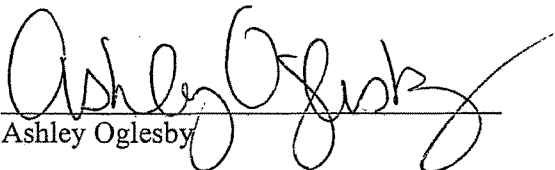
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2009, I served the Plaintiff's Motion for Temporary Restraining Order and Memorandum in Support of Motion for Temporary Restraining Order on the following by electronic mail and via FedEx standard overnight:

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